

**THIRD PARTIES IN PEACE NEGOTIATIONS: A CASE OF
KENYA'S POST-2007 ELECTIONS PEACE PROCESS**

BY

MUNYAMBU, RAPHAEL KIOKO

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DECLARATION

This is to certify that this project is my original work and has not been submitted for award of a Degree in any University.


SIGN.......... DATE.....19/11/2012.....

RAPHAEL KIOKO MUNYAMBU

This project has been submitted for examination with our approval as university supervisors.

SIGN.......... DATE.....20/11/2012.....

PROF. VINCENT G. SIMIYU

SIGN.......... DATE.....19-11-2012.....

DR. GEORGE M. GONA

DEDICATION

To my beautiful daughters, Susan and June

ACKNOWLEDGEMENT

It is my humble pleasure as I take this opportunity to salute a few individuals and institutions whom without, it would have been impossible to complete this project work. My sincere gratitude goes to Prof. Vincent Simiyu, Dr. George Gona and Dr. Mary Mwiandi of the Department of History and Archeology–UoN, and also Dr. Joshua Kivuva of the Department Political Science and Public Administration for the assistance, guidance, encouragement, criticism and goodwill they bestowed on me since the time of the course work, proposal writing all through to the writing of this project paper. I am also indebted to my classmates; Barrack Muluka, John Musembi, Major Imbiakha, Peter Kiriimi, Mary Kibenei and the rest, I really owe them gratitude.

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LIST OF ABBREVIATIONS

APP	African Peoples Party
AU	African Union
CLARION	Centre for Law and Research International
DPA	Department of Political Affairs
ECK	Electoral Commission of Kenya
EU	European Union
GoK	Government of Kenya
GSU	General Service Unit
ICC	International Criminal Court
IDPs	Internally Displaced Persons
IPK	Islamic Party of Kenya
IPPG	Inter-Parties Parliamentary Group
JKML	Jomo Kenyatta Memorial Library
KADU	Kenya African Democratic Union
KANU	Kenya Africa National Union
KNCHR	Kenya National Commission on Human Rights
KNDR	Kenya National Dialogue and Reconciliation
KPU	Kenya People's Union
MP	Member of Parliament

NARC	National Rainbow Coalition
NCKK	National Council of Churches in Kenya
NCSC	National Civil Society Congress
ODM	Orange Democratic Movement
ODM-K	Orange Democratic Movement – Kenya
PC	Provincial Commissioner
PEAP	Panel of Eminent African Personalities
PNU	Party of National Unity
SUPKEM	Supreme Council of Kenya Muslims
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNON	United Nations Office in Nairobi
USA/US	United States of America

WORKING DEFINITIONS

Third Parties: these are the external actors (state or non-state) including mediators who are actively involved in a peace process apart from the warring parties.

Peace Negotiations: is the process in which interested parties resolve disputes, agree upon courses of action, and bargain for individual or collective gain and attempt to craft outcomes which serve their mutual interests. It is usually regarded as a form of alternative dispute resolution.

Mediation: is a process by which the participants, together with the assistance of a neutral person or persons, systematically isolate dispute issues in order to develop options, consider alternatives, and be able to reach a consensual settlement that will accommodate their needs (Folberg and Taylor, 1984).

Warring Parties/Combatants: This refers to the parties in a dispute, also known as the disputants. For the purpose of this study, it means the Orange Democratic Movement (ODM) led by Raila Odinga and the Party of National Unity (PNU) headed by President Mwai Kibaki

National Accord: Also called the National Accord and Reconciliation Agreement – This is the final peace agreement or settlement which was signed by ODM's Raila Odinga and PNU's Mwai Kibaki on February 28, 2008 under the watchful eyes of Kofi Annan and President Jakaya Kikwete of Tanzania. This document was later transformed into an Act of Parliament as the National Accord and Reconciliation Act, 2008.

ABSTRACT

Third party interventions in peace negotiations are as ancient as the peace making itself. In every peace making process, there has been the involvement of third parties with some playing crucial roles towards the success of such process, while others become mere spoilers. Kenya experienced civil strife situation in the aftermath of 2007 elections, where disputed presidential election results brought about unprecedented violence occasioning death of over a thousand people and displacement of hundreds of thousands of others. This prompted the international community, regional community and local actors to intervene with a view to finding a solution to bring the two warring parties – Party of National Unity (PNU) and the Orange Democratic Movement (ODM) to the negotiating table, to stop the senseless killing and wanton destruction of property.

The manner in which the third parties carried themselves was exceptional, unique and exemplary culminating in a peace deal in less than two months. It is this behaviour of third parties that made me to carry out this study. Apart from AU's Panel of Eminent African Personalities who brokered the peace deal, there were other third parties who played a part towards the signing of the National Accord by President Mwai Kibaki and ODM leader Raila Odinga on February 28, 2008. The main third parties identified included the US, UK, UN, Uganda, Rwanda, Tanzania, the civil society, faith-based organizations and many others.

The purpose of this study is to show that peace was realized in Kenya after the intervention by the third parties. The study argues that, although the third parties were driven by their own national interests, the need to return Kenya to normalcy was eminent. With unstable country, these interests were at stake, and so the frantic efforts were employed by the third parties to salvage the threatened interests. This exercise saved Kenya from the political stalemate. This study outlines each third parties' contribution toward the success of the peace process. It also presents a pattern of convergence of interest among the third parties which led to a successful peace negotiation culminating in the signing of a workable peace deal (the National Accord and Reconciliation Act, 2008).

CHAPTER ONE

1.1 Introduction

Since independence in 1963, Kenya has been a peaceful country with minimal cases of political instability. In fact, Kenya had been referred to as “an island of peace in a regional sea of turmoil”¹. This was in reference to the relative social-political and economic stability of the country, yet Kenya is surrounded by Somalia, Ethiopia, Sudan and Uganda, - countries that were at different stages of state collapse. Some like Uganda and Somalia, had already experienced total state collapse. However, while Uganda has since President Yoweri Museveni’s *coup d’état* in 1986 been reconstructing the state, for two decades now, Somalia has been categorized as a failed state due to her unending civil war since 1991².

The above notwithstanding, Kenya has had a number of occasions where her peace and stability were shaken. This was both in pre-independence as well in the post-independence periods. In the former, challenges came from several sources. The Mau Mau insurgency of 1952 recorded some eight years of guerrilla warfare between the British colonial administration and the natives, especially the Kikuyu of Central Kenya who were fighting for independence and demand for return of their land. The period between 1955 and 1963 was informed by transition to independence whereby infighting between the newly formed political parties was the order of the day, first with the district parties and later between the two major parties to independence, i.e. KANU and KADU, with Paul Ngei’s APP also coming in the play.

Transition from colonialism into independence in 1963 was rather smooth only with different political and ideological ideas between personalities in the political arena. The post-independence period was informed by among others, the 1964 Army mutiny in

¹Wanjala Nasong’o S., “Resources Allocation and the Crisis of Political Conflicts in Africa: Beyond the Inter-ethnic Hatred Thesis”, in P. Godfrey Okoth and Bethwell A. Ogot, eds., *Conflict In Contemporary Africa*, Jomo Kenyatta Foundation. 2000, p.50.

²Kirsten Maas-Albert, preface in Heinrich Böll-Stiftung *Somalia Current Conflicts and New Chances for State Building*, 2008 Vol. XI p 7.

Nakuru army barracks which, although it did not present a major threat to the country, it was no doubt a wakeup call to the newly independent state that all was not smooth. The *shifita* wars of mid and late 1960s caused some serious threats to the peaceful country of Kenya. Cold War politics divided parliament right at the centre but not much of violence was witnessed. Kenya experienced 'little general elections' in 1966 with members of the newly formed KPU crossing the floor and seeking re-election. A lot of rhetorical conflict was witnessed during this period. Political assassinations of Pio Gama Pinto in 1965, Thomas Mboya in 1969 and J.M Kariuki in 1975 brought about some unprecedented tensions within the Kenyatta administration but Kenya was able to overcome these.

When Jomo Kenyatta, Kenya's first president died in August 1978, transition to Daniel arap Moi was also relatively smooth.³ In the 1970s and 1980s when a majority of African countries were experiencing military dictatorships, the country was able to escape this as well, save for the Moi era in 1982 when a section of the Air Force soldiers tried to overthrow the government in an attempted *coup d'état*. But this was thwarted by loyalist forces of the Kenya Army and the GSU. Kenya was made a *de jure* one party state and political detentions without trial became the order of the day. The collapse of the Soviet Union and the political upheavals that were caused by the end of the Cold War and its attendant bloc politics also left Kenya a relatively stable country. More recently, when multiparty politics were re-introduced in the country in 1991⁴, Kenya, though with difficulties, was able to embrace change. Kenya was also able to manage the pre-election ethnically-based political violence of 1992 and 1997 in some parts of the Rift valley, Coast, Nyanza, Western and Nairobi provinces. When president Moi's second term in the multiparty era ended in 2002, transition to the new President - Mwai Kibaki was smooth.

It was, therefore, of great surprise when, after peaceful election in 2007, Kenya was engulfed in a post-election violence that threatened to tear the country apart. For over a

³ Kenyatta died in his sleep in the coastal town of Mombasa on August 22, 1978 and despite political manoeuvres from some Kikuyu political elites to stop Moi who was the Vice President from taking over, Moi was sworn immediately as per the Constitution in an acting capacity as the president for 90 days before elections were conducted.

⁴ Repealing of Section 2(A) of the Constitution by President Moi in 1991 paved way for multiparty politics in Kenya.

month the country was engulfed in unprecedented ethno-regional conflict, neighbours turned against neighbours, a church was burnt with women and children taking refuge, wanton destruction of property and senseless killings that left at least 1,162 people dead and about 350,000 others displaced from their homes.⁵

This gave rise to serious international efforts to bring the destruction and human suffering to an end. In the realization that Kenya was on the brink of collapse, a number of third parties from around the globe offered to help in order to return the country to normalcy. The major ones included: The African Union (AU), the United States government, Britain, United Nations (UN), Uganda, Rwanda, the churches, the civil society and many others. Through the involvement of third parties, a peace deal was brokered by the Kofi Annan-led Panel of African Eminent Personalities leading to the signing of the National Accord on February 28, 2008. Here, the contending political parties signed a pact for power sharing, thereby rescuing the country from the precipice of disintegration. The warring parties were the Party of National Unity (PNU) led by President Mwai Kibaki and the Orange Democratic Movement (ODM) led by Raila Odinga. In the peace deal, Odinga became the Prime Minister with Kibaki remaining as the president and cabinet slots were shared between Members of Parliament from PNU (and her affiliate parties) and ODM.

In signing the National Accord, the parties to the conflict committed themselves to end the political violence, resolve the humanitarian crisis that the violence had caused, establish a power sharing mechanism and address the historical injustices that had created the problem.⁶ The most pronounced bone of contention which led to the violence was the presidential election results which ODM leaders and its supporters claimed had been “stolen” from them while the Electoral Commission declared PNU’s Kibaki as the victor. Soon the violence mutated to ethnic cleansing due to historical injustices which were informed by unfair distribution of national resources especially the land question.

⁵ Kenya National Commission on Human Rights (KNCHR) Report, “On the Brink of the Precipice: A Human Rights Account of Kenya’s Post-2007 Election Violence”, Nairobi, KNCHR, 2008, p.3

⁶ Read the four Agenda items of the Kenya National Accord and Reconciliation Act, 2008

This study argues that it was due to the intervention by third parties that peace was achieved and that the third parties had special interests in the country such that they could not let Kenya disintegrate.

1.2 Statement of the problem

Talking about the role of third parties in peace negotiations in general and the Arab-Israeli peace negotiations in particular, Laura Eisenberg and Neil Caplan,⁷ argue that third parties are more of the problem in peace negotiations than they are a solution. Eisenberg and Caplan argue that third parties in any negotiations pursue interests that are not necessarily geared towards the attainment of peace. Third parties have their own interests that they pursue separate from those of peace or negotiated settlement of the conflict. Indeed, the two point out that third parties make it harder for a negotiated settlement to be reached between the warring groups.

The above arises as a result of several factors: First, third parties normally align themselves with one party to the conflict over the other, which makes the party that has the support of the third party harden its position. Secondly, third party behaviour allows either party to the negotiations to pursue ends that are not geared towards the attainment of peace. Lastly, in a number of occasions, parties to a conflict use third parties to extend their conflict, that is, negotiations are used as “an extension of the basic war by other (non-violent) means”⁸. That is, in many cases, the presence of third parties (especially super-powers) encourages the continuation of the conflict, in which either or both sides to the conflict enter into negotiations for purposes other than making concessions or attaining peace.

Indeed, the presence of major powers in any conflict negotiations makes the parties to the conflict negotiate for “appearance” so as to show to the third party and to the world in general, of the justness of their cause and their flexibility to act to get a solution as opposed to the other party that is arrogant, extremist and un-compromising. That is,

⁷Laura Eisenberg and Neil Caplan, *Negotiating Arab Israel Peace*, Indiana University Press, Bloomington and Indianapolis, 1998, p.64

⁸ Ibid.

parties to a conflict either negotiate as a way of weakening their adversaries' position or negotiate to impress third parties. More importantly, third parties, when they are more than one, pursue conflicting interests that make it impossible for a lasting solution to the conflict. Thus, in any negotiations, the complementarities of third party interests are crucial in explaining the success or failure of the negotiations. This means that the more third parties are involved in any negotiations the harder it is to get a peaceful resolution to it.

Despite the involvement of many third parties in the Kenyan 2007/2008 post-election violence, the National Accord was signed between the warring parties – Party of National Unity and Orange Democratic Movement. This agreement not only brought to an end the violence but also became the basis for sustained reforms and improved working relationship between the conflicting parties. Indeed, through the National Accord, the conflicting parties cooperated to ensure the institution of a new constitutional dispensation in the country, as well as implementing a number of institutional reforms in the country.

The literature available shows that no previous study has been done to analyze and explain the input of various third parties in the peace process in Kenya. The motivation behind the concerted effort by each of the third parties has not previously been examined and so this study sought to put the same into perspective. Convergence of interests in ensuring a peaceful Kenya by all the third parties was a noticeable fact, and so there exists every need to identify and study the interests of the parties involved.

1.3 Justification of the study

Overtime, third party involvement in peace negotiations have tended to assign their role as “spoilers” or “self-seekers”, and that they are largely not interested in a peaceful settlement *per se*. This generalization leaves the possibility of convergence of interests by third parties towards the achievement of a peaceful settlement.

A closer scrutiny of the peace negotiations in Kenya will shed more light into this area of third parties and their place in peace negotiations. This research work shall be useful for

scholars of peace studies since it will unveil peace building as a new tool of international relations.

1.4 Objectives

The objectives of the study are twofold:

- To determine the interests and motivation of third parties to ending Kenya's post-election conflict.
- To determine whether the convergence of interests among the third parties was responsible for the success of the peace process.

1.5 Literature Review

In their view, Maundi, Zartman, Khadiagala and Nuamah⁹ bring out a number of significant observations and conclusions on mediators' entry in the settlement of African conflicts. These include: that mediators are motivated by self-interests in initiating entry or accepting a mediation invitation; that parties to conflict are equally motivated by self-interests in accepting mediation and a particular mediator; that conflict perceptions and definition change and affect mediators' entry and eventual success; that an impartial mediator is not central to the parties' acceptance of a mediator (that is a biased mediator can be both acceptable and effective); that mediators do not have to change the zero sum thinking of the parties to gain entry and be effective; and that the collective entry of multiple mediators is common. These factors will inform this study. Nonetheless, it is not certain whether they apply to every context, including that of Kenya.

Gilbert Khadiagala argues that, African mediators have, since the mid-1980s, been involved in matters to resolve civil conflicts especially in the Great Lakes region.¹⁰ These African mediators have intervened to help both combatant and non-combatant political

⁹ Mohammed Maundi, William Zartman, et al, *Getting In: Mediator's Entry Into the Settlement of African Conflicts*, United States Institute of Peace, 2006

¹⁰ Gilbert Khadiagala, "Mediation Efforts in Africa's Great Lakes Region", background Paper for African Mediators Retreat, Centre for Humanitarian Dialogue, Geneva, Switzerland, and the Miserere Foundation, Dar es Salaam, Tanzania, 2007 p.29

leaders rebuild institutions of political order, social cohesion, and economic stability.¹¹ However, he notes that, “most of these cases elder statesmen have mediated as individual supported by a wide array of local and international institutions.” The introduction of Kofi Annan perhaps gives the Kenyan case a different trajectory for which this study will pursue. The question here is, what Kofi Annan brought to the negotiations?

According to Eisenberg and Caplan, third parties get involved in conflict to serve their own interests, many of which have little to do with the resettlement of the conflict.¹² These two scholars point out that third parties offer disputants an escape route to avoid engaging in the costly business of resolving the conflict. Examining the many Arab-Israeli peace negotiations, the two have concluded that, third parties are a hindrance and not a solution to the conflict.¹³ They, argue that third parties provide the disputants with a hiding place to avoid having to deal with the actual problem. These sentiments inform this study on the behaviour of third parties in the Kenya peace process and elsewhere. However, this study will make step further to find out why the third parties in the Kenyan peace process did not seem to provide escape routes to the disputants, but discouraged them from becoming hardliners.

Similar arguments have been advanced by Wall and Lynn¹⁴, who point out that disputants invite third parties either to reinforce their position or when a stalemate is inevitable. Using the “hurting stalemate” model, Mitchell¹⁵ points out that disputants will only involve a third party when “neither disputant can envision a successful outcome through continuing the current strategies, nor an end to the increasingly unbearable costs.”¹⁶ The above literature informs this study on the reasons why the warring parties invited third parties and the importance of “hurting stalemate” to the conflict. Nevertheless, this study

¹¹ Gilbert Khadiagala, “Mediation Efforts in Africa’s Great Lakes Region”, p.31

¹² Eisenberg and Caplan, *Negotiating Arab Israel Peace*, p.43

¹³ Ibid

¹⁴ James Wall and Ann Lynn, “Mediation: A current Review”, *Journal of Conflict Resolution* 1993, 37(1): pp. 157-180

¹⁵ Chris Mitchell, “The Right Moment: Notes on Four Models of Ripeness”, *Paradigms* 9(2): 35-52, 1995.

¹⁶ Ibid, p.39

investigates whether such a hurting stalemate had been reached and also whether or not the presence of third parties in the country reinforced individual disputants' positions.

According to Richmond¹⁷ and Zartman¹⁸ disputants involve third parties only when they perceive that the third party is likely to "side with them" against the adversaries. Examining the case of Cyprus, Richmond¹⁹ points out that each party in the dispute "internationalized" their issues as a way of strengthening their position. As Zartman puts it, it was in the interest of both sides to bring a third party that would strengthen their position²⁰. In this case, the acceptance by disputants to involve a third party is dependent on the perceptions and misperceptions the disputants have of the third party power or resources and the perception that the third party will increase either party's position²¹. This study seeks to answer the questions; what were the perceptions of disputants in the Kenyan case to the mediators and, how did they use the international pressure to force the disputants to negotiate?

While analyzing the role of Kenya in the mediation of the Uganda conflict in 1985, Makumi Mwangi²² indicated that, Kenya's mediation of the Uganda conflict was prompted by President Moi's desire to wrest regional (especially East African) leadership from Tanzania, which had developed such pretensions. In the peace negotiations, Moi worked to establish Kenya's regional leadership. To Mwangi, the personal desire of president Moi to create for himself a *niche* in history cannot be underestimated. It is not always the case for mediators who are not incumbent president. Kenyan case was different because the mediators especially the Panel of Eminent African Personalities

¹⁷ Oliver Richmond, 'Negotiating Out of Fear and Fearing to Negotiate: Theoretical Approach to the Ending of the Cyprus Conflict', *The Cyprus Review* 8(2), 1996, pp. 99-110

¹⁸ William Zartman, 'The Internationalization of Communal Strife: Temptation and Opportunities Triangulation', in Manus Milarsky, 1992 p.27

¹⁹ Richmond, "Negotiating out of Fear and Fearing to Negotiate", p.101

²⁰ Zartman, *The Internationalisation of Communal Strife*, p.34

²¹ Richmond, Oliver, *Mediating in Cyprus: The Cypriot Communities and the UN*. London: Frank Cass. 1998, p.711

²² Makumi Mwangi, "Foreign policy and the Diplomacy of Conflict management in Kenya: A Review and Assessment", *African Review of Foreign Policy* Vol. 1 No. 1, March, 1999. p.6

were not sitting presidents. So how the situation played out is a point that this study pursues.

According to Bickerton and Klausner²³ some third parties are so interested in “just getting a solution” for publicity’s sake that, they would do anything to get recognized. At times, false promises are made in an effort to buy the will of the warring parties to start negotiations or agree to the conditions set thereby. The two scholars, for example, describe how former US secretary of State, Henry Kissinger, made contradictory and unrealistic promises to both parties during the Israel-Egypt Peace Process (1973-1979) to get them to sign a peace pact. Kissinger promised the Israelis that disengagement accords would reduce America’s demands for concessions and lessen criticism of Israel. He told Egypt the opposite, namely that accords would set the peace process in motion and increase the pressure on Israel for further concessions. The above example informs this study on how third parties give false promises to the warring parties to attain a political settlement. This study finds it interesting to examine whether the same methods of resolving conflict were applicable in the Kenyan case.

