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The pre-mediation phase in management of the electoral violent conflict
in Kenya (2008)

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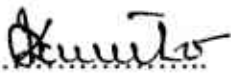
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Declaration

This project is my original work and has not been submitted for a degree in any other institution, college or University


Signature.....

.....18/11/2010.....

Okumu, Atieno Caroline

Date

This project has been submitted for examination with my approval as the appointed university supervisor.

Signature.....

.....22/11/10.....

Prof. Mwagiru M

Date

Dedication

I dedicate this work to my loving family.

Acknowledgement

First, I acknowledge God Almighty for his wisdom and guidance during the period of my studies. He gave me the strength to carry on even in times when I felt most weak.

Second, my deep gratitude goes to my brother Juma for his unconditional support during my studies. You were always there when I needed you most, to print my work and make whatever copies I needed. To his secretaries Regina, Ruth and Everlyne who were always there to assist me whenever my brother was not around. There is no single day you people turned me away and denied me an access to your office to do my work. For that reason, may God bless you.

MA 2007 class, thank you for being my classmates, for working together with me and encouraging me during those seasons of assignments, term papers and exams. You were a great class. Special thanks to Jaky, Truphosa, Tumaini, Edu and Ruth for being great friends. I do not know what I would do without you.

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Abstract

The electoral violent conflict that occurred in 2008 brought Kenya close to a failed state. The political crisis attracted the attention of the international community that moved in swiftly to try and prevent it from degenerating to civil war. This is what brought the idea of third party intervention through mediation to the electoral conflict. This study analyses the pre-mediation phase to the electoral conflict which in most cases has been downplayed in most conflict management yet it is an important phase that sets the stage on which mediation is conducted. The decisions made at the preparatory level and the activities of this phase have a great influence in mediation phase and determine the outcome of the entire process.

The methodology applied to this project is primary and secondary data from journals, books and reports on pre-mediation phase and electoral conflicts that made it possible to analyze the initial stages of mediation in the Kenyan electoral conflict.

The focus of the study was on the activities by the parties to conflict, mediator and other third parties at the pre-mediation phase. Therefore a clear analysis has been done on the identity of the parties to electoral conflict, the mediation environment, the issues surrounding the conflict and the role this phase played in the mediation process.

List of abbreviation

AU	African Union