To Stoessinger,²⁴ only a stalemate can lead to a negotiated settlement. This is why during the October war between Israel and Egypt in 1973, Kissinger constantly switched his support from side to side in order to exhaust them, leaving little choice but to negotiate. In the Camp David peace process, for example, Jimmy Carter had to result to financial incentives and blackmail to force a settlement between the Israeli and the Egyptians²⁵. According to Eisenberg and Caplan²⁶ the Camp David Peace Accord is maintained by the same financial incentives. Observations by the above scholars inform this study on how major powers manipulate the disputants into a negotiated settlement. However, this study will demystify the issue of use of incentives in the Kenyan case.

²³Ian Bickerton and Carla Klausner, J., *A Concise History of the Arab-Israel Conflict*, Third Edition. Prentice Hall, Upper Saddle River, N.J. 07458, 1998.

²⁴ John Stroessinger, *Why Nations Go to War*, New York, St. Martins Press, 1992. p.148

²⁵ Ibid

²⁶ Eisenberg and Caplan, *Negotiating Arab Israel Peace*, p.47

In some cases, the disputants do not like involvement of third parties in peace negotiations. First, where a government is involved and the mediator is a strong power or is the UN, there is the perpetual fear that the involvement of the strong power might lead to “a direct or indirect recognition of their adversaries’ claims or of the rebel party”.²⁷ According to Assefa²⁸ stronger parties to a conflict also fear that the involvement of a third party might lead to the empowerment of the weaker party to the dispute. This is mostly the case where the third Party is quite powerful or is a UN agency.²⁹ The above literature informs this study as to how strong power can empower weak disputants. This may explain why ODM supported internationalization of the peace process. Nonetheless, this study will go ahead to investigate whether or not the presence of strong powers, like the US and UN in the Kenyan peace process gave clout to one warring party while disadvantaging the other.

Stephen Stedman³⁰ views third parties as “spoilers” pointing out that, third parties are motivated by a need to preserve their positions and interests. To Stedman, the emerging peace threatens third party’s power, world view, and interests. As a result, third parties can even use violence to undermine attempts to achieve peace³¹. Stedman's spoiler typology lists four major problems associated with spoilers: position, number, type, and locus. Position refers to whether the spoiler is inside or outside of the peace process. Spoilers inside tend to use "strategies of stealth" to undermine the process, while outside spoilers are likely to use overt violence. The number of spoilers is another major problem. These observations inform this study as to the presence of spoilers in a peace process. The Kenyan case may have presented a different scenario and this is what this study wishes to unravel.

²⁷ George Modelski, “International Settlement of Internal War”, in James Rosenau, ed., *International Aspect of Civil Strife*, Princeton, NJ: Princeton University Press, 1964.

²⁸ Assefa H., *Mediation of Civil Wars*. London: Westview, 1987.

²⁹ Ibid p.76

³⁰ Stephen John Stedman, "Spoiler Problems in Peace Processes," in Stern, Paul C. and Daniel Druckman, eds., *International Conflict Resolution After the Cold War*, Washington, DC: National Academies Press, 2000.

³¹ Ibid, p.5

In other times, third parties simply manipulate the disputants to get a quick solution and praise for their role as mediators. According to Oliver Richmond,³² a third party is a mediator and has many motives for getting involved a dispute. They range from a genuine impulse towards peace-making; putting pressure on the combatants to resettle or even pursuing personal agenda. Equally, such intervention could be imposed from the outside, or stem from the concerns of an external power or external power's ally. Every mediator carries with him a track record which may depend on the disputants' perceptions and analyses of his roles in previous situations. The above literature is of great help to this study since it informs of third parties who are driven by personal agenda. This study for example will seek to establish the forces behind the chief mediator Kofi Annan's resilience and commitment throughout the process..

Richmond looks at mediation as a form of conflict management and points out that mediation should be done bearing in mind the positions of the disputants.³³ To him, those positions are so dear to them that compromise is either not possible or too costly. These observations by Richmond will help this study in establishing why President Kibaki was adamant at the start of the negotiations that his presidency was non-negotiable. While, Raila Odinga wanted nothing short of a re-run for the presidential elections.³⁴ This will help the study in unveiling the positions of the parties to the conflict at the start and during negotiations.

Makumi Mwangiru³⁵ examined the Kenyan post-2007 election conflict, its devastating effects and the conflict management strategies employed before a peaceful agreement was reached. The book categorizes the third parties involved in the Kenyan case into three groups and gives their characteristics. These are endogenous third parties, who are from within the conflict, exogenous third parties who come from outside the conflict and heterogeneous third parties, who have the characteristics of outsiders and insiders.

³² Richmond Oliver, "Devious Objectives and the Disputants' View of International Mediation: A Theoretical framework", Vol.35, No. 6 (Nov., 1998), pp. 707.

³³ Ibid, p.712

³⁴ *Sunday Times*, January 27, 2008, p.2

³⁵ Makumi Mwangiru, *The Water's Edge, Mediation of Violent Electoral Conflict in Kenya*, Institute of Diplomacy and International Studies, Nairobi, 2008, pp.16-24

Mwagiru's approach in explaining different types of third parties will inform this study on the typologies that exist among third parties and be able to group each of the third parties into those groups. However, this study will first establish whether those typologies existed in the Kenya case and the role each played.

1.6 Theoretical Framework

Several theories have been advanced to explain the involvement, interest and motivation of third parties into a conflict resolution. This study has found it prudent to apply the Rational Mediation Theory by Lesley G. Terris and Zeev Maoz (2005)³⁶. According to the theory, mediators are always faced with dilemmas in terms of their perceived abilities to transform the game of conflict into a game of co-operation. This is because conflicts are versatile. The greater the versatility of conflicts, the more intrusive the mediation strategies to be employed.³⁷

The intention of mediation is a "win-win" solution which can only be achieved through some form of compromise. Rational theory of mediation, therefore, attempts to show that before conflicting parties get to this point of compromise, rational decisions are made on if they need the mediation, if mediation will benefit them and their partisans and even the costs involved either financially, socially or politically. Mediators will select which conflicts to help resolve. This is only done after doing a cost-benefit analysis. Mediators will check the security issues involved. If the conflict in the region is still volatile, some disengages.

The Rational Theory of Mediation also attempts to bring forth the conditions under which disputants will seek outside help to resolve their conflict. In Kenya's case, the warring parties, being rational actors, decided to involve third parties for two reasons. First, they both realized that continuation of the conflict was eroding their credibility internationally and therefore each appealed to their key international allies as a way of regaining their credibility, hoping such would advance their course. The second was out of a realization

³⁶Zeev Maoz, "Rational Mediation: A Theory and A Test", in journal of peace research Vol. 42, No. 5, Sage Publications, 2005, p.563

³⁷ Ibid.

that a continuation of the conflict was not advancing their course in any way. President Kibaki realized that the chaos was threatening his administration and therefore he invited third parties as a rational response to prevent further erosion of his authority. Similarly, Raila, the challenger had realized that chances of his being made president were reducing by the day and therefore invited third parties to negotiate a settlement that would have at least given him some powers.

The Rational Theory questions the low rate of mediation and suggests possible selection effects. Some conflicts are more accessible to mediation than others and that at times, mediations 'select' the conflict to be involved in. The process of mediation is costly and not everyone can afford it. Under which conditions then does mediation take place? The theory offers the following answers;

- Those disputants seek mediation if they believe it can help them improve their lot in comparison with a continued conflict scenario.
- That a potential mediator will be willing to mediate a conflict if they believe they can make a difference to the extent that the benefit of agreement outweighs the costs of mediation.
- That the structure of conflict becomes important since the mediator focuses on the extent to which a given conflict game can be transformed into a game of cooperation between disputants with the help of a third party.
- That there are difficulties entailed in the transformation of conflict games into games of cooperation.
- The more versatile the conflict, the more likely it is to involve mediation. However, most literature lacks empirical research on the pre-conditions of mediation. The integration of mediator's perspective with disputant perspective is lacking. One or more player in the mediation is held constant.

The rational theory of mediation raises two fundamental questions; one, under what conditions will disputants seek outside help to resolve their conflict. And two, under what conditions will mediators be willing to step in. The rational theory starts with the Rational Theory of Conflict as there is no mediation without conflict. The theory proposes that mediators may actually have access to more information than either disputants or possess sufficient resources to change disputants' preferences. Then they may be able to accomplish what the parties themselves are unable to.

Assumptions of Rational Theory of Mediation-

- The theory assumes that players are unitary rational actors out to maximize their expected utility.
- Those rational actors persist in a state of conflict because both disputants believe they are better fighting than compromising or yielding to the other opponent.
- That mediation is voluntary – that disputants can request mediation or dismiss an active mediator.
- That an outside actor can accept or turn down a request to mediate or quit a mediation process.
- Conflict versatility – that mediation is voluntary and the mediator cannot impose upon parties a new evaluation of the conflict and that disputants may be willing to consider a redefinition of the situation if neither stands to lose from doing so.

Rational Mediation Theory has been criticized by many scholars on several fronts. The most common critique is that at times mediation is not a voluntary process. Parties in conflict in some instances are threatened by 'superpowers' to either get into an agreement or they withdraw their support. This can be seen in most cases in third world countries. To exemplify it, the scenario after the post-election violence was of this nature where the principles and other political leaders were threatened with statements like "it will not be business as usual".

Mediators can be irrational. It is not right to assume that all mediators are rational. As the father of psychology, Sigmund Freud puts it, human beings are irrational creatures and mediators being human beings are subject to biases, impartiality and thus not always rational.

1.7 Hypothesis

This study will test two hypotheses:

- That, third parties to Kenya's post-election violence were motivated by a desire to bring peace to the country.
- That, the convergence of interests among third parties contributed to the peaceful settlement.

1.8 Scope

This research work is designed to examine and explain the necessity, motive and the behaviour of the third parties in the Kenya's peace negotiations in the year 2008. It is limited to the months of January and February 2008 until the signing of the Kenya National Dialogue and Reconciliation Accord on the 28th of February 2008. My time frame has been derived from the fact that serious cases of violence were reported to have erupted immediately after poll results were announced and the subsequent swearing in of president Kibaki for a second term in office. Violence took its toll in the months of January and February 2008 and this was the time that serious negotiations for peace took place. However chapter two traces historical background of election-related conflicts in Kenya and so goes back to the pre-independence Kenya all through to the post-election violence.

The third parties shall include all other actors whether internal or foreign who took part in the peace negotiation until the signing of the Peace Accord.³⁸ In this case, all major powers, regional and international community together with international organizations

³⁸ All states and non-state organizations who took part in the mediation of the Kenya's post-election conflict are hereby referred to as third parties.

which participated in search for conflict resolution and mediation, were considered third parties.

1.9 Limitations

A number of limitations hindered my efforts in carrying out my research. Limited information on the Kenya's peace negotiations took its toll, bearing in mind that the negotiations took place not long ago and so not much written information is available on the subject. This study was conducted at a time when implementation of Agenda Item Four of the Kenya National Accord was still in the process. Institutional and constitutional reforms were still being undertaken and so the information contained in this study experienced rapid changes.

The research was carried out at a time when the International Criminal Court (ICC) investigators were in the country carrying out their investigation on the post-election violence.³⁹ Some of the would-be respondents were unwilling to cooperate due to the fear attached to giving evidence to the ICC. In fact, my fears were confirmed when most of my would-be interviewees, who had earlier accepted to be interviewed, changed their minds after learning that my topic touched on the post-election violence. Most of the expected informants currently hold senior political positions and could not be reached due to both bureaucracy and unwillingness.

1.10 Methodology

Methodology is a system of explicit rules and procedures upon which research is based and against which claims for knowledge are evaluated. This research relied on qualitative methodology based on interviews, and documentary data – books, conference papers, government's publications, statistical yearbooks, journals and even unpublished materials. Many of these have been accessed at or through the University of Nairobi library. I also visited other area libraries and government departments as well. The following sections discuss sources of data in detail, which will be divided into primary and secondary sources.

³⁹ International Criminal Court investigators were in Kenya for the better part of the year 2010 and also in early 2011

1.10.1 Primary Data

The first source of data collection method has been primary data source which include; collection of data through interviews with experts on the Kenyan post-election peace negotiations. Interviews were carried out on the people and other actors who directly or indirectly took part in the peace process. Members of faith-based organizations which played a key role in the peace negotiations, such as NCKK and the Catholic Church, were interviewed. Members of the civil society who formed part of the local third parties were also consulted. These include; the Kenya National Commission on Human Rights (KNCHR), Kenya Human Rights Commission (KHRC) and other group which participated in the peace negotiations.

I interviewed consultants of South Consulting Ltd which was contracted by the Kofi Annan Panel of Eminent African Personalities to monitor the implementation of the National Accord. University lecturers conversant with the negotiations were also interviewed. Oral Interviews were also conducted with key informants, being persons who were deemed experts on matters of the coalition government. People who were privy to Kofi Annan's mediation proceedings were interviewed. Also journalists, political analysts, members of the civil societies and Non-governmental organizations were also interviewed.

1.10.2 Secondary Data

Since the study seeks to understand the role played by third parties in the Kenyan post-election violence, information and data was gained from a wide range of published and unpublished documents. Published materials included books, documentaries, journal articles, statistical abstracts and government publications among others. I also relied on the quarterly publications by South Consulting Ltd, which monitors the implementation of the National Accord. I also relied on unpublished conference materials, e-journals and other academic papers. In addition, I consulted newspaper articles and documentaries by both local and international media. Both local diaries and international media shall inform my study. Visits were done to the main libraries like Jomo Kenyatta Memorial Library, other national libraries, KNCHR library, the American Embassy Library and the National Archives.

CHAPTER TWO

History of Electoral Conflict in Kenya Since 1960

2.1 Introduction

Elections in Kenya in which Africans participated can be traced to the year 1957 when Kenya held her first elections to elect African members of the Legislative Council. Electoral related conflicts of less magnitude can also be traced to the same period. Since this time, Kenya's elections have been accompanied by one or another form of conflict. In the post-independence period the conflict seemed more ideological though they manifested themselves on ethnic terms. But this changed with the end of the multi-party system in 1969. With the introduction of a single party system, competitive presidential elections came to an end, and any election related conflict tended to be propagated by the state. Serious election-related conflicts/violence resurfaced with the introduction of the multiparty system in 1991.

This chapter traces and analyzes election-related violence in Kenya. The chapter is divided into five sections; 1) The 'transition' to independence period which covers the period 1957 – 1964, 2) Elections and violence during Kenyatta regime (1964-1978), 3) Electoral Violence in Kenya between 1978 and 1991, 4) The 1992 and 1997 pre-election conflicts and 5) The 2007 post-election violence.

2.2 Transition to Independence (1957 to 1964)

This was a transition to independence which sought to replace the colonial state with an independent state, i.e. the replacement of European administrators with indigenous political elite. At this time, the overriding conflict was about the kind of state to create. Much of the conflict was among most of those who sought to replace the colonial administrators. Thus while the broad conflict was between the colonial administration and the nationalist movement, there was also conflict between the nationalist movement itself over the kind of state to create, the distribution of resources and other benefits and personality conflicts among the leaders of nationalist movement.

The nationalist movements and the nationalist leaders were divided on ideological basis between those who wanted a capitalist leaning state against those who wanted a socialist state. Throughout this period, the conflicts manifested themselves on ideological basis, ethnic affiliation, regional and party basis. On attainment of independence, there was a realignment in which friends became foes, while foes became coalition partners. The transition period cover four election cycles; 1957, 1958, 1961 and the 1963 elections.

The roots of Kenya's electoral violence can be traced back to the divide and rule politics of British colonial administration in the first half of the twentieth century. The divide and rule politics ensured that the British dominated the diverse and decentralized communities which fell within the Kenyan territory. In Kenya as in other parts of the continent, colonial rule had created a bureaucratic administrative structure for effective administration of its subjects. The bureaucratic structure and in particular the provincial administration had a limited form of electoral intervention in the 1957 elections which allowed Africans to elect their representatives to the Legislative Council (hereafter Legco) for the first time.⁴⁰

Nevertheless, in the colonial period, British domination over Africans, which manifested in numerous oppressive and discriminatory laws and policies, compelled Africans to protest in an organized manner.⁴¹ After a stint with parochial political associations, such as the Kikuyu Central Association and the Young Kavirondo Association, Africans went into more encompassing political organization that took the form of country-wide political parties, beginning with the Kenya African Union (hereafter KAU) in 1944. The advent of the Mau Mau revolt in 1952 saw the colonial government ban the organization of country-wide political parties by Africans. In 1955, Africans were restricted to political activities at the district level. The result was the formation of numerous district political parties from 1956 such as Nairobi District African Congress, Taita African Democratic Union, Nakuru African Progressive Party, and Baringo District Independence

⁴⁰ Keith Kyle, *The Politics of Independence of Kenya*, New York, Palgrave Macmillan, 1999, pp.70-71

⁴¹Nick Wanjohi, "Political Parties in Kenya: Formation , Policies and Manifestos", Views Media, Nairobi, 1995

Party, among others.⁴² Since Kenyan districts had been demarcated along ethnic lines, political parties assumed ethnic identities and orientations. This marked the origin of ethnicity in the organization of political parties.

The 1957 elections were held without a national party machine to back those African Elected Members. It was not until 1960 when the colonial government allowed the formation of national parties by which the African Elected Members could reach the public.⁴³ The nationalist movement that grew after 1957 suffered from divisive influence: the personal rivalry that developed within the ranks of the African Elected Members of the Legislative Council, which was closely influenced by tribal identification. At the outset, the most obvious rivalry was between Oginga Odinga and Thomas Mboya.⁴⁴ There was by no means the only rivalry that developed within the group of African leaders, but it was the most publicized; and it undoubtedly became a dominant feature of KANU politics.

The first elections to the Legislative Council were held on 9-10 March 1957⁴⁵. In these elections, except for Daniel Moi, all other previously nominated representatives of the Legco were rejected by the electorate. Thomas Mboya ran against Argwings Kodhek⁴⁶ in Nairobi and won. Because of the restrictions imposed on the Kikuyu, not many of them were allowed to register as voters and not many were even allowed to contest for the elections and therefore even in Nairobi, which was then considered a Kikuyu territory, non-Kikuyu were elected into the Legco. With the absence of a Kikuyu in the Legco, the Luo, led by Odinga and Mboya (who had been elected Chairman and Secretary of the African Members in the Legco) took over the leadership of the African Elected Members.

Not much of electoral violence was witnessed in this election as the case would be in the coming elections. Most of the conflict recorded was personality-based. Much of this

⁴² Ibid

⁴³ Gertzel Cherry, *The Politics of Independent Kenya*, London, Heinemann Educational Books Ltd, 1970 pp.44-47

⁴⁴ Ibid

⁴⁵ Polling itself took two days

⁴⁶ Oginga Odinga was closer to Argwings Kodhek than he was to Mboya and when Mboya decided to run against, and even defeated Kodhek, Mboya's relations with Odinga were strained further.

personality conflict was between Mboya and Kodhek and later between Mboya and Oginga Odinga.

From 1955 until 1960, only a few political parties were allowed in non-Mau Mau areas.⁴⁷ These ethnic-based political associations laid the foundation of future ethnicized political contests. Indeed, it was these ethnic political associations that were required to disband in preference for a national party.⁴⁸ The united national party was KANU that was formed in March 1960. However, ethnic and interest group calculations led the so-called “minority” ethnic groups to withhold their support for KANU. They (minority ethnic groups) subsequently formed KADU and advocated for a federal constitution which could secure their rights especially land ownership.

In the ‘mid-term’ elections of March 1961, the nature of ethnic support for the two big parties was confirmed. Besides securing the support of the Kikuyu and Luo, KANU also got support from amongst the Meru, Embu, Kamba and the Gusii communities. KADU, on the other hand received support from the pastoral ethnicities such as the Kalenjin and Maasai and a few other minor tribes. Among the major ethnic groups, it was only the Luhya that split its vote between KANU and KADU. In 1962, Paul Ngei mobilized his Kamba community into his African Peoples Party (hereafter APP). Their intention was obviously to create an organizational framework within which to bargain for inclusion in the government after the 1963 independence elections.⁴⁹ The seeds of ethnic calculations in electoral politics had thus been sown.

Similarly, political parties further fuelled electoral malpractices and later violence due to their ethnic nature. The colonial era political associations were ethnic and local due to necessity, but independent political parties continued with the trend. Though not exclusively ethnic, the parties were “mere federated ethnic loyalties around

⁴⁷ Walter O. Oyugi, *Ethnicity in the Electoral Process: The 1992 General Elections in Kenya*, Africa Association of Political Science, Vol. 2, No. 1, 1997, pp. 41-69, p. 44.

⁴⁸ Ibid.

⁴⁹ Ibid

individuals”.⁵⁰ The Kenya African National Union (KANU), for example, which made the greatest claim to represent a Kenyan nation, had a largely Kikuyu and Luo leadership. The rival Kenya African Democratic Union (KADU) was a conglomeration of a number of ethnic parties, some of which had made common cause with the white settlers as “minority” groups.⁵¹ The fertile Rift Valley land appropriated by white settlers became a central issue. Pastoralist politicians and a faction of the white settlers were united by their desire to keep the primarily Kikuyu migrant labourers and “squatters” from making claims to the Rift valley land. It is this desire that has continued to inform electoral violence in Kenya, especially the Rift valley, to date.

Moreover, Kenya’s cut throat and violent ethnic electoral process goes back to the Second Lancaster House discussions. The 1962 negotiations saw both KANU and KADU take opposing views on the type of constitution Kenya was to adopt at independence. KANU advocated for a unitary constitution purportedly to uphold national unity while KADU advocated for a federal constitution with shared powers between the central government and the regional governments. KADU was supported by the white settlers who were keen to hold on to some political autonomy. This diverging view only added to ethnicize the subsequent political contests which gave way to violence. In May 1963, KANU soundly defeated KADU and Paul Ngei’s African Peoples Party (APP) to form the first genuine independent government. The elections were not violent but an ethnicized political process was first cementing itself in the new nation.

2.3 Elections and Violence during Kenyatta Regime (1964-1978)

This section covers Jomo Kenyatta’s⁵² consolidation of power which was characterized by political assassinations, intra-and inter-party conflicts that saw the merger of KANU and KADU. There arose several disagreements after independence in 1963. At this time,

⁵⁰Jacqueline M. Klopp, “*Ethnic Clashes and Winning Elections: The Case of Kenya’s Electoral Despotism*”, *Canadian Journal of African Studies*, Vol. 35, No. 3 (2001), pp. 473-517, Canadian Association of African Studies. Accessed from <http://www.jstor.org/stable/486297> on 10th May, 2011, p. 476.

⁵¹Ibid.

⁵²Jomo Kenyatta became the Prime Minister after his KANU party won the 1963 elections over KADU. He later became the president of the Republic of Kenya

ethnicity threatened to tear the country along tribal lines. As Cherry Gertzel⁵³ points out, the Kikuyu appeared to many as the major beneficiaries of independence, dominating both the bureaucracy and the country's economy. So explicit did this become that one Luo Member of parliament speaking at a public luncheon in 1965 felt it necessary to warn that, "There was no place for establishing one clan or one tribe as a ruling class in African society".⁵⁴

By the end of 1965, fears of Kikuyu dominance in government and, therefore, control over policy making were regularly voiced in and out of parliament; and the debate on the presidential address at the November state opening of Parliament demonstrated the extent to which Members shared this fear.⁵⁵ Disagreement about the allocation of resources between districts and the consequent emphasis on tribal position was by no means the only source of dispute over policy. There were more fundamental disagreements over certain basic assumptions underlying government policy. This came out most clearly in the debates on land, nationalization and Kenya's foreign policy.

The most significant of these disagreements concerned land. In each successive budget debate in 1963, 1964 and 1965, members from all parts of the country challenged the government's land and settlement policies. Much of the criticism was directed at specific aspects of settlement policy: the squatter problem, the future of labourers evicted from former European farms, the organization of the Ministry of Settlement, the behaviour of settlement officers, the loans policy which required payment of loans from new farmers within what was regarded as too short a period, the size of deposits required from new farmers in the settlement schemes, which many members insisted were too high for ordinary Africans.⁵⁶

⁵³Gertzel, *The Politics of Independent Kenya*, pp.44-45

⁵⁴ Mr. Okelo Odongo, then Assistant minister for Finance, was speaking at the United Kenya Club luncheon. *East African Standard*, 15 July 1965.

⁵⁵House of Representatives *Official Report*., Vol. VII, 9 November 1965, col. 212; 10 November, col. 278; 11 November, col. 354 ; 30 November, col. 276.

⁵⁶Gertzel, *The politics of Independent Kenya*, p.45

As Keith Kyle⁵⁷ observes, an ominous trail of blood from political assassinations marred the political record of independent Kenya. First there was the left-wing Asian and ally of the forest fighters and later of Odinga, Pio Gama Pinto, who was executed very professionally in his driveway in 1965 by two teenagers. Next, Tom Mboya was assassinated in a Nairobi street on 5th July 1969; one month before he would be 39. He was one of the most gifted leaders modern black Africa has yet produced. Africa could ill afford to squander so rare a resource. A kikuyu trained as a sapper in Bulgaria, was tried, condemned on circumstantial evidence and executed for the crime but without his reference to the “big man” who should have been picked up ever having been elucidated.⁵⁸

The death of Tom Mboya amplified the already sour relations between the Luo and the Kikuyu communities with the Kenyatta’s government being implicated in the death. This led to the tragic events of October 25, 1969 in Kisumu in which Kenyatta’s motorcade was stoned and his security guards opened fire, killing eleven people and injuring many others. These unfortunate events happened when the president had gone to Kisumu to open the Russian –built New Nyanza Provincial Hospital, a project of his fierce rival, opposition leader, Oginga Odinga.⁵⁹ This was happening a few months after the death of Tom Mboya and that of Argwings Kodhek who had died in a road accident. The Kisumu incident would act as a turning point of the Kenyan politics as Oginga together with other KPU sympathizers, were arrested three days after and put in detention. KPU was banned and Kenya became and *de facto* one party state.

The next victim was the charismatic Josiah Mwangi Kariuki, once a favourite of Kenyatta who though a junior minister as late as October 1974, had articulated for some time the growing sense that a small elite group was acquiring great wealth and that, as Kenyatta grew very old, cronyism was becoming the predominant form of government. The seeds of corruption had been sown very early after *Uhuru*, though its impact had been masked

⁵⁷ Kyle, *The Politics of the Independence of Kenya*, p.71.

⁵⁸ Ibid

⁵⁹ Interview by Emeka-Mayaka Gekara with Collins Odinge Odera, *Saturday Nation*, October 23, 2009

the country's initial appearance of prosperity. But Kenya, lacking natural resource, is basically a poor, rural country and great contrasts in wealth, at first tolerated, were increasingly criticized. "We don't want" Kariuki said, "a Kenya of ten millionaires and ten million beggars." In March 1975, Kariuki was murdered. He had last been seen in the company of members of the paramilitary GSU.⁶⁰ The most recent, post-Kenyatta, instance of politics leading to death was in 1990 with the assassination of the incumbent Foreign Minister, Robert Ouko, a Luo, a crime which was also never solved. Political scientists related some of these assassinations to evil strategies of the powerful political elites of those times.

After acquisition of power, KANU systematically recentralized power through a series of constitutional amendments. The consolidation destroyed the regional governments that had been negotiated prior to independence. The ruling party led by President Kenyatta coerced and persuaded KADU and APP MPs to join it. It is worthwhile to note that Kenya became a *de facto* one party state after KADU and APP dissolved themselves to join KANU. Kenyatta and KANU used the "carrot and stick" approach towards the opposition. Kenyatta held out promises of position and patronage to those members of KADU who defected to the ruling party, but froze out stalwart opposition supporters during distribution of public services.⁶¹ Moreover, Kenya's *de facto* one party status was further reinforced by President Kenyatta's decision to ban Kenya Peoples' Union (KPU) of Jaramogi Oginga Odinga in 1969.

Prior to 1969, Kenya's political scene had been influenced by the cold war. Kenyatta and his inner circle were sympathetic to the capitalist west, while Odinga and his friends preferred USSR's socialist ideologies. The subsequent political contest saw Odinga dethroned from his position of KANU vice-presidency in 1966. The decision had been engineered by cabinet minister Tom Mboya which made Odinga to resign in a huff as

⁶⁰ Jennifer A. Widner, *The Rise of a Party-State In Kenya. From Harambee! To Nyayo!*, University of California 1992, pp. 86-7

⁶¹ Joel D. Barkan, *Kenya: Lessons From a Flawed Election*, *Journal of Democracy*, Volume 4, Number 3, July 1993, pp. 85-99 (Article), John Hopkins University Press. Accessed from <http://muse.jhu.edu/ajournals/jod/summary/v004/4.3barkan.html> on 10th May, 2011.

Kenya's vice-president. Odinga and his sympathizers went ahead to form KPU. The ensuing "Little General Elections" were characterized by high voltage campaigns and political rhetoric. The by-elections held in 27 constituencies in that year revealed two influences in the electoral process. Firstly, the regime was determined to portray the opposition as a Luo tribal formation by ensuring its defeat in the non-Luo constituencies through electoral malpractices. Secondly, finding themselves on the defensive, the Luo became victims of ethnic ideology by perceiving the contest as one between them and their adversaries in KANU: they returned all the KPU candidates in Luo land to parliament.⁶²

2.4 Electoral Conflict in Kenya Between 1978-1991

When Kenyatta died in 1978, vice-president Daniel Moi became the President. While independent Kenya continued to hold regular elections, it was the powerful office of president which approved of the winners with the president always romping home unopposed. As before, it was the provincial administration that supervised and facilitated the elections with those in bad books with the establishment being on the receiving end. Similarly and expectedly, Moi used the electoral process to weed out Kenyatta's former ruling clique. He intervened in party nominations and influenced the elections to replace real and perceived Kenyatta clients with his loyal friends. Moi appointed his fellow Kalenjins into key positions in the security and other government services.⁶³ His steady and increasing grip of power was shaken in the aborted 1982 coup d'état. Among the consequences of the coup was the call for an early election in 1983 where real and perceived Moi critics were locked out.

However, it is claimed that Moi's decision to make Kenya a *de jure* one party state in early 1982 was partly responsible for the coup. In mid-1980's, Moi heavily cracked down upon critics of his government. The crackdown saw detention of several politicians and

⁶² Gertzel, *The Politics of Independent Kenya*, , pp.44-45

⁶³ *Africa Confidential*, October 23, 1990

scholars. Besides the detention, many critics of president Moi were tortured and killed as others were forced to flee into exile.⁶⁴

The worst, however, occurred during the 1988 queue voting general elections, which have been branded “Kenya’s most undemocratic elections”.⁶⁵ In these elections the secret ballot was abandoned as the method of electing members to the Kenyan Parliament and was replaced with a queue voting one. Earlier in 1985, the ruling party, KANU, had changed its own election rules from the secret ballot to one in which the voter would queue behind the candidate or agent of the candidate of his/her choice. According to Hyden, in the queue voting system, supervisors, the majority of whom were civil servants, did not hesitate to announce winners according to the wishes of the KANU leadership.⁶⁶

Those that “lost” in the elections began to clamour for multi-partyism as a way of regaining their lost positions and probably as a way of replacing Moi. Towards the end of 1980s, therefore, the Moi government came increasingly under pressure from the international community as well as from Kenyans to end the one party rule. Countrywide demonstrations and riots were organized against Moi and KANU, which climaxed with the 1991 infamous *Saba Saba* riots in which a dozen people were killed and the key leaders arrested and detained.⁶⁷

Using the 1988 marred and rigged elections, amongst other grievances, Moi critics soon got national attention. Eventually, Moi carved in 1991 and allowed for the repealing of

⁶⁴ The Truth, Justice and Reconciliation Commission (TJRC) which was formed after the signing of the National Accord in 2008 to address the historical injustices is currently (in 2012) carrying out public hearings with the victims of the infamous Nyayo house torture chambers. This is in bid to reconcile the victims of the unpopular Moi regime.

⁶⁵ NCKK, 1988

⁶⁶ The 1988 elections in particular have been considered Kenya’s most undemocratic elections and were characterized by widespread cases of rigging, bribery, voter intimidation and coercion (beyond 1988). Many popular politicians were prevented from presenting themselves as candidates, were rigged out at the Mlolongo (queue) stage or were totally expelled from KANU, the sole political party.

⁶⁷ Kuria, 1994

section 2A of the constitution. Kenya changed from a *de jure* one party state to a multiparty state. However, keen to hold on to power, Moi's supporters and strategies put in place a master plan which ensured that Moi and KANU held on to power. The strategy gave rise to election related violence for the attainment of particular electoral results.

2.5 The 1992 and 1997 Pre-election Conflicts

The period leading to the general elections of 1992 witnessed the open use of violence and killing, intimidation and displacing of communities perceived as opposition supporters.⁶⁸ The violence, however, had begun in late 1991 after the ruling party KANU reluctantly agreed to repeal section 2A of the constitution. A number of KANU politicians foretold of the country is disintegration on tribal lines and subsequent anarchy and chaos. Consequently, KANU MPs and other politicians allied to the party mostly from the Rift Valley province began to call for the forceful removal of other ethnic groups from the province as they were viewed as opposition adherents.⁶⁹

Violence initially broke out in November 1991 at Meteitei farm, a small settlement on the border between Western, Nyanza and Rift Valley provinces.⁷⁰ The violence later spread to other parts of the country in the run up to the 1992 general elections. In the Rift Valley, the violence largely targeted the Luo, Kikuyu, Luhya and Gusii ethnic groups.⁷¹ The violence manifested in form of killings and displacements of populations. At the Coast, Likoni in particular, violence broke out in May 1992. Rioting rocked Likoni shortly after the release of Muslim activist, Mr. Sheikh Khalid Salim Balala, who had been arrested on allegations of inciting the coastal people against the KANU government.⁷² Tension had soared over the delay in IPK's registration and had been aggravated by the Coast PC Mr. Mbuo Waganagwa, who had warned Muslim parents in Likoni against letting their

⁶⁸ Patrick Mutahi, "Political Violence in the Elections", in Herve Maupeuet al, eds., *"The Moi Succession: Elections 2002,"* Transafrica Press, Nairobi, 2005, p. 69.

⁶⁹ Ibid., pp. 69-70.

⁷⁰ Ibid., p. 70.

⁷¹ Peter H. Okondo, *A Commentary on the Constitution of Kenya*, Nairobi, Phoenix Publishers Ltd, 1995, p.68

⁷² *Weekly Review*, "Muslims go on the Rampage", May 29, 1992, p.34.

children be used as pawns by fundamentalists out to achieve their own goals.⁷³ The police responded by arresting some Muslim leaders provoking further riots.

The Electoral Commission that was single handedly appointed by the president to conduct the 1992 poll and re-appointed to conduct the 1997 elections, albeit with some additional ten members proposed by the opposition, was accused by a section of Kenyans of favouring the ruling party KANU and dancing to the whims of the president. The electronic media, the provincial administration and the police force were consistently used as electoral weapons for the president.⁷⁴

As Mogire observes, KANU kept a band of thugs or party stalwarts in the form of KANU Youth Wingers and *Jeshi la Mzee* (the President's army) who reined havoc on opposition leaders. These thugs made life uncomfortable for the opposition.⁷⁵ Among the general reasons for the violence is that it was to confirm the 'prediction' that multipartyism would bring tribal animosity and chaos. It was also to displace the non-Kalenjin communities in Rift Valley so that the *Majimbo* agenda could be successful. The violence also aimed at provoking a mass reaction in support of former President Moi and KANU among the Kalenjin so that sub-groups like the Nandi and Kipsigis could not join the opposition.⁷⁶ Consequently, the violence ethicized Kenyan politics and increased ethnic animosity and hatred. In addition, the violence also ensured that KANU gained victories in areas where it had slim chances of winning.⁷⁷

In the run-up to the 1997 general elections, the scenario repeated itself as violence rocked some parts of the country. Clashes erupted at the coast in August 1997 targeting upcountry people settled in the province. Over 60 people lost their lives and an estimated

⁷³ *Weekly Review*, May 29, 1992, p.34

⁷⁴ Andreassen B.A., Geiseler G., and Tostensen A, *A Hobbled Democracy: The Kenya General Election, 1992*, Bergen, Chr. Michelsen Institute, 1993.

⁷⁵ Edward Mogire, "The State and Internal Political Conflicts In Africa: The Case of Kenya". In P. Godfrey Okoth and Bethwell A. Ogot, eds., *Conflict In Contemporary Africa*, Jomo Kenyatta Foundation, Nairobi. 2000, p.131

⁷⁶ Mutahi, "Political Violence in the Elections" p.70.

⁷⁷ *Ibid.*

10,000 upcountry people fled the province.⁷⁸ This violence was originally explained by analysts in terms of strategy by the KANU regime to ensure president Moi garners 25 per cent of the votes in the province in the 1997 elections in order to fulfill the constitutional requirement that the winning presidential candidate must garner 25% of the votes at least in five of the country's eight provinces.⁷⁹ The 1997 violence was also aimed at dissenting voices within the ruling party KANU. This is why the non-Pokots were evicted from West Pokot while the non-Maasai were intimidated and chased out of Trans-Mara/Gucha districts.⁸⁰ In addition, the Marakwet, who had started criticizing the government, suffered the brunt of violence through cattle rustling along the Marakwet/West Pokot border.⁸¹

The 1997 election violence was similar to the 1991/1992 violence. KANU was being pressurized by the civil society and the opposition to review the constitution and held the 1997 elections under some constitutional amendments. The civil society and the opposition garnered substantial support from the public. The public support caused panic among KANU members and vigilantes were mobilized to stem the calls for constitutional reform by intimidating people.⁸²

At the Coast, traditional warriors were employed to displace and intimidate upcountry people mainly the Luhya, Luo, Kikuyu and Kamba. By perpetuating the violence, KANU wanted to break the dominance of the unregistered Islamic Party of Kenya (IPK), which had denied it substantial votes in 1992.⁸³ Secondly, it wanted to break the alliance of the Swahili-Arab and Mijikenda elite that was proving to be politically dangerous for the ruling party in 1997.⁸⁴ Thirdly, the violence was to disenfranchise upcountry people in Mombasa and Kwale, effectively undermining the electoral demographics of the IPK and

⁷⁸*The East African*, September 29 – October 5, 1997, pp.3

⁷⁹Wanjala Nasong'o, "Resources Allocation and the Crisis of Political Conflicts in Africa: Beyond the Inter-ethnic Hatred Thesis", in P. Godfrey Okoth and Bethwell A. Ogot, eds., *Conflict In Contemporary Africa*, Jomo Kenyatta Foundation, Nairobi, 2000, p.52

⁸⁰*Ibid.*, pp. 70-71.

⁸¹ *Ibid.*

⁸² *Ibid* p.71

⁸³ Patrick Mutahi, "Political Violence in the Elections", p.71

⁸⁴ *Ibid.*

the opposition. Besides KANU increased its parliamentary seats and its presidential candidate votes increased from 34 per cent in 1992 to 42 percent in 1997.⁸⁵

In 2002, there were fears of an outbreak of violence in the run up of the elections. However, elections were carried out in a rather peaceful environment and very minimal cases of electoral violence were reported. A number of reasons were responsible for the reduced violence, First, former President Moi who was constitutionally barred from running for another term, voluntarily relinquished power to Mwai Kibaki who had won the election under the banner of the National Rainbow Coalition Party. Secondly, the 2002 elections were a challenge to KANU as it provided a different, unfamiliar election field that made the use of centrally organized state-sponsored violence unattractive.⁸⁶ The ruling KANU party politicians were battling to survive politically and were also battling to ensure that KANU retained power. The reduced violence can also be credited to the unity of the opposition in nominating a single presidential candidate, which ensured an increased appeal over KANU. Similarly, civic education by government and non-governmental organizations helped the electorate to shun electoral violence.

Though large-scale violence was not witnessed in the run-up to the 2002 elections, about 325 lives were lost due to electoral violence. The deaths were caused by assault, inter-ethnic violence, banditry and cattle rustling. More deaths were caused by disruptions of public meetings, threats, intimidation and political thuggery. The months of November and December 2002 recorded the highest number of electoral violence cases due to party nominations and general elections campaigns.

2.8 The 2007 Post-Election Crisis

On December 27, 2007 Kenya conducted her regular general elections – the fourth since the re-introduction of the multiparty system in the country. The campaigns and elections were conducted in a relatively peaceful environment. The problem began when the presidential election results were not announced on time. The delay in announcing the

⁸⁵ Patrick Mutahi, "Political Violence in the Elections", p.71

⁸⁶Ibid, p.72.

presidential election results made the already anxious nation suspicious that the delay was an attempt to manipulate the results. The announcement of the presidential election results on December 30, 2007 sparked off violence in Kenya: in Nairobi, Kisumu, Mombasa, Eldoret, Kericho, Taveta, Wundanyi, Kilifi, Narok, Busia, Bungoma, Kakamega, Kuresoi and Molo.⁸⁷

The ODM leadership and its supporters rejected the results by the Electoral Commission of Kenya (hereafter ECK) that gave Mwai Kibaki's PNU victory. Raila Odinga and his ODM party called their supporters to the streets to protest PNU's victory. ODM supporters claimed that their votes had been stolen. Mwai Kibaki was sworn in by the Chief Justice on December 30, 2007 at about 18.30Hrs.⁸⁸ Violence spread all over the country with exception of Eastern and the North Eastern provinces. Most international observers noted that there had been irregularities in the tabulation of the presidential vote and in reporting the tabulation of the vote, even though the conduct of the ECK during a large portion of the electoral process had not raised serious concerns.⁸⁹

As Makumi Mwangiru⁹⁰ tabulates, within the first three days, 164 people were killed. Within three weeks of the violent conflict over five hundred people had died. By the end of the third week, over six hundred people had been killed and another 250,000 were internally displaced in the post-election violence. By the end of the first month of the conflict, over eight hundred people had been killed and another 350,000 were internally displaced. This pattern continued up to end of February 2008 when the violence ended with the signing of the National Accord with over a thousand left dead and over 350,000 becoming Internally Displaced Persons (hereafter IDPs).

The nature of the violence was multidimensional, although at the beginning it was a political conflict precipitated by the disputed election results. Soon it became an ethnic conflict between communities that had supported Raila Odinga's ODM (especially in

⁸⁷*The Standard*, January 1, 2008, p.13

⁸⁸ Ted Dagne, *Kenya: Current Conditions and the Challenges Ahead*, 2011

⁸⁹ Joel Barkan, "Breaking the Stalemate in Kenya." Center for Strategic and International Studies Online *Africa Policy Forum*, January 8, 2008, available at <http://forums.csis.org/africa/> visited on 12/6/2011

⁹⁰ Makumi Mwangiru, *The Water's Edge*, p.3

Nyanza and Rift Valley) against the Kikuyu (who to had been perceived to support Mwai Kibaki). However, after a few days, the conflict turned into a complex multidimensional score-settling fight to resolve Kenya's historical disputes between communities. The violence often took an ethnic angle, but much of the violence in the slums around Nairobi was also motivated by poverty and unemployment, and some may simply have been undertaken by easily manipulated young people and criminal groups that had nothing to lose from engaging in and sustaining the violence.⁹¹

Table 1. Electoral Commission of Kenya: Official National Presidential Results, 2007

Other Names	First Name	Votes	Party Abbrev.	Party
Mwai	Kibaki	4,578,034	PNU	Party of National Unity
Raila Amolo	Odinga	4,352,860	ODM	Orange Democratic Movement
Stephen Kalonzo	Musyoka	879,899	ODM-K	Orange Democratic Movement - Kenya
Joseph Ngacha	Karani	21,168	KPTP	Kenya Patriotic Trust Party
Pius Muiru	Mwangi	9,665	KPP	Kenya People's Party
Nazlin O Fazaldin	Rajput	8,624	WCP	Workers Congress Party of Kenya
Kenneth S. Njindo	Matiba	8,049	SSA	Saba Saba Asili
David Waweru	Ngethe	5,976	CCU	Chama Cha Uma Party
Nixon Jeremiah	Kukubo	5,926	RPK	Republic Party of Kenya

⁹¹Joel Barkan,. "Hearing on the Immediate and Underlying Causes and Consequences of Flawed Democracy in Kenya," Testimony, Prepared for the Senate Foreign Relations Committee's Subcommittee on African Affairs, February 7, 2008

Before the announcement of the presidential results, initial constituencies' results from ODM's areas were announced giving Raila Odinga a sizeable lead. This gave his supporters confidence that he was winning. However, the subsequent results showed more support for PNU's Mwai Kibaki. As more results were announced, the gap between Kibaki and Raila narrowed until at the end it showed Kibaki had defeated Raila.⁹² ODM supporters' suspicion of vote tampering was reinforced by the fact that the party had won ninety nine parliamentary seats to the PNU's forty-three.⁹³

The Kenyans for Peace, Truth and Justice (hereafter KPTJ), which had been formed on January 3, 2008, released a report detailing how the ECK bungled the presidential poll.⁹⁴ It showed that there were discrepancies in 130 out of 210 constituencies in the country. The organization of 50 Civil Society Organizations (hereafter CSOs) observed that the discrepancies were such that it was difficult to determine who had won the presidential elections.⁹⁵

This was not the first time in Kenya's history that elections had been accompanied by violence. As observed earlier, previous elections had either been preceded or followed by violence especially the 1992 and 1997 general elections. Notwithstanding, the 2007 post-election violence was certainly the first time that the violence had been so severe, widespread, and with such devastating consequences. Some 1,162 people were thought to have died and at least 350,000 others were displaced.⁹⁶ The economy of Kenya and her neighbours especially that of Uganda and Rwanda, was severely dented. The tourism and

⁹² See Table 1 for the official national results as given by The Electoral Commission of Kenya showing a thin margin between Mwai Kibaki and Raila Odinga's votes.

⁹³ Human Rights Watch, "Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance." New York Times, March 2008.

⁹⁴ The report by KPTJ was entitled "Countdown to Deception: 30 days that destroyed Kenya".

⁹⁵ Ben Sihanya and Duncan Okello, "Mediating Kenya's Post-Election Crises: the Politics and Limits of Power Sharing Agreement", in Karuti Kanyinga and Duncan Okello eds., *Tensions and Reversals in Democratic Transitions; The Kenya 2007 General Elections*. 2010, p.677

⁹⁶ Kenya National Commission on Human Rights, *On the Brink of the Precipice: A Human Rights Account of Kenya's Post-2007 Election Violence*, The Final Report, 15th August, 2008 p.7

transport sectors were the worst hit with agriculture and manufacturing industries being also seriously affected.

The violence in Kenya was largely witnessed in the months of January and February 2008 and took the form of killings, widespread looting, and the burning of property, including houses and churches. As time went on, massacres, sexual violence, beatings, intimidation, and threats were also reported. In the run-up to the elections, both ODM and PNU ran campaigns that were heavily laden with grievance/victimhood nuances, the so called 'us' verses 'them' campaigns. Emotive subjects of religion and *majimbo* added to the polarization. Political and media analyses took an ethnic and partisan interpretation of election issues.

Most scholars argue that the 2007 election violence was also due to long term causes in the form of unresolved historical grievances. In a meeting held on February 7, 2008 in Nakuru by the Kalenjin and Kikuyu community elders in search for peace, former Laikipia West legislator G. G. Kariuki said, "These problems are deep rooted and date from as far back as the colonial era and have only manifested themselves now. It really would not have mattered who won the presidential elections as the violence would still have erupted".⁹⁷

The major grievance was land, which was an underlying factor in the violence especially in the Rift Valley province. The British colonial authorities alienated agriculturally productive land throughout Kenya, especially in the Rift Valley and Central provinces. At independence, most the Rift Valley land ended up being sold to the political elite and Kikuyu peasants by use of land-buying companies. The indigenous Kalenjin and Maasai communities were left out and developed a perception that the Kikuyu were impostors on their ancestral land.

⁹⁷*The People Daily* "Kikuyu, Kalenjin elders meet", Friday February 8, 2008, p.4

Besides land, the violence was caused by widespread poverty and inequality.⁹⁸ The poverty has subsequently given forth to a large unemployed mass of the Kenyan youth. Feeling alienated from the Kenyan economy and society in general, the idle youths took to rampaging and looting as they had nothing to lose⁹⁹. For them, it was a chance to acquire assets and ventilate their long held anger.

Musambayi Katumanga attributes economic sociology of the capital city to the violence that rocked Nairobi, especially in the slum areas. There were violent conflicts between landlords and tenants that the electoral process exacerbated. In Kibera, for instance, the Gikuyu and Nubians owned houses while the Luo were tenants. Although the Nubians are the first settlers and occupants of the area, successive governments have failed to give them title to the land. Property rights of the slum dwellers and the feeling of domination of the economic space by the Gikuyu thus aggravated the conflict.¹⁰⁰

Another long-term cause of the 2007 election violence had been the politics of the 'indigenous' against those of the 'settlers.' Kenyan politicians have often mobilized their ethnic communities during elections to the exclusion of 'settlers' communities. However, when the 'settler' communities take a contrary political opinion or stand, they are perceived as enemies who should be exiled from the 'foster' communities. This violence is in most cases instigated by political leaders who see the 'settler' as a political threat. Thus this ethnic incitement alongside business rivalry and jealous, led to the attacks and displacement of 'settler' communities throughout Kenya.

In general, the 2007 electoral violence was a consequence of the ethnicized nature of the Kenyan politics. Every national and political issue was analyzed and interpreted through an ethnicity lens. This analysis germinates ethnic emotions which boil over to violence particularly by the ethnic communities who feel aggrieved.

⁹⁸KNCHR, *On the Brink of the Precipice*, p.17

⁹⁹ Ibid

¹⁰⁰Musambayi Katumanga, "Militarized spaces and the Post-2007 Electoral Violence", in Karuti Kanyinga and Duncan Okello (eds.), *Tensions and Reversals in Democratic Transitions: The Kenya 2007 General Elections*, Nairobi, University of Nairobi, 2010 p.548

Concerns that the violence was getting out of control and spiralling into a civil war led to initial endeavours by the international community to call for and organize peace negotiations. Despite initial hiccups met by Desmond Tutu, President John Kufuor of Ghana and Cyril Ramaphosa of South Africa, Kofi Annan was able to get representatives of ODM and PNU to the negotiating table.

Dr. Kofi Annan's mediation process took some 41 days to materialize. Official negotiations started on the 23rd day of March 2008 and ended on the 28th February 2008 when the National Accord was signed between PNU (government) and ODM (opposition). This development paved way for the creation of a Coalition Government between the two warring parties. It also became the basis of sustainable healing and reconciliation process in Kenya and even became the platform for reforms¹⁰¹ in a country which had been ailing from acute institutional failure and constitutional breakdown.

2.9 Conclusion

Electoral violence dates back to the start of active election activities in the country in the late 1950s, all through to the transition to independence period and the clamour for multiparty politics. This chapter has observed that the violence witnessed in 2007 post-election violence had never been witnessed in any other time in the history of Kenya. This unprecedented violence triggered the intervention by third parties across the globe as we are going to see in Chapter Three of this study.

The early 1990s witnessed a clamour for constitutional reforms in many African countries and Kenya was not an exception. In the absence of the necessary reforms, the African presidents continued to use their enormous powers to ensure they stay in office. Such powers have particularly been used to manipulate the electoral process by putting in

¹⁰¹ Read the Agenda Four Item of the Kenya National Dialogue and Reconciliation Accord (KNDR), 2008.

place partisan electoral mechanisms and employing the coercive instruments of state in support of the president.¹⁰²

The 2007/2008 electoral violence was due to the ethnic politics of Kenya and ethnic incitement by the Kenyan political leaders. The violence had roots in historical injustices especially the land issue in the Rift Valley. Equally, it was a manifestation of several issues which were mainly fuelled by ethnic considerations. The doubt presented by ECK as to who had won the elections acted as the spark of an already tense election campaign. The consequences of the violence forced the intervention of the international community which culminated in the peace talks.

¹⁰²Fredrick Wanyama, "The Role of the Presidency In African Conflicts", in P. Godfrey Okoth and Bethwell A. Ogot, eds., *Conflict in Contemporary Africa*, Nairobi, Jomo Kenyatta Foundation. 2000 p.33

CHAPTER THREE

Third Party Interests in Finding Peace in Kenya

3.1 Introduction

Kenya went through an internationally-supported internal peace mediation process in the months of January and February 2008. This was occasioned by the 2007 post-election constitutional and political crisis that threw the country into an unprecedented civil crisis. On February 28, 2008, Mwai Kibaki, leader of the Party of National Unity (PNU) and Raila Odinga, leader of the Orange Democratic Movement (ODM) signed a political settlement. Parliament enacted this as law through an amendment to the Kenyan Constitution as the Constitution of Kenya (Amendment) Act 2008, and as the National Accord and Reconciliation Act, 2008. There were also agreements establishing the Commission of Inquiry into Post-Election Violence (CIPEV), the Independent Review of Electoral Commission (IREC), and other related mechanism matters incidental to the settlement.¹⁰³ This was as a result of an effort by not only the negotiators and the mediators, but also third party pressures.

This chapter discusses third parties in the negotiations that led to the signing of the National Accord. The chapter makes three arguments; First the key third parties in the negotiations (US, UK, Uganda, EU, AU, UN and others), have had a significant historical national interest objectives in Kenya. Secondly, that the 2007 post-election violence threatened these interests and that their involvement in the negotiations was to reverse the threats. Finally, the chapter argues that, although each third party was pursuing their national interest, the pursuit of these national interests converged into a common objective – of preventing Kenya from sliding into anarchy, which would have threatened their collective objective.

During the post-election violence peace negotiations, apart from the AU's Panel of Eminent African Personalities, the other most pronounced third parties were the United States, the United Nations, European Union and Kenya's neighbours Uganda and

¹⁰³Sihanya and Okello, "Mediating Kenya's Post-Election Crises", p.676

Rwanda which put pressure on Kenya to get back to democracy soonest. In Washington, DC, for example, members of a US Congressional Sub-Committee on Africa said that Kenya was too important in the region and the world to be allowed to go the way of Rwanda or Somalia.¹⁰⁴ Political analyst and publisher Barack Muluka, asserts that;

Beyond creation of peace, there was more as to why the third parties intervened. The simple answer is that they had their own interest to protect and without peace in Kenya, those interests would not have been guaranteed. One would wonder that, despite Zimbabwe experiencing almost the same scenario with Kenya following their disputed presidential election later in 2008, those third parties did not respond in the same way they did to Kenya. Ivory Coast experienced an electoral problem in 2010 but very little was done.¹⁰⁵

The next section analyzes these historical social-political and economic interests that made third parties intervene in Kenya.

3.2 US Role in Kenya's Peace Negotiations

During Kenya's post-election skirmishes, US presence in the country was more pronounced than at any other time in the history of independent Kenya. The US was among the first states to send a congratulatory message to president Kibaki on "winning the elections." An official statement from the US declared that "those alleging vote tampering may pursue legal remedies and should be able, consistently with respect for freedom of speech, to make their case publicly."¹⁰⁶ It later withdrew the statement citing 'serious concerns'. Sihanya and Okello¹⁰⁷ have argued that the US State Department rushed to withdraw the statement after it realized that Kibaki could neither guarantee US interests nor govern. The US has had long term interest in Kenya and it is these interests that drew her into acting the way it did with regard to finding peace in Kenya.

¹⁰⁴ *The Standard*, Friday, February 8, 2008 p. 1

¹⁰⁵ Oral interview, Barack Muluka, Publisher and Political Analyst, 9/6/2011

¹⁰⁶ Press Release issued on December 31, 2007 by the US Embassy in Kenya.

¹⁰⁷ Sihanya and Okello, "Mediating Kenya's Post-Election Crises", p.672

In the early days of violence, US president George Bush dispatched a high level diplomatic team to the country in order to help Kenya find a solution to the crisis. On January 4, 2008 the US Assistant Secretary of State, Jendayi Frazer arrived in Kenya and held talks with President Kibaki and later with the ODM leader Raila Odinga. Frazer stated that there had been rigging in the elections, but blamed both PNU and ODM for the flawed elections. She tried on several occasions to broker a peace deal between the two warring parties but all in vain. On January 12, 2008 Frazer stated that there could be no “business as usual in Kenya” without a compromise and a solution to the dispute. She also insisted that the US could not conduct “business as usual in Kenya” under the circumstances, saying that Kibaki and Odinga should meet in person “without pre-conditions”.¹⁰⁸

The US government was showing solidarity with Kenya all along during the crisis. The world’s super power was committed to getting Kenya back to democracy by all means. Frazer was quoted as having said that,

Kenya should count on US for continuous support. We will stand by your side at all times and that is why we are committed to ensure end of violence and restoration of peace.¹⁰⁹

As the talks were going on, Bush planned to visit the Africa continent. President Bush sent the then US Secretary of State, Condoleezza Rice on February 18, 2008 to support the mediation efforts which was being undertaken by the Panel of Eminent African Personalities under the captaincy of Dr. Kofi Annan. President Bush began his Africa tour the Saturday before her visit, insisting that a deal on power sharing was agreed upon. Following a closed door meeting with Annan and key members of the team, in a press statement that was completely in line with Annan’s sentiment, Rice made it clear that the world was waiting for an agreement. According to Rice, the time for ‘political settlement was yesterday’,¹¹⁰ and it was now up to the principals to take the last step. She insisted

¹⁰⁸ Sihanya and Okello, “Mediating Kenya’s Post-Election Crises”, p. 676

¹⁰⁹ *The Standard*, January 9, 2008 p.5

¹¹⁰ *Daily Nation*, February 19, 2008, p.4

that as long as the crisis remained unresolved, Kenya could never enjoy business as usual with the United States. With a visit of support just a few days later from Chairperson elect of the African Union Commission, Jean Ping, there could be no doubt that the Panel worked with the support of the international community.¹¹¹

When Rice arrived to Kenya on February 18, 2008, at the height of post-election violence, she was categorical the “Kenya was too important to let collapse”. She explained reasons for her trip:

The international community is engaged; they are engaged because of their friendship for Kenya... we came to join Kofi Annan, who is here on behalf of the African Union and the international community, to help the leadership and Kenyans to end the political crisis. There needs to be a coalition and sharing of responsibility in the governing of this country.¹¹²

The US has had historical relations with Kenya that were established in the 1960s at the height of the Cold War, when both the Soviet Union and the US were exporting Cold War politics to the newly independent African states. After attaining independence in 1963, Kenya committed herself to the policy of non-alignment. However, the country was for all practical purposes a capitalistic state and pro-US and the Western bloc. Sectional Paper No. 10 of 1965 set the stage for capitalism in the country.¹¹³ The significance of this cannot be overstated, especially in light of the fact that Kenya’s neighbours, especially Uganda, Tanzania and Somalia, were already committed to socialist and therefore pro-soviet Union. Joshua Kivuva explains that in the East African region, the US was left with no other sympathizer save for Kenya in the 1960s. He says,

The 1967 Arusha Declaration in Tanzania, President Obote’s *Common Man’s Charter* in Uganda in 1969 and

¹¹¹ Barkan, . “Breaking the Stalemate in Kenya”, 2008

¹¹² *Sunday Nation*, “Secret talks with Rice” February 24, 2008 pp. 1,6

¹¹³ Sessional Paper No 10 of 1965 was a document dubbed *African Socialism and its Application to Planning in Kenya*. This document laid a foundation to development of the newly independent state with aim to eradicate poverty, disease and ignorance. Its architects were Tom Mboya and Mwai Kibaki.

the general move to the left were in no doubt socialist in orientation. Somalia because of its history of socialism/fascism and the fact that it was pre-dominantly an Islamic state meant that the only reliable partner in the region for the US was Kenya.¹¹⁴

There exist several other reasons why Kenya remains significant to the US. First, Kenya is very significant to the US global war against terrorism. In the wake of September 11 2001¹¹⁵, the Horn of Africa gained renewed salience in U.S. geopolitical calculations. Kenya, which shares border with war-torn countries, such as Ethiopia, Sudan, and Somalia, emerged as a relatively stable anchor state in a volatile and violent region. The new global context thus added a dimension to the US-Kenya bilateral relationship. The United States saw Kenya as key to enhancing cooperation and assistance in its counterterrorism efforts, and the Kenyan government in turn was to look to the United States for financial support and good will with the international financial institutions. These reasons made the US not to allow Kenya to slide into war.¹¹⁶

For the US, Kenya was also important for her effort at researching on HIV/AIDS, since more than 2 million Kenyans were reported to have had contracted the virus. Kenya in this regard became a centre of international activity by AIDS researchers, activists, pharmaceutical companies, and NGOs. Kenya is home to the Centers for Disease Control and Prevention's (hereafter CDC) largest operation outside the United States and one of four countries targeted by USAID to receive significant increases in resources to fight HIV/AIDS. Therefore it is a very important ally of the US.¹¹⁷ A country of such significance could not be left to go to war, lest research be jeopardized.

¹¹⁴ Oral interview, Joshua Kivuva, 23/06/2011

¹¹⁵ September 11, 2001 terrorist attack on America at the World Trade Center Towers in New York City and The Pentagon in Washington was the really test for the US internal security. Over 3000 people died in the attack that shook the world.

¹¹⁶ Center for Strategic and International Studies, Africa Program, Washington, DC 20006. www.csis.org visited on 16/7/2011

¹¹⁷ Ibid

Kenya's political and economic status in the region was a motivating factor for US intervention in the country's democratic transition. The US policy makers argued, had an interest in seeing that Kenya went through its political transition peacefully and successfully if it had to maintain its regional status. It was felt that a democratic Kenya would not succumb to the instability and civil wars that had beset several of its neighbours and other African countries.¹¹⁸ US policy makers had always viewed Kenya as the regional power in the Horn and eastern part of Africa. The State Department and USAID in particular, had in the past partly justified aid requests for Kenya before Congress on the ground that Kenya was the political and economic fulcrum of its region.¹¹⁹

Kenya's geopolitical position in the Indian Ocean added significance to the importance of Kenya to the US during the entire Cold War period. To secure access to Kenya and access to Kenya ports the US became Kenya's good trading partner and major supply of the military hardware. While testifying before the Africa Sub-Committee of the House, William Twadell, then Acting Assistant Secretary for African Affairs, argued for continued engagement on the ground that "our armed forces benefited from the use of Kenya facilities during the Gulf War."¹²⁰

All what is happening after the end of Cold War has informed the concerns the US holds for Kenya even in the contemporary scenario. Kinyanjui Kamau of NCKK wondered;

Why is it that the search for AFRICOM headquarters in African was stopped immediately Kenya plunged into political crisis in December 2007 and nothing much has been heard since then? This means that may be, the US wanted her African Command to be headquartered in the country (Kenya).¹²¹

¹¹⁸Nyinguro Philip O., "United States Policy and the Transition to Democracy in Kenya 1990-1992", PhD dissertation, University of South Carolina, 1999

¹¹⁹ Ibid

¹²⁰ Congress, House, Committee on foreign Affairs, Kenya Election Crisis: Hearing before Sub-Committee on Africa, 105th Congress, 2nd Sess. 29th July 1997' 44

¹²¹ Oral Interview, Kinyanjui Kamau, NCKK, 24/6/2011

3.3 United Nations Interest in Kenya

United Nations interest in Kenya began when Kenya was still a colony of the United Kingdom. At that time, the United Nations was primarily concerned with the treatment of the indigenous people by the colonial power. It monitored the administration of the territory to ensure the protection of Kenyans against abuses and tried to promote the political aspirations of the people, while also helping to develop agriculture and health. Under Article 73 of the Charter of the United Nations, the United Kingdom was required to send annual reports on the economic, social, and educational conditions in the colony. The United Kingdom was obliged, according to the Charter of the United Nations, to recognize the principle that the interests of the inhabitants of its colonial territories were paramount and to accept as a sacred trust the obligation to promote to the utmost their well-being.¹²²

In the 1960s, the United Nations interest was on helping the Government establish indigenous technical capacity by training specialists in the required fields and setting up pilot schemes to introduce and test ideas based on successful experiments elsewhere. United Nations assistance intensified rapidly after the Kenyan independence in 1963, with many United Nations agencies setting up offices in Nairobi. During the 1970s, the need to establish and strengthen national institutions to set priorities and harness efforts was seen to be of paramount importance, while at the same time better methodologies and techniques were being reproduced and mainstreamed. The 1970s saw further expansion of the United Nations presence in Kenya when the country became host to the fledgling United Nations Environment Programme (UNEP). Originally located at Uchumi House in the city centre, UNEP was soon moved to the Kenyatta Conference Centre in 1974, and on to its current location in Gigiri in 1975, where it was joined in 1978 by the United Nations Centre for Human Settlements, now known as UN-HABITAT.

¹²² United Nations Resident Coordinator in Kenya, *United Nations and Kenya: Fifty Years of Partnership*, Nairobi: UN Office in Nairobi, 2006

United Nations headquarter duty station in the developing world comprises some 1,900 national and 800 international staff. During the 1980s, the interest of the United Nations and the growing bilateral donor community shifted to helping the Government to increase its effectiveness in various areas of production and social services while reducing state intervention and local subsidies. The 1990s saw the emergence of democratic practices and further effort in improving productivity through better management in Kenya. This coincided with the interests that emphasize technical assistance in favour of more broad-based support to Government programmes.¹²³

Kenya's hospitality that the country extends to refugees was another factor that is dear to the UN. Up to 1991, Kenya hosted only a relatively small population of refugees. However, in the early 1990s the political crises in Somalia and Ethiopia led to a large-scale influx of refugees into Kenya and neighbouring countries. Kenya alone saw the establishment of 15 new refugee camps to accommodate the more than 420,000 refugees who had arrived in the country by December 1992, the peak of the refugee emergency in Kenya. In partnership with UNHCR, WFP provided food assistance to refugees, predominantly from Somalia, Sudan and Ethiopia, since the early part of 1991. Today Kenya hosts some 525,000 refugees mainly Somalis in the Dadaab camp, and 91,000 in Kakuma camp.¹²⁴ The Kakuma camp is mainly inhabited by refugees of Sudanese origin. In both locations there are refugees of various other nationalities, including Ethiopians, Congolese, Eritreans, Rwandese, Burundians and Ugandans.¹²⁵

Another concern was the disruption in the flow of food aid and other humanitarian assistance to some 7 million refugees and displaced people in the region. The survival of many of them depended on direct support from the UN World Food Programme (WFP) and other relief groups. The WFP moves 1,000 tonnes of food out of Mombasa port on daily basis. The alternative route through Tanzania was 20 per cent more expensive and

¹²³ Ibid

¹²⁴ These figures have significantly risen due to drought and famine being experienced in Somalia with over a thousand refugees reported to have been checking in to the camps daily in the better part of 2011. The effects of Al-Shabaab militia menace notwithstanding.

¹²⁵ UN, "United Nations and Kenya" p.23

took two weeks longer. Uganda was hosting refugees from Kenya, about 12,000 of them. Renewed conflict could create bigger flows of Kenyans to neighbouring countries, some of which were still politically unstable. The humanitarian consequences of new disruptions, forced these regional neighbours to intervene.¹²⁶ Disruption of the road and railway transport system in Kenya during the post-election violence threatened this noble duty of the UN and so intervention by the global body was inevitable.

The United Nations draws additional interest in Kenya through its operations in neighboring countries, including Sudan, Somalia and the countries of the Great Lakes region. The operations are commonly in the form of humanitarian supplies and contracts to provide such items as food, drugs and blankets, as well as transport and haulage. The growth of Lokichoggio, which is eleven miles south of the border with Sudan, from a small cattle boma to Kenya's second busiest airport, illustrates the importance of these United Nations operations to the economy of the country. Lokichoggio houses hundreds of United Nations and other aid workers. Operation Lifeline Sudan the relief operation is based at Lokichoggio. The presence of United Nations agencies in Kenya not only makes the United Nations an important partner in Kenya's development, but also makes Kenya an important country to the United Nations in the eastern Africa region, Africa and the world.¹²⁷

In the field of peacemaking and peacekeeping, the United Nations have strong interest in Kenya because of its position not only in the African region, but in the world at large. With the support of the United Nations, Kenya has played a crucial role in peace building in the troubled regions of the world. Kenya's participation in United Nations peacekeeping operations spans over two decades, covering 18 missions in which more than 10,000 Kenyan troops have served in distant countries to bring peace and hope to victims of violence. The deployment of Kenyan soldiers abroad has exposed Kenyans to

¹²⁶Mary Kimani, "East Africa feels blows of Kenyan crisis: Economic and Social repercussions affect entire region", Vol. 22, April 2008, p.3

¹²⁷ Ibid

soldiering in politically charged international and inter-cultural situations. This has no doubt enriched their military experience and worldview. The peacekeeping assignments have offered Kenyan troops unique opportunities to hone their professional skills.

In 2001 Kenya was ranked the sixth largest contributor to United Nations Peacekeeping Missions. In Africa, Kenyan peacekeepers have seen service in Cote d'Ivoire, Liberia, Sierra Leone, Ethiopia and Eritrea, Darfur in Sudan and in eastern Democratic Republic of Congo. The centrality of Kenya in international peacekeeping in Africa was underscored in 2002 when the Government set up a training centre for its soldiers who are called upon to participate in United Nations peacekeeping operations. The centre, partly funded by the United Nations, also attracts participants from other African countries.¹²⁸

In addition to these peacekeeping ventures, the United Nations interest in Kenya was due to the collaboration in peace initiatives, most notably in supporting peace negotiations for Sudan and Somalia, where peace accords were successfully brokered. The Sudan peace process was concluded in Naivasha town in Kenya, leading to the signing of the Comprehensive Peace Agreement in January 2005 which pioneered the country to a successful separation of Southern and Northern Sudan and the subsequent birth of Southern Sudan as a new state in 2011.

The Somali accord, also mediated by Kenya, led to the election of a president and parliament in preparation for the establishment of a government in Somalia. It is worth noting that Kenya's own development is dependent to a large extent on peace in neighbouring countries. Currently, Kenya hosts two Special Representatives of the Secretary-General, working on the Great Lakes peace conference and on peace in Somalia.¹²⁹

Through the United Nations Development Fund for Women (hereafter UNIFEM), the United Nations has also worked to integrate women's voices into the peace negotiation

¹²⁸ UN, "United Nations and Kenya" p.26

¹²⁹ Ibid

process. A major initiative, the establishment of the African Women in Crisis Umbrella Programme, was hosted in Kenya. It was developed to provide support to women caught up in crisis, and include their voices in peacekeeping initiatives.

The importance of the United Nations to Kenya cannot be overemphasized. The emergence of new concerns has added to an already overcrowded agenda. Some of these include issues of peace and security, international terrorism, inter- and intra-state conflicts, HIV/AIDS, advancing globalization and sustainable development. They have contributed to the complex situation confronting the diplomatic community today, especially those working in the UN system. Kenya plays a significant role within the East African region by virtue of its dominance in socio-economic and political affairs and being host to the only United Nations Office in Africa which houses the United Nations Environmental Programme and the United Nations Human Settlement Programme. The country has transformed itself into an international business and diplomatic hub. Kenya's long standing participation in peacekeeping and conflict resolution has boosted the country's stature and reputation globally.¹³⁰

United Nations was very vocal in search for peace in Kenya in the advent of 2007 post-election violence. As early as on January 2nd 2008, UN through its Secretary General Ban Ki-moon was appealing to Kenyans to be humble and advised the police to have self-control when handling the situation. Ki-Moon urged the security forces "to show utmost restraint" and appealed to Kenyans "for calm, patience and respect for law."¹³¹ The Secretary General visited Kenya on February 1, 2008 supposedly to "boost" the peace mediation which was being led by his predecessor, Dr. Kofi Annan, and promised that the UN would continue supporting the humanitarian efforts aimed at assisting displaced persons. He urged Kibaki and Raila to support the peace negotiations. Ban Ki-Moon had also met President Kibaki at the opening of the Special African Union Heads of States and Governments Summit in Ethiopia where the Kenyan situation was discussed. At the

¹³⁰ Government of Kenya, The Service Charter for Kenyan Mission to the United Nations,

¹³¹ *The Standard*, "UN, Moi appeal for calm, restraint", January 3, 2008 p.4

Summit the Secretary General remarked “I call upon the Kenyan people, stop the killings and end the violence now before it’s too late.”¹³²

At the same time, the United Nations Security Council held a closed door meeting on 30th January 2008 in New York to discuss the political situation in Kenya. Under-Secretary General for political affairs, B. Lynn Pascoe, briefed the Council on the developments in Kenya. The Council called on Kenya’s leaders to do all in their power to bring the violence to an end and restore calm.¹³³

3.4 European Union Interests in Kenya

Since the end of the Cold War in the early 1990s, the interests of the European Union in Kenya shifted to the promotion of democracy and human rights as a subject which assumed a prominence in the unions’ foreign policy agendas. This was favoured after the end of competitive bipolar politics.¹³⁴ According to the EU, democracy and good governance were essential prerequisites for development and that democratization was a process that could be assisted by appropriate support from the international community.¹³⁵ The EU, therefore, became an active promoter of democracy not only in Kenya, but the entire African continent.

The EU wanted to fit or be seen contributing towards democracy promotion in Africa for both economic and strategic interests. This was seen as fitting in the millennium goals while at the same time not to obstruct possessive goals of EU foreign policy. These interests required the EU to attach higher degrees of instrumentality to its democracy promotion policies in not only in Kenya, but in the entire Africa.¹³⁶ The EU constructed its identity, and the legitimacy of its normative power, on a non-negotiable commitment

¹³²*The People Daily*. “UN chief now headed for Kenya”, Friday, February 1, 2008, p.2

¹³³*The People Daily*, Friday, February 1, 2008, p. 11

¹³⁴ Francis Fukuyama, *The End of History and the Last Man*, Penguin Publishers, 1992

¹³⁵ Vienna European Council, 1998

¹³⁶ Varrenti Mario Giuseppe, “European Union and Democracy Promotion in Africa: The Case of Kenya”, MA International Relations, University of Warwick

to democracy as a universal value. On November 28, 1991, the European Community adopted a Resolution of the Council and of the Member States meeting in the Council on Human Rights, Democracy and Development which made human rights and democracy a condition for development.¹³⁷ The EU included a clause defining respect for human rights and democracy as essential elements of co-operation in all development agreements between the EU and the world.¹³⁸

The member states came up with the Treaty of Maastricht in 1993, which made development and consolidation of democracy and the rule of law, and respect for human rights and fundamental freedoms, an objective of Common Foreign and Security Policy (CFSP) as a whole. The EU also reached the Cotonou Agreement, which was meant to regulate the EU-African Caribbean Pacific (ACP) countries trade between 2000 and 2007. The agreement made human rights and democracy an integral part of sustainable development.¹³⁹ The basis for EU action, the European Commission stated in 2001, was the attempt to uphold the universality of human rights and democratic principles. The EU Council defined these principles as the right to choose and change leaders in free and fair elections, separation of legislative, executive and judicial powers, guarantees of freedom of expression, information, association and political organization.¹⁴⁰

The European Union responded to the Kenyan post-election violence with *gist* and in earnest. Before even Kofi Annan and his team started work, EU had shown support towards the establishment of a mediation team. For example, on January 14, 2008, the EU backed Kofi Annan's bid to mediate in the Kenyan crisis.¹⁴¹ The Union urged the parties to the mediation to build on the AU-led peace efforts and pursue a long lasting solution to the political crisis prevailing at the time.¹⁴²

¹³⁷ Crawford Gordon, Conference rapporteur at international conference on 'Enhancing the European Profile in Democracy Assistance', organized by the Netherlands Institute For Multi-Party Democracy, The Hague, 4-6 July, 2004

¹³⁸ European Commission Report, 2001 p.5

¹³⁹ The Cotonou Agreement, 2000

¹⁴⁰ Vienna European Council, 1998

¹⁴¹ Vision Reporter and Agencies, 2008

¹⁴² *Standard*, January 14, 2008

There are combinations of motives at the heart of the EU's commitment to promote democracy abroad, including Kenya. The first is the view that human rights and democracy are desirable ends in themselves and mutually reinforcing objectives.¹⁴³ A further motive is the purported link between democracy and peace. It is believed that democracy offers a kit of peaceful tools for the settlement of conflicts within states which can be externalized to relations between states. In addition, democratic institutions are believed to constrain the recourse to violent means in international relations. These assumptions are referred to as democratic peace thesis. In the 1990s, democracy also started to be seen as a prerequisite for social and economic development. The EU Commission, for instance, maintained that poverty reduction would only be sustainably achieved where there were functioning participatory democracies and accountable governments.¹⁴⁴

During the Kenya's post 2007 election peace negotiations, the European Union was giving stern warning that Kenya had to find a peaceful solution to the political stalemate. It was reported that the European Union Council sat in Brussels on January 28, 2008 and made it clear that donor relations between its 27 member states and Kenya would be put on hold until a protracted and consensual political solution was reached between the parties to the conflict.¹⁴⁵ The Council also stated that political impasse had greatly affected the EU-Kenya relations. In the statement, the Council stated that, "...Until a legitimate solution is agreed, the EU and its member states cannot conduct business as usual with Kenya..."¹⁴⁶

The EU interests were democracy through the leverage offered by political dialogue, trade and external assistance. Human rights and democracy clauses were included in co-operation and trade agreements like, for example, the Lomé and Cotonou conventions with ACP countries or in the provisions of the European Neighborhood Policy. EU interests were based on three pillars; the use of incentives to reward countries that

¹⁴³The Cotonou Agreement, 2000

¹⁴⁴European Commission Report, 2001, 4

¹⁴⁵*Standard*, January 29, 2008

¹⁴⁶Sihanya and Okello, "Mediating Kenya's Post-Election Crises", p. 674

improve their democratic standards, the use of sanctions in those cases of democratic abuses and setbacks, and the funding of democracy programmes including, inter alia, electoral assistance. This third pillar goes under the name of democracy assistance. The EU financed various programmes in Kenya through which it would be a setback if the country disintegrated into a civil war.

3.5 Interests of AU in Kenya

The African Union was interested in the Kenyan peace process for a number of reasons, among them the democratic and good governance principles embedded in its Constitutive Act. The Constitutive Act is reinforced by the need to create an environment of peace and security as an enabling condition for development and good governance on the African continent. At the inception of the Union in 2002, the continent was ridden by a wave of conflicts in various countries, among them, Sierra Leone, Guinea, Liberia, Cote d'Ivoire, Sudan, Somalia, Zimbabwe and the Central African Republic. The chaos, crises, wars and political turmoil inspired by the conflicts threatened peace and were recipe for violence, anarchy and disorder in the entire Africa.¹⁴⁷

After Kenya plunged into a full-blown civil strife at the end December 2007, African Union took the earliest the opportunity to find a solution to this crisis. The then Chairperson of AU and Ghanaian President John Kufuor was among the first dignitaries to arrive in the country in order to find a way out of the crisis. Though Kufuor did not really achieve much, he laid down the ground for the Kofi Annan mediation process. At the Summit of Africa Union Heads of States in Ethiopia on the January 30, 2008, chairperson of AU Commission Alpha Konare warned the continent's leaders – including president Kibaki - that Africa was facing genocide in Kenya. He stated that:

AU must give priorities to resolving the crisis. Kenya was a country that was a beacon of hope for the continent, today if you look at Kenya; you see violence in the streets. We

¹⁴⁷ John Shinkaiye "Governance Challenges in Africa and the Role of the African Union", Public Lecture to mark the 20th Anniversary of the European Centre for Development Policy Management, Onze Lieve Vrouweplein 21, Maastricht, Netherlands, 19 December 2006

are even talking of ethnic cleansing. We can't sit back with our hands folded. If Kenya burns, there will be nothing for tomorrow.¹⁴⁸

Broadly, the AU recognized that the persistence of the conflict would undermine its broad agenda of democracy and development. Hence, it adopted a proactive approach to resolving a conflict. The approach emphasized early response to developing conflict situations and a process of active mediation on a day-to-day basis with the instrument of special envoys and special representatives. The approach stressed comprehensive coverage so that conflicts are not isolated or treated with indifference. To further strengthen the peace and security framework of the continent, African leaders, Kenya included, adopted the Protocol relating to the establishment of the Peace and Security Council of the Union which reinforced the scope and capability of the AU Mechanism for Conflict Prevention, Management and Resolution.

The new security architecture included the creation of a Peace and Security Council to operate at three levels ambassadorial, ministerial and summit with responsibility for overall peace and security of the continent. The protocol was supported by modalities and guidelines for facilitating common defence and security, frameworks for controlling and combating conflict.

The new AU Peace and Security architecture also provided for strengthened partnerships with relevant international actors, sub-regional, regional and other international organizations and non-state actors. This justified the AU presence in Kenya alongside other actors in the common goal of peace for Kenya. The AU had also established a new Peace and Security architecture. It included a new pattern of establishment of institutional structures to support the AU agenda for peace, security and development. A significant number of the structures were focused on the governance agenda.¹⁴⁹

Similarly, the African Union was committed to assist Kenya and its other member states to build their capacity to realize its core principles and to fulfil their duty of effectively

¹⁴⁸*The People Daily*, "UN chief now headed for Kenya", Friday, February 1, 2008, p 2

¹⁴⁹Shinkaiye, "Governance Challenges in Africa and the Role of the African Union" p.6

and timely accounting to their constituencies through the setting-up and enforcement of monitoring mechanisms and core operational values. More importantly, the search for effective popular participation led the AU to capitalize on the promotion of adherence to principles of good governance, gender equality, and the rule of law and the involvement of civil society organizations in Kenya.¹⁵⁰

The AU has made a number of commitments in the area of governance that pushed it to act on the Kenyan case. This include among others, the Durban Declaration on Elections, Governance and Democracy, the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance, the Convention on the Prevention and Combating of Corruption and the Protocol to the African Charter on Human and Peoples' Rights Relating to the Rights of Women, just to name a few. During the conflict in Kenya these principles were challenged forcing the AU to act in order to safeguard not only its interest but also to reaffirm its commitment. It is worth mentioning that these decisions and commitments actually were built on the legacy of the predecessor OAU that had adopted valuable instruments and decisions relating to human rights, democracy and governance. More importantly, the AU had learnt a lesson from the Rwandan genocide which left hundreds of thousands killed. During the Rwandan conflict the UN withdrew its small force from the country when it was highly needed. The Africans felt that the international community had deserted them at a time of great need. When the Kenyan post-election violence threatened to take a similar trend as that of Rwanda, the AU moved swiftly to avoid a similar disaster.¹⁵¹

Another remarkable interest of the AU is in the continent's governance agenda which relates to the recognition that political power should be acquired through constitutional means and democratic processes. In this regard, unconstitutional changes of government are no longer condoned nor tolerated by the continent, and particularly by the AU. The Lomé Declaration and the AU Constitutive Act have unequivocally rejected and condemned any attempt to seize power in violation of constitutions in member states. It is

¹⁵⁰Ibid

¹⁵¹Ibid

imperative to uphold this effort by not only reinforcing adherence to constitutional order, but also by ensuring that the rule of law and democratic governance prevailed at all times, so that principles of good governance, transparency, accountability, popular participation in the management of public affairs, were effectively promoted, to ensure that through regular and credible elections, the people of Africa choose freely their leaders without intimidation and constitutional and/or electoral manipulation by incumbent regimes.¹⁵² The interest of AU in Kenya was a means of saving these principles. In pursuance of these objectives, evolving conditions of equality for all the citizenry is considered very critical. It is seen as the only real deterrent to many potential sources of conflict as it ensures a sense of inclusiveness. In this regard, the AU was expected to play an important mediation and advocacy role aimed especially at bringing conflicting parties in Kenya to adopt common democratic values and principles through formal legal instruments.¹⁵³

Moves by the AU to engage in the crisis were undertaken just days after it erupted. When Kufuor's own efforts and those of the preparatory team he had sent to Nairobi proved to be inconclusive, he personally wrote a letter to Kofi Annan, asking him to take on the role of AU Special Adviser and Chief Mediator of the Panel for the forthcoming mediation process. The decisive nature of this engagement was a crucial factor in avoiding further deterioration of the situation. Given the situation on the ground, time was clearly of the essence. While within the Charter of the United Nations there is an explicit provision against interference in the domestic affairs of member states except in the case of enforcement measures under Chapter VII, the Constitutive Act of the African Union had adopted a wider field of engagement options, from mediation to using force to intervene in specific circumstances. Article 4(h) of the Constitutive Act specifies the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in

¹⁵²Shinkaiye, "Governance Challenges in Africa and the Role of the African Union", p.12

¹⁵³Ibid

respect of grave circumstances, namely, war crimes, genocide and crimes against humanity.¹⁵⁴

One of the principal objectives of the AU, stated in Article 3(e) of the Constitutive Act, is to encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights. While Article 53(1) of the UN Charter requires that any enforcement action by regional arrangements be authorized by the Security Council, Article 52(2) encourages regional organizations to make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council. Given that Kenya's scenario was not an enforcement action, the AU was well placed to act quickly and with the implicit support of the UN Charter. Due to the regional impact that the crisis was having and the catastrophic consequences that would have followed its spiralling out of control, there was undoubtedly a need for speedy action.¹⁵⁵

3.6 Britain

When Kenya was on the brink of collapse in January and February 2008 after the disputed 2007 presidential election results, Britain was majorly visible in the mix of search for a peaceful solution for her former colony Kenya. On January 2, 2008, UK Foreign Secretary, David Miliband, was quoted as saying that, "We are appalled by and condemn the incidents of violence taking place in Kenya, including horrific killings in several Kenya's towns."¹⁵⁶

Britain has had several historical relations with Kenya, having been the colonial power and has established close relations with the country. This explains why Britain was so much in it and was playing the Big Brother role in the Kenya's post-election peace negotiations. Sihanya and Okello attribute two reasons why conflicts in Africa have always received serious international attention. First, even after attainment of

¹⁵⁴Daniel Adzei Bekoe, "Toward a Theory of Peace Agreement Implementation: The Case of Liberia." *Journal of Asian and African Studies* 38, nos. 2-3 (2003): 256-294.

¹⁵⁵Barkan, "Breaking the Stalemate in Kenya."

¹⁵⁶*The Standard*, January 3, 2008

independence, African states have maintained ties with their former colonial powers (especially Britain and France), which still have varying degrees of vested interests. Second, the proliferation of violence in a country generally creates regional insecurity and instability. These two factors played a significant role in the great interest that the United Kingdom took in the Kenyan crisis.¹⁵⁷

On December 30, 2007 at the onset of bloodletting in Kenya, Britain announced it was ready to broker a deal. The British Prime Minister, Gordon Brown, telephoned Raila with an offer to intervene to end the crisis which Raila accepted but gave his own terms. First, to have President Kibaki step aside and publicly own up that he was not elected president and secondly, the mediations to be undertaken by international mediators.¹⁵⁸

On the economic front, Britain and the British nationals have interest in agricultural land in the Rift Valley, and as a result of the need to protect the land, the government has sought to remain influential in Kenya. The horticultural industry is mainly controlled by British nationals and Kenyans of British origins, most of them descendants of former colonial settlers in the country.

For the longest time, Britain has been the major trading partner until it was overtaken in 2009 by Uganda.¹⁵⁹ Kenya has been a tourist centre for the British nationals since the colonial times all through to present. Kenya's wildlife within the national parks, especially the Maasai Mara Game Reserve, has attracted many tourists across the globe. It is worth noting that the current monarch of England Queen Elizabeth II became the queen when she was on tour of Kenya in 1952. Prince William and Princess Kate had their engagement ceremony done in Kenya while the duo were on a holiday in the country in 2010. All these would not have been possible with unstable Kenya. The continuation of chaos in Kenya would have pushed the British nationals in the country to relocate.

¹⁵⁷Sihanya and Okello, "Mediating Kenya's Post-Election Crises..." pp. 653-701

¹⁵⁸Ibid, p. 673

¹⁵⁹*The Standard*, "UN, Moi appeal for calm, restraint". Thursday, January 3, 2008 p.4

3.7 Uganda

Uganda government and President Museveni's personal intervention into the Kenya's post-election crisis cannot be overstated. During the political crisis, President Museveni had sessions with president Kibaki, the ODM team and various other actors, including Joachim Chissano, Anne Tibaijuka of the United Nations in Nairobi, Kofi Annan and several heads of missions in Nairobi.¹⁶⁰ It was suggested that a meeting held between President Museveni, Annan and President Kibaki is what made possible the face-to-face meeting between present Kibaki and Raila Odinga.¹⁶¹

In his capacity as Chairman of the Heads of State Summit of the East African Community, Uganda's President Yoweri Museveni arrived on a two-day official visit on January 22, the same day the Panel of Eminent African Personalities started mediation.¹⁶² This was a calculated move by the Uganda president to use the EAC platform to push his mediation agenda through.

Although president Museveni was an active facilitator in the peace negotiations in the country, it is not lost to observers that the Ugandan president was a very unpopular third party in the eyes of ODM. President Museveni's alleged link with PNU made ODM refuse any effort to resolve crisis emanating from him. For example, ODM turned down President Yoweri Museveni's proposal for a Judicial Commission of Inquiry into the presidential election. The party said it rejected the idea because the post-election crisis had mutated into a bigger problem. ODM Secretary General, Prof. Anyang Nyong'o said that Museveni had a very interesting proposal that was listened to, but the take was that ODM did not want a quick fix, which could not stand the test of time.¹⁶³

President Museveni was the first head of state to send a congratulatory message to Kibaki on "winning" the elections, followed by the US government. Later the US withdrew her statement, but Kampala did not withdraw even after Kenya plunged into political mucky

¹⁶⁰Makumi Mwangi, *The Water's Edge: Mediation of Violent Electoral Conflict in Kenya*, Institute of Diplomacy and International Studies, Nairobi, 2008

¹⁶¹*The East African*, "How no-nonsense Museveni kick started talks" January 28-February 3, 2008, p. 2.

¹⁶²*Daily Nation*, January 24, 2008.

¹⁶³*The Standard* Friday January 25, 2008 p 5

waters. This recognition of the Kibaki presidency at a time when electoral results was in a dispute made Uganda to be seen as an insincere third party before the eyes of the ODM leaders and supporters. As one newspaper put it, "...Museveni rush (sic) to congratulate Mwai Kibaki upon his re-election, the first and only message from an African leader fanned the suspicion that Museveni assisted PNU."¹⁶⁴

In the early days of the violence, there were rumours that Ugandan soldiers had invaded the western side of Kenya, especially Kisumu, in a bid to give support to the PNU. However both Kampala and Nairobi refuted these claims. But the allegations again made Uganda an unpopular third party within the ODM rank and file. ODM leader, Raila Odinga, called Ugandan President during the election riots to protest at the alleged presence of Ugandan gunmen in Kisumu. Museveni assured Raila that there were no Ugandan forces in Kenya.¹⁶⁵

Uganda played host to the Kenya refugees who crossed the border during the post-election violence. As early as on January 10, 2008 there were over a thousand Kenyans who had crossed over and sought refuge in the Eastern part of Uganda. Ugandan's Minister for refugees assured Kenyan refugees of their safety and upkeep until the situation back home normalized.¹⁶⁶ This action of taking care of the refugees not only worked as a damage control exercise but also was calculated to show that Uganda adhered to the principle of good neighbourliness as enshrined in the International Law.

Uganda is not just the major trading partner of Kenya, but also Ugandan industries and indeed, her entire economy is dependent on Kenya's infrastructure. The 2007 post-election violence blocked roads, uprooted the Kenya-Uganda railway line and cut off Ugandan goods from the port of Mombasa, almost totally crippling Uganda's economy. In January the *Daily Monitor* reported that Uganda was losing Ushs 3 billion a day due to

¹⁶⁴ *Daily Nation*, Thursday January 10, 2008 p.4

¹⁶⁵ *Daily Nation*, Thursday January 10, 2008 p.10

¹⁶⁶ *The Sunday Standard* January 13, 2008 p.23

the post-election violence in Kenya. The loss was associated by fuel crisis and disruption of access to the sea route for imports and exports.¹⁶⁷

Indeed, Uganda economy suffered a great deal due to the Kenyan electoral crisis. According to the Uganda Manufacturers Association, food prices went up by about 15 per cent and in January inflation rose to 6.5 per cent from 5.1 per cent the month before. By mid-February, manufacturers had lost \$43 million because of delays, destruction of goods and slowed production. The Uganda Revenue Authority reported daily revenue collection losses of up to \$600,000 due to the disruptions in trade.¹⁶⁸

Humphrey Tirimba¹⁶⁹ argues that Uganda over a long period of time has had to cooperate with Kenya even when there were conflicts between the two countries for the sake of her economic survival. Tirimba cites an example of the entire period of 1980s, when despite Uganda's frequent belligerence, the salience of economic and political survival made it imperative that she hastily reconciled with Kenya in order to avoid much suffering.

All of the above activities by the Uganda government and by president Museveni as a person were a clear demonstration that Uganda was not going to let Kenya run into anarchy. Uganda was likely to suffer the greatest out of the Kenya's political instability.

3.8 Rwanda's and the Great Lakes interests

Various factors informed the Great Lakes involvement in the Kenyan peace negotiation as third party negotiators. Post-election violence in Kenya threatened to harm regional economies that depend on its status as an East African business hub. The World Bank and the aid agencies of leading western governments, including the United States, Britain, plus the European Commission, shared their worries about the region's economies. They were concerned that the unrest that continued in some parts of Kenya threatened

¹⁶⁷*Daily Monitor*, Thursday January 17, 2008 p.4

¹⁶⁸*The Standard*, "Rwanda Ration fuel supply", Friday, January 4, 2008 p 7

¹⁶⁹Tirimba Humphrey, "Conflict and Cooperation: Antecedents of Kenya-Uganda Relations, 1964-1990", M.A Thesis, University of Nairobi, 1991p.42

impressive gains in economic growth and poverty reduction in the entire East African region.¹⁷⁰

Rwandan president, Paul Kagame, was the first foreign leader to suggest military option for Kenya during the post-election violence, warning that the situation could easily slide into a mass slaughter.¹⁷¹ Though Kenya did not heed this call, Kagame was instrumental in the Kenyan post-election peace process success.

Kenya is the transit point for one quarter of the GDP of Uganda and Rwanda and one third of the GDP of Burundi. These countries reported fuel shortages as supply lines in Kenya were disrupted by the 2007 post-election violence. It was from this point that urgent political dialogue was needed to restore stability in Kenya after violence broke out in Kenya at this time of crisis. In addition to attacks by armed groups from the two sides, protesters' roadblocks along the main highways between Kenya and neighbouring countries curtailed trade and manufacturing in the region. Such blockages, along with other economic disruptions, slowed economic growth throughout East Africa. Before the unrest, the five countries of the East African Community - Kenya, Tanzania, Rwanda, Burundi and Uganda - expected to see their combined gross domestic product grow by 6 per cent in 2008.¹⁷²

Blocked roads and vandalized rail lines also hampered the transportation of humanitarian assistance to vulnerable groups in the eastern Democratic Republic of the Congo (DRC) and southern Sudan. Kenya is the platform for relief operations in Somalia and Sudan, a regional entry point for trade and investment and a key anchor for the long-term stabilization of Rwanda, Uganda and Burundi. The regional impact of Kenya's crisis was particularly significant because of the country's long-standing role as East Africa's main

¹⁷⁰ Helen Nyambura and George Obulutsa, World Bank adds Fitch, in *Reuters*, January 2008

¹⁷¹ *Reuters*, "Rwanda suggest military option for Kenya crisis" January 30, 2008

¹⁷² Mary Kimani, "East Africa feels blows of Kenyan crisis: Economic and social repercussions affect entire region", *Africa Renewal*, Vol. 22, April 2008, p.3

transportation hub. More than 80 per cent of Uganda's imports pass through the port of Mombasa, as do almost all of Rwanda's exports. Commercial trade and humanitarian assistance to Burundi, the eastern DRC, parts of northern Tanzania and South Sudan also rely on the port. These countries were, therefore, at risk of being significantly affected by violence and disruption in Kenya, making them to be interested in third party mediation.¹⁷³

For a region that was working hard towards economic integration, the disruptions of trade and business had been severe. Most commodities going through the port also must travel along the Northern Corridor, a network of highways through Kenya to neighbouring countries. Each day some 4,000 light vehicles, 1,250 trucks and 400 buses carry more than 10 million tons of cargo to Sudan, Uganda, Rwanda and Burundi along the network.¹⁷⁴ However, in January and early February 2008, an estimated 40 illegal roadblocks barred the way. The UN's Office for the Coordination of Humanitarian Affairs (OCHA) estimated that fuel costs in Uganda, eastern DRC and Burundi rose by up to 50 per cent. The price of petrol products in Kigali, Rwanda more than doubled, and severe shortages prompted the government to institute fuel rationing. Three days after the poll chaos erupted in Kenya, Rwandan government was taking measure, to among other things, ration fuel supply. On 3rd January 2008, Rwandese Minister for Commerce, Industry, Investment and Tourism, Mr. Protais Mitali, announced,

We have given directives to all petroleum dealers to ration fuel as a measure of managing the reserves inside the country. For small cars, the maximum will be 10 litres of petrol while for petrol-consuming jeeps, the maximum will be 20 litres a day.¹⁷⁵

As at that time, no truck carrying fuel had entered Rwanda due to the violence which was being experienced on the Kenyan soil. Air traffic between Rwanda, Burundi and Kenya declined because of the high cost of aviation fuel. Kenya Airways, the largest carrier in

¹⁷³ Kimani, "East Africa feels blows of Kenyan crisis" p.6

¹⁷⁴ *The Standard*, "Rwanda Ration fuel supply". Friday, January 4, 2008 p.7

¹⁷⁵ *Ibid*

the region, also suspended direct flights to Paris, affecting passengers from Burundi, Rwanda, DRC, Seychelles and Comoros who had to switch to longer and more expensive routes. Bus companies servicing the Nairobi-Kampala and Nairobi-Kigali routes also cut down on trips because of insecurity and the slowness of secure convoys.¹⁷⁶

3.9 Civil Society in the Kenya's Peace Negotiations

The civil society in Kenya was actively involved in efforts towards finding a political settlement to the post-2007 elections debacle which was witnessed in the country. The foremost interest of civil societies in Kenya was the desire to put pressure on the state or governments that systematically violated individual and collective rights and they needed to ally with the same governments to cope with the security threats. The lack of in-house expertise on the state of the art in the field of conflict transformation and peace building negatively affects the interests and operations of the civil societies. Nevertheless, the respective interests of the civil societies in Kenya were to promise support for conflict resolution.¹⁷⁷

Davis Malombe of the Kenya Human Rights Commission (KHRC) asserts;

During the post-election peace negotiations, there were so many states and non-state actors competing for space, all of them wanted to take part in the peace process. In fact some did not get a chance of airing their views. Kenya is a very strategic country that its instability would have rubbed these actors the wrong way. We as the KHRC were actively playing a key role in trying to find peace in the country since it is our duty and mandate to entrench civil and political rights to the Kenyan citizenry.¹⁷⁸

Local civil society was best positioned to lead its own society towards the elimination of cultural violence. The interest of civil societies was mainly dealing with the

¹⁷⁶ Hellen Nyambura and George Obulutsa, "World Bank adds Fitch", in *Reuters*, January 2008

¹⁷⁷ Wanis, Anthony and Darren Kew, "Civil Society and Peace Negotiations: Confronting Exclusion", *International Negotiation 13 (2008) 11-36*, Martinus: Nijhoff Publishers, 2008, pp. 1-12

¹⁷⁸ Oral interview, Davis Malombe, Kenya Human Rights Commission (KHRC) official 22/6/2011

consequences of direct violence by mediating, anti-conflict campaigning and non-violent solution by contributing to the prevention and cessation of armed hostilities through creating safe spaces and effective processes for negotiations. CSOs that work on the ground ensure sustainability of conflict transformation that was at the heart of peace building. It was the role of the local civil society in Kenya to build relationships between conflict parties at all levels, including at the highest political level. Malombe added, “We were giving moral and material support to the Kofi Annan team and were also pushing for inclusion of non-state actors to the Serena group.”¹⁷⁹

In most cases, peace building is a particular sphere of civil society operations. CSOs in Kenya positioned themselves as peace builders during the 2008 peace process. They preserved trust and respect of their societies and retained influence with the authorities. They also promoted conflict transformation that implied a degree of deviation from the dominant national discourse on the goal and the means, and critical re-assessment of the own side’s wrongdoings and of the legitimacy of the grievances of the opponent side, on the other.¹⁸⁰ One of my interviewee - Morris Odhiambo said,

We (the Civil Society) acted as consultants for H.E. Kofi Annan, during the negotiations, he (Annan) would adjourn and call us for consultative meetings, and we would inform him of the political and constitutional situation in the country.¹⁸¹

Kenyan civil society institutions, especially the Kenya Human Rights Commission (KHRC) and the Kenyans for Peace for Truth and Justice (KPTJ), played a critical role in informing and influencing the process, content and outcomes of the mediation talks. These two lobby groups were the brains behind the formation of the Independent Review Commission (IREC) and the Commission of Inquiry into Post-Election Violence (CIPEV). In this regard, when the two commissions were formed, these CSOs brief-

¹⁷⁹ Oral interview, Davis Malombe, 22/6/2011

¹⁸⁰ Wanis, Anthony and Kew, “Civil Society and Peace Negotiations” pp. 1-12

¹⁸¹ Oral interview, Morris Odhiambo, President, National Civil Society Congress (NCSC), 19/10/2011

watched them and also made submissions, and thereby influenced the national agenda.¹⁸² The national agenda herewith being the road map to achieving sustainable peace and reconciliation among the warring functions.

3.11 The Church and other Faith-Based Organizations

The church and other faith-based organizations (hereafter FBOs) played a pivotal role in the restoration of peace and democracy in Kenya in the aftermath of 2007 general elections. The Catholic Church and other churches under the umbrella of National Council of Churches in Kenya (NCCCK) together with Muslims under the umbrella of Supreme Council of Kenya Muslims (SUPKEM) came together in bid to restore calm in the country. According to Mr. Kinyanjui Kamau of NCCCK, the church had anticipated violence long before the elections. He stated

We had started putting measures to prevent violence long before the elections were conducted, we formed the Inter-Religious Forum (IRF) in April 2007 when faith institutions came together to address social issues. Towards the elections we felt that the country was seriously wounded and the situation was quite tense following the divisions among ethnic groups occasioned by the 2005 Constitutional Review process.¹⁸³

Faith-based organizations also tried to put up measures to ensure peace was prevailed before and during the post-election violence, according to Kamau who said that,

We wanted to ensure that the elections would be transparent, democratic and peaceful. We organized national prayers and through IRF, we ran a youth peace campaign dubbed *Chagua Amani Zuia Noma* (Choose Peace, Prevent Chaos). The IRF initiated programmes in which politicians were made to sign charters binding themselves to ensure that the elections were peaceful. This was months before the elections.¹⁸⁴

¹⁸² Tom Kagwe, "The Unfinished Reform Agenda and the 2007 General Elections in Kenya", in Karuti Kanyinga and Duncan Okello eds., *Tensions and Reversals in Democratic Transitions; The Kenya 2007 General Elections*. University of Nairobi, 2010 p 447

¹⁸³ Oral interview, Kinyanjui Kamau, NCCCK, on 24/6/2011

¹⁸⁴ Ibid

Immediately after the post-election violence broke out in the last days of December 2007, the church invited the first international mediator Nobel Laureate Archbishop Desmond Tutu from South Africa. Though Desmond Tutu was able to meet Kibaki and Raila separately He did not achieve much due to suspicion among the warring parties. Also, the church on many occasions gave their presentations to the Kofi Annan-led PEAP and even pushed in vain for the inclusion of non-state actors to the negotiating team. The head of the Roman Catholic Church, Pope Benedict XVI, in a letter to the Kenya Episcopal Conference called for “an immediate end to the acts of violence and fratricidal conflict”.¹⁸⁵ The Pope’s letter said in part,

The pope followed the great tragedy in Kenya with deep sorrow and concern and also appeals to the political leaders, who are responsible for the common good and invites them to embark resolutely on the path of peace and justice, since the country needs peace that is based on justice and brotherhood.¹⁸⁶

During the two months of violence, various initiatives were mooted seeking to restore peace and stability in the country. The Inter-Religious Forum (hereafter IRF) engaged in four-pronged approach to respond to the violence. These were: humanitarian and relief; prayer and Spiritual Action; political mediation; and Media Relations.¹⁸⁷ In spite of the said efforts by the church in preaching peace, the faith-based organizations were largely blamed by the Kenyan citizenry for failing to execute its mandate – provision of spiritual and moral guidance in the time of crises. The church was accused of “sitting on the fence” when its congregation needed moral direction and the political system required guidance. The clergy had lost moral authority to reconcile warring political factions and seemed to be partisan and divided along ethnic lines even after the elections.¹⁸⁸

¹⁸⁵ Reuters, January 4, 2008

¹⁸⁶ Says in part Pope’s letter signed by Vatican Secretary of State Cardinal Tarcisio Berton

¹⁸⁷ Kenya Thabiti Taskforce, “The Root Causes and Implications of The Post Election Violence in 2007”, Report by The Inter Religious Forum, 2009, p.3

¹⁸⁸ Babere Kerata Chacha, “Pastors or Bastards? The Dynamics of Religion and politics in the 2007 General elections in Kenya” in Karuti Kanyinga and Duncan Okello eds., *Tensions and Reversals in*

In March 2008, the NCKK formally apologized to the nation for having taken sides during the 2007 elections. This was considered an important step in the long road to the church recovering its credibility and playing its role of being the conscience of society.¹⁸⁹ The Catholic bishops also confessed in late March 2008 to having failed its faithful. The church, having gone through much turbulence, yielded to the widespread criticism and admitted liability, saying that, “We (The Catholic Church) did not listen to the voice of the shepherd, who is Jesus Christ. We failed to love one another. We sinned by failing to love one another...”¹⁹⁰

Nevertheless, the NCKK and the Catholic Church and SUPKEM worked tirelessly in making sure that peace prevailed. These efforts were taken by some political and religious commentators as acts meant to redeem and redefine the lost glory of the religious organizations at the time. The NCKK and the Catholic bishops therefore conscientiously worked to create an open space that built trust of all Kenyans. In the midst of the negotiations, the church would on several occasions give its view to the Kofi Annan-led mediation team. For example, on the issue of government structure to be formed, the church recommended a lean and efficient cabinet. The Catholic Church, through Cardinal John Njue, the Anglican Church, through Bishop Nzimbi and the NCKK, through its General Secretary, stated that, “would like to see a lean and efficient cabinet that can deliver especially because there was a lot of work to be done urgently”.¹⁹¹

In a nutshell, the church and other religious organizations in Kenya can be said to have played the role of both peace makers and perpetrators of violence to some extent. Going by the expectations of many, the church did not optimize its purpose of preaching peace during the post-elections crises. On the other hand, the church was on the receiving end as much of its institution was affected by the violence. In the early days of violence, for

Democratic Transitions: The Kenya 2007 General Elections, Nairobi, Institute of Development Studies, 2010 p.128

¹⁸⁹ Ibid

¹⁹⁰ Cardinal John Njue made the apology at the Holy Family Basilica as faithfuls celebrated a thanksgiving mass for the formation of the grand coalition government.

¹⁹¹ *Daily Nation*, “Choose efficient cabinet, Kibaki, Raila urged” March 25, p.2

example, a church where women and children taking refuge was set ablaze in Eldoret. Also a catholic priest was killed in the Rift Valley allegedly because he belonged to the “other community”. There are many instances where the church suffered the wrath of ethnic violence.

3.12 Conclusion

The experience of peacemaking in African conflicts suggests that international mediators are driven by national or self-interests. This is especially the case where disputants to the conflict are in a country that is strategically positioned and its slip into war would hurt the third party interests. It could be argued that third parties only use power to safeguard their interests. It might, therefore, be concluded that peacemaking by states, multinational bodies and non-state actors should be regarded as complementary, suitable in different settings or appropriate at different stages in the resolution of a conflict.

Unlike in other instances elsewhere, where third parties differ in interests and others turn spoilers to peace process, the third parties for the Kenya conflict acted in unison: they pressed ahead to find a settlement to the political crisis. They never seemed to side with either of the parties, except in matters of common benefit. The negotiating third party – the Panel of Eminent African Personalities-was getting support from the other third parties whenever such support was required. This exemplary behavior of the third parties in the Kenyan case remained unique and explained the success of the negotiations.

This convergence of interests among third parties is what is credited for the success of the Kenyan peace process. The international community, individual governments, the international organizations, faith-based organizations and local state and non-state actors played a key role in finding a peaceful settlement to the political crisis. The third parties whether driven by selfish interests or otherwise, all presented a pattern of convergence of interests, i.e. bringing normalcy to the country (Kenya). The third parties had realized that the only way to have their diverse interests safeguarded was to have a peaceful Kenya.

CHAPTER FOUR

Third Parties in Kenya's 2008 Peace Negotiations

4.1 Introduction

Political violence of unimagined proportion engulfed Kenya following hotly disputed presidential election results in December 2007. The violence which was heavily experienced in the months of January and February 2008 led to the killing of at least 1,162 people and some 350,000 others were internally displaced.¹⁹² Following this, the international community and local state and non-state actors made frantic efforts to initiate peace negotiations between the warring parties, i.e. Orange Democratic Movement (ODM) referred to as the opposition and Party of National Unity (PNU) herein referred to as the government.

South African Archbishop Desmond Tutu was the first international figure to jet into the country for mediation. He was followed by the African Union chairman John Kufuor but both efforts proved futile. AU's choice of the Panel of Eminent African Personalities led by Dr. Kofi Annan seemed to go down well with both PNU and ODM. The Annan-led team began mediation on January 23, 2008. On February 28, 2008, Mwai Kibaki, leader of the Party of National Unity (PNU) and Raila Odinga, leader of the Orange Democratic Movement (ODM) signed a political settlement. Parliament enacted this as an amendment to the then Kenyan Constitution - the Constitution of Kenya (Amendment) Act, 2008. The parties also agreed to undertake several measures to end the political violence and address several long standing issues that, if unresolved, threatened recurrence of the crisis.¹⁹³

This chapter examines and discusses the key stages of the mediation process. The chapter demonstrates that the success of the mediation was as a result of the support, commitment and the willingness of the third parties involved. What then made the Kenyan peace

¹⁹² KNCHR "On the Brink of the Precipice: A Human Rights Account of Kenya's Post-2007 Election Violence", p. 3

¹⁹³ Sihanya and Okello, "Mediating Kenya's Post-Election Crises" p. 673

negotiation process to be successful within a short period of time?¹⁹⁴ What were the manifestations of third party engagement and how were they accommodated in the peace negotiation process and the resultant outcomes? Second, how did the interest and power relations influence the structure and process of the mediation?

4.2 Start of Peace Mediation Process

On December 31, 2007, a day after the violence had erupted, a group of prominent members of civil society launched Concerned Citizens for Peace - a multilevel peace initiative which became a rallying point for peace activists and an interlocutor within the peace process. Similarly, religious groups and business leaders called for a halt to the violence, condemning the polarization of Kenyan society and calling on the leaders to work together for peace.¹⁹⁵

The mediation efforts preceding the Panel of Eminent Person's engagement provided essential building blocks for the mediation strategy that followed the post-election violence. The first involvement of a third party in the conflict was on New Year's eve, when the British Foreign Secretary, David Miliband,¹⁹⁶ called for an end to the violence and urged Kenyan leaders to act responsibly. Four days later, similar sentiments were echoed by the United States Ambassador to Kenya, Michael Renneberger, who held talks with President Kibaki at State House on January 4, 2008 and discussed the need for a political settlement to the crisis.¹⁹⁷ The IMF, concerned about the impact of the crisis in Kenya on her neighbours—Uganda and Rwanda, which are heavily depended on Kenya and the Port of Mombasa for their supplies - wanted to see a quick resolution to the chaos. Through its MD, Dominique Strauss-Khan, the IMF called for a quick and peaceful end to the conflict.¹⁹⁸

¹⁹⁴ Short time is in reference to the 41 days it took the Kofi Annan- led peace negotiations to achieve success in terms of a power sharing deal between PNU and ODM

¹⁹⁵ Kenya Thabiti Task Force Report, "The root cause and implications of the post-election violence in 2007" Inter-Religious Forum, 2009 p.77

¹⁹⁶ *Daily Nation* "Who will save Kenya from the brink? Raila must try" January 1, 2008 p.10

¹⁹⁷ *Saturday Nation*, "Kibaki-Raila Deal Possible, says Tutu" January 5, 2008, p.1

¹⁹⁸ *Daily Nation*, "IMF warns of economic doom" January7, 2008 p.32

It was, however, not until January 2, 2008, three days after violence erupted across the country, that, the first external third party arrived in Nairobi. The Nobel Peace Laureate, Archbishop Desmond Tutu, became the first foreign dignitary to arrive in Nairobi to try and mediate in the conflict. Despite his impressive moral authority, Desmond Tutu's intervention did not have an immediate effect. Seemingly biding his time, Odinga refused to engage in dialogue, while Kibaki was adamant that the only recourse for the opposition was through the courts, a lengthy process involving a system dominated by government allies.¹⁹⁹ ODM supporters perceived the system as unjust so it could not give a just outcome and so they were adamant that that they would accept nothing but either PNU hands in power or a re-run of the presidential elections is conducted.

One of the Serena 8 negotiators,-William Ruto of ODM, pointed out that;

... at that time (at the start of negotiations) our position was (that) we had won the elections and we had two options, either we are declared the victors or in the event of any doubt, we go for a run-off. And the PNU side insisted that there was a government in place, there was a president and there were ministers. We insisted on the other side that the elections were contested; there was no outright winner, as was confirmed later by Krigler...²⁰⁰

Some media commentators claimed that Desmond Tutu's efforts to mediate the conflict were frustrated by the manner in which the Archbishop was sidelined by the ODM.²⁰¹

Desmond Tutu's presence in Kenya was not entirely futile as he was able to meet President Kibaki at State House and Raila Odinga, separately. It is in these meetings that the idea of a coalition government was first mooted. In fact in his meeting with Tutu, President Kibaki indicated his willingness to explore the formation of a coalition

¹⁹⁹Barkan, "Hearing on the Immediate and Underlying Causes and Consequences of Flawed Democracy in Kenya," February 7, 2008

²⁰⁰ William Ruto speaking in a documentary dubbed "Amani Room Reflections" by Linus Kaikai of NTV aired on 28/2/2011.

²⁰¹ *Nairobi Star*, "ODM settle fo Ghana President Kufuor for talks", January 4, 2008, p.4

government with his rivals.²⁰² Despite the failure of the initial efforts to resolve the conflict, the idea of a coalition government seemed to have endured.

Meanwhile, other third parties also started arriving in the country. The US Assistant Secretary of State for African Affairs, Jendayi Frazier, arrived shortly after Desmond Tutu on January 4, 2008. Fraizer met President Kibaki at State House on January 5, and also met ODM leader Raila Odinga. Kibaki proposed to form a Government of National Unity (GNU), while on the other hand Raila argued that “Kibaki should not come to the negotiating table as the president” and called for creation of a transitional government leading to a new election in three to six months.²⁰³ In the face of escalating violence, President Kibaki sent Assistant Minister for Foreign Affairs, Moses Wetangula, as a special envoy to Ghana to brief AU chair, president Kufuor of the political crisis in the country.

On January 8, four former heads of state under the banner of Former Presidents Forum (FPF) arrived in the country. They included Tanzania’s Benjamin Mkapa, Mozambique’s Joachim Chissano, Botswana’s Katumile Masire, and Zambia’s Kenneth Kaunda, who immediately travelled with Frazier to Eldoret to meet with residents whose lives had been devastated by the post-election violence. They also met President Kibaki, ODM members and former President Moi of Kenya.²⁰⁴ The four former heads of state carried with them their moral authority and respect of both parties, and, as part of an African intervention, were seen as more acceptable in the eyes of a government still intent on resisting internationalization.²⁰⁵

Before she left the country, Frazier blamed both sides of the political divide for the elections fiasco. This made her less appealing as a mediator in the eyes of the ODM, which was insistent that the vote had been stolen from them. Her ten-day stay, despite her

²⁰² *Saturday Nation*, “Kibaki-Raila Deal Possible, says Tutu” January 5, 2008, p.1

²⁰³ Mike Wooldridge, “Can Tutu heal Kenya’s wounds?” 2008, at <http://news.bbc.co.uk/2/hi/africa/7171607.stm>, visited on 10/5/2011

²⁰⁴ *Daily Nation*, “Ex-presidents call for talks to end violence” January 10, 2008, p.8

²⁰⁵ While ODM was for international mediation throughout the entire period, the government (PNU) side was against international mediation at the initial stages, it argued that Kenya was a sovereign state and was ready to employ its internal conflict resolution mechanisms.

otherwise commendable efforts, was inconclusive and she left Kenya shortly thereafter, but not before writing a strongly worded and very personal letter describing her disappointment at the parties' inability to reach compromise. Similarly, the intervention of the four former heads of state, albeit a very laudable response to the escalating events on the ground, only added to the plethora of options available to the government, thereby multiplying both the channels of communication and the possibilities for stalling any real efforts toward peace.²⁰⁶

On January 8, 2008, the same day the Former Presidents Forum arrived, President John Kufuor of Ghana and the African Union chairperson arrived in the country. Following his two day engagement at Kibaki's request, which had involved a meeting with Kibaki at the President's residence, State House, and another with Odinga at the Orange House, Kufuor failed to bring the two antagonistic parties together. The Ghanaian president left Kenya stating that at least both sides had agreed there should be an end to the violence, and they also agreed that, there should be dialogue, to be coordinated by a Panel of Eminent African Personalities.

President Kibaki's actions did not help the mediation. On January 8, the day Kufuor came to Kenya, Kibaki, despite dispute over the elections results and his status as president, went ahead to appoint a cabinet and filled the position of Vice President. Kufuor did not achieve much though his efforts were rated high. As one commentator put it, the international community supported him abundantly, because,

Being the AU chairman... Kufuor stands out as a mediator with an impartial position and genuine interest in peace and stability in Kenya, the pressure of international community, which will direct the process, the changing regional geopolitical and economic situations in east, central and Horn of Africa may influence the outcome of the process²⁰⁷

Another key third party personality was President Yoweri Kaguta Museveni of Uganda. President Museveni's engagement, the last before the Panel was accepted as the only

²⁰⁶Barkan, "Breaking the Stalemate in Kenya."

²⁰⁷*Daily Nation*, "Kufuor talks up against serious odds" Chinta Musundi-Beez January 10, 2008, p. 11

official mediation option, was strongly encouraged by the PNU group which was heading the Government of Kenya, but less favoured by the ODM. Museveni accompanied Kibaki to State House the very day the Panel began its efforts for official talks. This appeared to be a last attempt on the part of the Kenyan government to resist internationalization of the crisis and coincided with another, less publicized, attempt at mediation in which Kibaki sent Foreign Affairs Minister, Raphael Tuju, to meet with the Rwandan President Paul Kagame.²⁰⁸

At the same time, President Kibaki appointed 17 Ministers to half of the Cabinet seats, and said he was ready to dialogue with ODM and form a Government of National Unity. This action by one side of the protagonists made matters of possible political settlement even more complicated. Notably, the powerful ministries had been allocated to the PNU MPs.²⁰⁹ Kalonzo Musyoka of ODM-Kenya – a party which became an affiliate to the PNU - got the slot of Vice president during this Cabinet selection. Musyoka, according to the ECK results, came in third in the presidential election.²¹⁰ The president also filled sixteen other ministerial positions in his cabinet with members from his PNU party. This provocative move left very little room for ODM appointments in case of a coalition government. This action further fuelled violence in the Rift Valley, which erupted again in protest at these exclusionary moves.²¹¹

As the death toll rose, the ODM called for more protests against the government, as well as international sanctions, thereby amplifying its double-edged strategy of using protests and international attention to give weight to its cause and strengthen its position before going to the negotiating table. These interventions may appear to some to have been failures, but in fact they provided the Panel led by Kofi Annan with important ground on which to build the strategy and insights that proved essential for the way ahead. First,

²⁰⁸ Barkan, "Breaking the Stalemate in Kenya." P.14

²⁰⁹ *The Standard* "Kibaki names Cabinet", January 8, 2008

²¹⁰ See Table 1

²¹¹ Barkan, Joel D. "Hearing on the Immediate and Underlying Causes and Consequences of Flawed Democracy in Kenya," Testimony, Prepared for the Senate Foreign Relations Committee's Subcommittee on African Affairs, February 7, 2008

Annan insisted that there would be one mediation team, and with a single mediation, there could be no possibility for alternatives if the compromise being proposed did not suit the parties to the conflict.²¹²

The previous absence of coordination in the first few weeks of the crisis, even among African actors who rushed to the scene with noble intentions but not enough tools or resources at their disposal, could not be repeated according to the chief mediator. He stated that there should be no interference in the mediation and that the mediator would decide whom to ask for support and when. Secondly, certainly never explicitly stated but implied by the previous mediation attempts, was the understanding that the mediator had to be someone who could not only bring enough moral authority, but also enough political good will. Despite all the challenges, it must be noted that there was overwhelming interest and engagement of the African continent in coming to the aid of Kenya which indicated there was enough will and skill to find an African solution to an African problem.²¹³

4.3 The Panel of Eminent African Personalities' Mediation

President Kufuor's good offices led to the creation of a team, under the auspices of the African Union, to mediate in the conflict. This team was to be chaired by former UN Secretary General, Kofi Annan. The team included eminent African personalities, namely Graca Machel and ex-president of Tanzania Benjamin Mkapa.²¹⁴ Kufuor's selection of Kofi Annan to lead the AU-mandated mediation process, which was announced publicly on January 10, 2008, was an inspired choice. With years of mediation experience, an internationally renowned figure with moral authority and a strong political reputation, Annan combined extensive political experience and a unique negotiating skill. A Commissioner with the Kenya National Commission on Human Rights observed that, Kofi Annan seemed to appeal both to the international community and the parties to the conflict,

²¹²Human Rights Watch, "Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance." *New York Times*, March 2008.

²¹³*Ibid*

²¹⁴Mwagiru, *The Water's Edge*, p.68

Apart from being fronted by the AU, Kofi Annan had an internationalistic (sic) look, he was acceptable to the international community otherwise he would not have gotten the support he got from the major powers... In choosing of Kofi (Annan), Kofour wanted to front someone whom he thought would appeal to the warring parties and the international communities. Again as Kufuor was the president of Ghana and while Annan was a former UN Secretary General, who also hailed from Ghana and so Kufuor wanted someone he understood well... ²¹⁵

Kofi Annan arrived on January 22nd and held separate meetings with both the warring leaders, after which it became clear that much efforts would be needed to bridge the gap between the parties' respective positions. Annan and his team engaged in extensive diplomacy soon after they arrived in Nairobi. The essence of this diplomacy was to lay down the framework under which the mediation would take place. On the first day, they met with a cross-section of interested parties, who included the speaker of the national assembly, Kenneth Marende, Ugandan President Yoweri Museveni, former presidents Benjamin Mkapa and Joachim Chissano and the ODM leadership in Nairobi.²¹⁶ The aim of this "high stakes" diplomacy was said to be to enable Annan to "understand the issues that brought about the dispute before meeting the two groups."²¹⁷

Even before meeting Annan, Odinga insisted that the election had been rigged and the presidency stolen from him, and maintained that his preconditions for even entering into dialogue would begin with Kibaki's resignation. He also suggested a re-run of the presidential election, or the formation of a transitional government, and an agreement to undertake comprehensive, legal constitutional reforms, especially concerning the contentious land issue.²¹⁸ Odinga seemed determined to use the international mediation to his full advantage and wanted to secure as many concessions as possible before going to the table, not least because he was persuaded by Annan to call off the mass protests that were planned for that week, protests which would have given him leverage and

²¹⁵ Oral interview, Hassan Omar Hassan, commissioner - KNCHR, 21/10/2011

²¹⁶ *Daily Nation*, "Mass action called off after Annan-ODM talks" January 24, 2008, p.1

²¹⁷ Ibid

²¹⁸ *Daily Nation* "ODM spells out its demands for Annan-led team" January 21, 2008 p.4

heightened the impression of crisis but which risked seriously undermining the mediation effort still in its fragile first phase.²¹⁹

Kibaki delayed his first meeting with Annan, set for January 22, 2008 in order to meet privately with President Museveni, who was proposing his own peace plan. Publicly, Kibaki made clear that he was ready and willing to negotiate only when Odinga and the ODM accepted his presidency as legitimate, thereby dropping all references to the election having been stolen, and as long as Odinga came to the table with no preconditions.²²⁰ Kibaki was insistent that his presidency was non-negotiable and certainly not an issue to be brought to international mediation. Conscious that each day the parties stalled more lives were being lost, Annan brought the two leaders together in a closed door face-to-face meeting. He pressed upon them the need for genuine dialogue and the absolute imperative of putting an end to the violence. Using terminology that would, over the coming weeks, become familiar, Annan insisted that this was “an extraordinary situation which needed an extraordinary solution”, starting with commitment from the leaders to work together.²²¹

When Raila Odinga and Mwai Kibaki shook hands publicly on January 24 for the first time since the beginning of the crisis, a sigh of relief swept across the country after the handshake. Kofi Annan had, in two days, managed to accomplish what no one else had - to convince the leaders of the warring parties to agree to a face-to-face meeting, thereby recognizing each other formally, no longer as enemies but as negotiating partners.²²² On the very same day the leaders shook hands and agreed to engage in dialogue, they also took steps which increased the gap that existed between them. Kibaki used the high-profile handshake to highlight the legitimacy of his presidency, using his speech to

²¹⁹ *Ibid*

²²⁰ *Daily Nation* “Ghanian leader opens talks on election dispute” January 10, 2008, p.2

²²¹ Barkan, “Hearing on the Immediate and Underlying Causes and Consequences of Flawed Democracy in Kenya,” p.9

²²² *The East African*, “Can Annan rescue Raila and Kibaki from the clutches of hardliners?” January 28-February 3, 2008, p.1

emphasize that he was “the duly elected president” and that the crisis could be resolved internally.²²³

In the pre-negotiation period, the negotiators were inaugurated. The negotiators from the government/PNU side were Martha Karua, Sam Ogeri, Mutula Kilonzo and their liaison officers were Gichira Kibaara, and Ludeki Chweya. The negotiating team from ODM was made of Musalia Mudavadi, William Ruto and Sally Kosgei, with Karoli Omondi as the Liaison Officer. The negotiating teams were later increased by one person each after *ODM pleaded that they needed a lawyer in their team*. James Orengo and Moses Wetangula were, therefore, added to the ODM and PNU/government side, respectively.²²⁴

As Martha Karua, the lead negotiator of the PNU, asserts;

It was my duty as the lead negotiator on the side of the president to ensure that at all times it was recognized that Kenya has a government and that the talks had been initiated by the president inviting the negotiators. The start was difficult because we had to establish the ground rules. There was pressure to internationalize what was going on and to make it externally driven...²²⁵

Odinga, reacting to these comments, warned of the possibility of mass action once more. What the public thought was the first step towards finding a lasting solution became the start of another round of accusations and counter-accusations. Kibaki restated that the government could not share power with those whom it had accused of engaging in mass killings and that allegations of irregularity should be referred to the legal systems for arbitration. Odinga insisted once more that the only way to restore confidence would be

²²³ *Daily Nation*, “ODM criticize Kibaki remark” January 25, 2008, p.5

²²⁴ *Daily Nation*, “ Leaders pledge to unite Kenyans” January 30, 2008, p.2

²²⁵ Martha Karua, the former minister for Justice and Constitutional Affairs and the lead negotiator for the PNU/government side on oral interview with Linus Kaikai in a documentary dubbed “Amani Room Reflections”, a NTV 2011 series.

through a re-run of the presidential elections, ruling out any possibility of forming a government of national unity with President Kibaki.²²⁶

Kofi Annan took it upon himself to include the people in the process as much as possible through media transparency. While downplaying the harsh realities behind closed doors when the process seemed to go off track, he reassured the nation with his steady optimism. He also undertook to shield the public from the constant stalling, the quarrels over details, and the revisiting of issues, not wishing to sow the seed of failure within the process itself. He made a point of building on what had been achieved, always looking to the road already walked.²²⁷ Furthermore, the specific language used in interactions with the media was going to take on a huge significance, both inside and outside the negotiating room.

Annan reminded both parties that there was a need to watch the words that they uttered and how they used them. This was advice to the parties, but also advice that he would heed. He used it to his advantage when necessary in order to push the parties in the right direction. He intended to use such words to turn hopes and ideas into reality. This strategy would not have been as effective in reassuring the nation and keeping faith in the process without the help of former President Mkapa who made a point of translating all the proceedings of the press conferences into Swahili. This prominent figure ensured that the message was heard and understood by the Kenyan people, and delivered by someone they could trust.²²⁸

4.4 Third Parties During Negotiations

In the Kenyan mediation process, Kofi Annan, the former UN Secretary General, and the AU Panel of Eminent African Personalities had leverage, esteem, respect, and incentives

²²⁶ *The Standard*, "Kibaki insists ODM should go to court," February 2, 2008, pp.1-2

²²⁷ Human Rights Watch, "Ballots to Bullets", *New York Times*, p.16

²²⁸ *Ibid*

to succeed. They commanded international support, and Annan had immense convening and calling power in the world.²²⁹

The principals agreed to enter into dialogue and appoint team members from their groups to represent them in the negotiations. The fact that the principals themselves would not be around the negotiating table meant that a vast amount of power lay outside the negotiating room, a dynamic that would prove to be both a challenge and an opportunity within the peace process. The secretariat of the Panel worked intensely behind the scenes during this week to produce the agenda or what has commonly been referred to as the Road Map for the talks, the modalities for the negotiation, the structure and terms of reference of the Panel, and the Rules of Procedure. These documents were produced in close consultation with these newly formed negotiating teams even before the formal negotiations were opened. Vital adjustments were made to the texts so that by the time the talks were formally opened at the National Assembly on January 29th the teams already had a common basis to work from. They were able to adopt all the above documents immediately, and begin working on addressing some of the essential items.²³⁰

After the first face-to-face meeting between Kibaki and Raila, rapid adoption of the Annan's Road Map was agreed. The Road Map included four items: (1) to undertake immediate action to stop violence and restore fundamental human rights and liberties, (2) to take immediate measures to address the humanitarian crisis, promote reconciliation, healing, and restoration, (3) to overcome the political crisis and (4) to work on long-term issues and solutions, such as poverty, inequality, and unemployment (especially among the youth), as well as the need to confront impunity, tackle land reform, and consolidate national cohesion and transparency. The Road Map was to provide a structure and stimulus throughout the peace talks.²³¹

Annan announced his timeline publicly, that violence was to be stopped in seven days, the short-term issues dealt with in four weeks, and the longer-term issues within one year.

²²⁹Sihanya and Okello, "Mediating Kenya's Post-Election Crises" p.676

²³⁰Mwagiru, *The Water's Edge*, p.105

²³¹ Ibid

The negotiations, therefore, got off with a swift and positive start with the mediation team having made the important decision to separate the short- and long-term issues at hand. The aim was to stop the violence so that the negotiations could take place within a constructive framework and a peaceful environment.²³²

The arrival of UN Secretary-General Ban Ki-moon on February 1st was further proof of the undivided support of the international community. The Secretary-General made several clear and unconditional statements of support for the work of Kofi Annan and the mediating team, while also making it clear that responsibility for peace lay with the leaders themselves. In his address to the Summit of the African Union in Addis Ababa on January 31st, Ban emphasized the need for Kibaki and Odinga to do everything possible to resolve the causes of the crisis peacefully. The UN boss also called upon all African leaders present at the summit to urge and encourage the leaders and people of Kenya to calm the violence and resolve their differences through dialogue and respect for the democratic process.²³³

The UN Secretary General held consultations with representatives of both ODM and PNU urging them to think beyond their personal interest for the sake of the people of Kenya. In what was an important showoff support for the staff involved, the Secretary-General also took part in a town hall meeting with some of the 5,000 UN Staff based in Kenya in various UN agencies. To these staff and to the media, he made it clear that the UN was ready to increase its support for the process as needed. He ended his trip in a media conference where he described the violence and suffering as unacceptable and stressed the need for the negotiating teams to persevere and show courage, vision and leadership to expeditiously find a just and peaceful solution.²³⁴

²³²Barkan, "Breaking the Stalemate in Kenya" p.47

²³³Barkan, "Hearing on the Immediate and Underlying Causes and Consequences of Flawed Democracy in Kenya," p.14

²³⁴Human Rights Watch, "Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance." *New York Times*, March 2008.

The US government dispatched high level government officials into the country in search of a political solution. The doctrine of carrot and stick was effectively applied by the world's only super power. When diplomacy was not working, the US threatened to use force to restore order in Kenya, but when it seemed that the parties to the conflict were in agreement the super power promised support. Frazer warned, "we'll find an international mechanism if they can't find it internally".²³⁵

Furthermore, the US gave warnings and perceived threats of possible alternative action. It issued an ambiguous statement on the need for an external solution, without giving any details of what such a solution would entail. The pressure for a negotiated solution was mounting. As one of my interviewee privy to Serena proceedings observes,

...the issue of power sharing was American since she (Jendayi Frazer) was insisting that there must be power sharing and real power sharing and this was long before the Secretary of State (Condoleezza Rice) came. It had already been decided that you guys (sic) have to share power, since this is the only way out of these crises. I was in one of those (her) meetings where this message came out very clearly. The Secretary of State basically came to cement that view²³⁶

the same view was also mentioned by another respondent Hassan Omar,,

This power sharing matter was very foreign, it is the (US) Secretary of State Condoleezza Rice who came with issue of 50-50 power sharing between ODM and PNU. She insisted that the same power sharing must be real. Also (president) Bush speaking in Rwanda said that they can't allow the Kenyan situation to disintegrate into a full genocide like the one experienced in Rwanda (in1994)....²³⁷

²³⁵ *Daily Nation*, Thursday January 31 2008 p.1

²³⁶ Oral interview, Morris Odhiambo, Executive Director CLARION and the president of National Civil Society Congress, 19/10/2011

²³⁷ Oral interview Hassan Omar Hassan, Commissioner, Kenya National Commission on Human Rights, 21/10/2011

The Kenyan government insisted that the statement from the US was unnecessarily threatening.²³⁸ There were some pressure from other third party sources as well as the pressing need for a solution to end the violence. This led to two major agreements on agenda items one and two to end the violence and address the humanitarian situation on the ground. These agreements - made on February 1st and 4th, respectively -involved concrete measures to hold joint meetings to promote peace, ensure freedom of expression and the right to peaceful assembly, investigations into crime and police brutality, assisting the safe return of internally displaced persons and the establishment of a truth and reconciliation commission.²³⁹

Within just ten days, the Panel and the parties had made substantial progress. As negotiations got underway in Nairobi's Serena Hotel, the impression was that the parties were moving steadily toward a peaceful solution. Discussions appeared constructive and focused on practicalities, such as the need to create transport corridors to ensure aid could travel rapidly, and on the need to mobilize local leaders to make this possible.²⁴⁰

On February 28, 2008, Kofi Annan stressed on the need to engage the principals rather than the negotiators. He stated that he wanted the have the Principals i.e Mwai Kibaki and Raila Odinga, agree on the structure of government to be formed. He said,

I believe that the Panel of Eminent African Personalities working with the Kenya National Dialogue and Reconciliation has done its work. I'm now asking the party leaders, Hon Raila Odinga and President Mwai Kibaki to do theirs²⁴¹

In which, according to Annan, violence posed the biggest threat to the success of the talks. At this early stage in the negotiations, Annan's interventions were brief and to the

²³⁸ *The Standard*, "US accused of double standards over results" January 14, 2008, p.5

²³⁹ Barkan, "Breaking the Stalemate in Kenya", p.12

²⁴⁰ Human Rights Watch, "Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance." New York Times, March 2008.

²⁴¹ *The Standard*, February 26, 2008

point, seeking to give as much ownership of the process to the parties as possible, while also keeping the talks focused and forward looking.²⁴²

4.5 Third Parties in the Reached Agreement

On February 28, 2008, Kofi Annan and President Jakaya Kikwete of Tanzania, along with former President Mkapa and Graca Machel, met for the final stage of negotiations with President Kibaki and Mr. Odinga. The decision to bring in President Kikwete at this point was double edged; Kikwete was a respected figure on the continent and at the time, he was the chairperson of the African Union. He brought with him both knowledge and power. Firstly, Kikwete could emphasize the success of the Tanzanian example, where power had been shared between the President and Prime Minister in such a way as not to create two centres of power. Jakaya Kikwete replaced the then Ghanaian President John Kufuor as Chairman of the African Union, following his election on January 31, 2008, in Addis Ababa.²⁴³ President Kikwete was also said to have brought a message from President Bush that “dramatically broke the deadlock once he met President Kibaki and Raila Odinga”²⁴⁴

One of my expert interviewee asserted that,;

Apart from being the AU chairman at the time [president] Kikwete brought a very strong message from [president] Bush. About a week or two before Kikwete came to Kenya, he met president Bush in Washington, and he came like today [sic] and a peace deal was signed the following day... the message must have been you have to reach a settlement or else...²⁴⁵

On February 28, after hours of intense negotiations with the principals, Kofi Annan came out and made the “We Have A Deal” statement to the relief of the entire nation. Finally, an agreement known as the National Accord and Reconciliation Agreement was reached

²⁴²Barkan, “Hearing on the Immediate and Underlying Causes and Consequences of Flawed Democracy in Kenya,” p.8

²⁴³Ibid

²⁴⁴*Saturday Nation*, “Last minute efforts that led to a peace deal” March 1, 2008, p.2

²⁴⁵Oral interview, Morris Odhiambo, Executive Director CLARION and President NCSC, 19/10/2011

and later parliament enacted it as an amendment to the then Kenyan Constitution as Constitution of Kenya (Amendment) Act, 2008. It was also incorporated into the Acts of Parliament and called the National Accord and Reconciliation Act, 2008. Later that same day, at a ceremony at Harambee House, Mwai Kibaki and Raila Odinga signed the Agreement on the Principles of Partnership of the Coalition Government.²⁴⁶

The agreement among other things provided for the position of a Prime Minister charged with coordination, supervision and the execution of the functions and affairs of government. Each member of the coalition was to nominate someone from the National Assembly as Deputy Prime Minister.²⁴⁷ The coalition government was to take into account the principle of portfolio balance and reflect their relative parliamentary strength. The removal of any minister was to be subject to consultation and concurrence in writing by the two leaders.²⁴⁸

When the third parties led by the Chairman of the Panel, Kofi Annan, left Kenya on March 3rd, after six long and difficult weeks had passed, it was clear that they had played a significant role towards achieving peace in Kenya. The technical elements of agenda item three were left in the hands of Attorney-General, Amos Wako, and a team of lawyers whose job it was to draft the necessary bills for the implementation of the power sharing agreement into law, and 2 billion Kenyan shillings were pledged by the US in support of the speedy implementation of the agreement, in addition to the Sh1.75 billion already pledged by the US toward reconstruction.

The negotiations over, the root causes of the crisis, however, were left in the hands of Nigerian Foreign Minister Oluyemi Adeniji, who was tasked with addressing the last item on the agenda, the land issue, historical injustices, the cycles of dispossession, and the steps needed to move toward reconciliation. While the mediation was initiated by the African Union, the Panel realized that to be successful it would need the broader support of the international community, including African nations, the US, the EU, and the

²⁴⁶ Sihanya and Okello, "Mediating Kenya's Post-Election Crises" p.676

²⁴⁷ Mwangiri, *The Water's Edge*, p.150

²⁴⁸ *Ibid.*

United Nations. It became clear that third parties played a key role in stopping violence in Kenya, although they faced various challenges.

4.6 Conclusion

The 2007 post-election violence was without doubt the worst political crisis ever witnessed in independent Kenya. Africa was at the brink of experiencing another Rwanda-like genocide in Kenya. The concerted efforts by third parties bore fruits, especially efforts by the US, Britain, AU, UN, Uganda, Rwanda and Tanzania. Also the civil society and faith-based organizations played a big role. The violence which was spread across the country stopped and the final peace deal between warring parties became the foundation stone for institutional and constitutional reforms.

Chapter Four dwelled more on the mediation process, the challenges and the success of the mediation. The peak of the negotiations was the power sharing agreement, whereby the post of an executive Prime Minister was created to accommodate the ODM leader Raila Odinga and inclusion of ODM MPs into the Cabinet. There was noticeable convergence of interests among the third parties to the peace negotiations. The third parties seemed to have had one goal of getting nothing less than a negotiated settlement. It was, therefore, this convergence of interests among third parties that explained the successful signing of the National Accord and the subsequent road map for resolving the underlying causes of the post-election violence.

CHAPTER FIVE

Summary, Conclusion and Recommendations

5.1 Summary

This study, has examined the role of third parties in Kenya's 2007 post-election peace process. The study has not only identified the interests of the third parties but also showed the role each third party played in the negotiations. These third parties were mainly governments, non-governmental organizations, the civil society, faith-based organizations and individuals. The study mainly sought to unveil the interests and motives of these third parties and why there was an undisputable convergence of interest among them which culminated into a successful peace agreement. The overall argument presented by the study is that it was due to the convergence of interests by third parties that a settlement was reached.

This study was justified by the fact that no other study had seemed to analyze and explain the input of various third parties in the Kenyan 2007 post-election peace process. The motivation behind the concerted effort by each of the third parties had not previously been examined and so this study sought to put the same into perspective. Since there was a noticeable case of convergence of interest among the third parties of ensuring a peaceful Kenya, there was every need to have these interests identified and studied.

The major limitations of the study were identified. The first one revolved around the limited amount of information on Kenya's peace negotiations bearing in mind that the negotiations took place not long ago and so no much of written information was available on the subject matter. This study was carried out at a time when Agenda Four item of the National Accord and Reconciliation Act was still in the process of implementation and so the information collected was subject to many changes.

Secondly, the research was carried out at a time when the International Criminal Court investigators were in the country carrying out investigations into the post-election violence, and so many would-be respondents were unwilling to cooperate due to the fear attached to giving evidence to the ICC. As a result, a number of interviewees who had

earlier accepted to be interviewed changed their minds after learning that the topic touched on matters related to the post-election.

The study had two objectives; 1) to determine the motivation of third parties in ending Kenya's post-election conflict 2) to determine whether the convergence of interests among the third parties was responsible for the success of the peace process. In line with these two objectives, the study had two corresponding hypotheses 1) that the third parties to the Kenya's post-election peace process were motivated by their desire to bring peace to the country and 2) that there was a convergence of interests among the third parties that is credited with the success of the peace process.

The study also reviewed the relevant literature which was organized thematically, each literature showing the relevance of the books reviewed, as well as the gaps that the study sought to fill.

As indicated in the methodology section, the study used qualitative methodology based on interviews, and documentary data – books, conference papers, government publications, statistical yearbooks, journals and even unpublished materials. The study used both primary and secondary data collection methods. Primary source of data included interviews of experts on Kenya's post-election peace process, members of faith-based organizations and the civil society.

To help make meaning of the study, a conceptualization of the Rational Mediation Theory was used. The Rational Mediation Theory points out that mediators are always rational in their call to involve in a peace mediation process and that they are driven by the will to transform the game of conflict into a game of co-operation. The intention of mediation here is a “win-win” solution which can only be achieved through some form of compromise. The theory in this context is used to show how different third parties were driven by not only concerns of protection of their national interests, but also by the need to save Kenya from sliding into a state of anarchy. The study shows how Kofi Annan was able to bring together the two warring parties to a negotiating table and make them drop their hard-line positions, thereby making a compromise be reached.

Chapter two of this study traced and analyzed election related violence in Kenya since pre-independence days. The chapter attributed the cause of 2007 post-election violence to a series of historical injustices meted on Kenyans since pre-independence. The ethnic nature of Kenyan politics, which was a major cause for ethnic violence in 2007/2008, had a historical precedent. British colonialists used divide-and-rule method of administration which planted the seeds of ethnic hatred. The post-independence politics was dominated by the larger ethnic communities, making the small communities perceived to have been marginalized. Single party politics were employed during Kenyatta and Moi's administrations and according to many scholars, elections were not free and fair and democracy was at its lowest. In the multi-party era, elections in Kenya were preceded by ethnic cleansing especially in the Rift Valley and Coast provinces.²⁴⁹ The chapter also discussed the 2007 post-election violence in detail.

Chapter three is about the interests and motives of the third parties that made them work tirelessly towards the attainment of peace in the country. And the fourth chapter looked at the peace negotiation and mediation processes in the aftermath and during the post-election violence in Kenya.

5.2 Conclusion

The findings of the study were that major third parties involved in the Kenyan peace process - which were the US, UK, AU, UN, Uganda and Rwanda governments, faith-based organizations and the civil society - pressed for a political settlement. Each of the third party was driven by national or self-interests. The following were identified as the major interests pursued by each third party. For example, the US was interested in having a peaceful Kenya due to the country's geostrategic position, especially in the monitoring the horn of African and the Middle East. Also the US war on terrorism was another concern as to why the US had a lot of interest in the Kenya's post-election peace negotiations. Uganda and Rwanda played key roles in the peace negotiations in a bid to safeguard their economies which had severely been affected by the violence in Kenya.

²⁴⁹ Read 1992 and 1997 general elections

The intervention by the regional and international organizations, like the AU and UN, had the mandate their member countries to broker peace as entrenched in their Charters.

The main argument in the study is that there was a convergence of interests among these third parties. That is, the interests of these third parties in Kenya could only be attained within a peaceful and stable Kenya. We argue that it is these third parties, pursued their national interest, that forced the two warring parties into a coalition “partnership” government as way of ending the conflict and preventing the collapse of Kenya. A collapsed Kenya would have threatened the national interests of these third parties. Hence, the signing of the National Accord was made possible because of the role that the third parties played.

Eisenberg and Caplan²⁵⁰ have shown that in many cases, conflicting third party interests provide the combatants with an opportunity to use different third parties to escalate the conflict. According to them, different combatants identify with a third party and use the interests of that third party to continue the demands that had caused the conflict. The argument made in this project paper is that the absence of a conflict of interests among the third parties denied the two combatants an opportunity to continue with conflict.

Led by the US, which wanted to continue its hegemonic status in the region and supported by other third parties whose interests in the region were consistent with that of the US, the various third parties passed to the two combatants a common and consistent message - that Kenya would not be allowed to collapse or disintegrate the Somali way or they would not sit and watch as the country degenerated into anarchy or civil war. The study has argued that this convergence of interests among third parties played three important roles: First, it avoided the escalation of the conflict. Secondly, it prevented either of the combatants from using any third parties to perpetuate the conflict. And third, it forced the combatants to seek a negotiated settlement of the crisis.

²⁵⁰ Eisenberg and Caplan, *Negotiating Arab Israel*, 1998

As a result of the above, none of the combatants wanted to be seen to be the one preventing the attainment of peace. Therefore when a suggestion was made for the combatants to seek a negotiated solution, each of the combatants went to the negotiating table to prove its willingness to resolve the crisis to avoid being perceived as the one hindering the search for a solution.

Since the various third parties wanted a quick resolution to the conflict to avoid hurting their national interests, the third parties therefore also wanted a real solution to the problem and hence left the negotiations in the hands of a competent and respected negotiator—Kofi Annan - who sought a settlement that did not negatively disadvantage any of the parties. The study found out that the solution to the political stalemate, that of power sharing was exotic and was imposed on the warring parties – PNU and ODM.

This project has also analyzed the negotiation/mediation process showing the participation of different third parties. The pressures and influences asserted by each third party are well articulated. The argument made is that the February 28, 2008 Agreement (The National Accord and Reconciliation Agreement) was forced upon the two warring parties by the third parties. The Agreement nevertheless did not seem to completely disadvantage any of the combatants or their supporters. That is, the solution offered each combatant something positive but, more importantly provided them with a way out of their demands, which also became face saving for both parties.

5.3 Recommendation

Since the reintroduction of the multiparty system in African in the early 1990s, the conduct of elections have given rise to election-related violence in a number of countries that have ended up in a form of coalition government in two of the countries i.e. Kenya and Zimbabwe. This study recommends the examination of the factors that have led to the rising incidences of election related violence. In the case of Kenya, the study recommends a better management of diversity and ethnicity to ensure that elections are better managed and less contentious. The study also recommends that efforts be made to establish pre-election coalitions as a way of uniting different groups.

It is recommended that further research be carried to establish how the third parties played it out after the historic signing of the National Accord and Reconciliation Agreement on February 28, 2008. This work was limited to the works of third parties during the peace negotiations between the months of January and February 2008. Words of H.E Kofi Annan were that the great task lay ahead with the negotiators, with parliament, with civil society, but most of all with the Inter-Religious Forum.²⁵¹ It is worth noting that immediately after this event, on March 1, 2008, PNU and ODM negotiators returned to the negotiating table and agreed on key proposals to seek long-term solutions to the political crisis. These included the formation of Truth Justice and Reconciliation Commission (TJRC), the Independent Review Commission (IREC), the Commission on Post-election Violence (CIPEV), initiatives towards comprehensive constitutional review, as well as poverty reduction and land reforms.

Also the issue of the International Criminal Court (ICC) as a late entry third party into the Kenya's 2007 post-election debacle cannot be underestimated. The issues surrounding the action by the ICC in trying some Kenyan suspects over the conflict should be researched and unveil the importance of the country (Kenya) to this institution and its financiers. Success and failures in the implementation of the agenda four items agreed under the National Accord and Reconciliation Act should be investigated.

²⁵¹ "The Root Causes and Implications of the Post Election Violence in 2007" A Report by Kenya Thabiti Task Force, Inter-Religious Forum, 2009, p. 154

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Dr. Joshua Kivuva, Lecturer, Political Science Dept. UoN, 23/6/2011

Hassan Omar Hassan, Commissioner and Vice-Chair Kenya National Commission on Human Rights (KNCHR), Nairobi 21/10/2011

Kinyanjui Kimani, NCCK, Jumuiya Plaza, Nairobi 24/6/2011

Morris Odhiambo, Executive Director, CLARION, also President, National Civil Society Congress (NCSC) Nairobi. 19/10/2011

Eleven more interviewees wished not to have their names published.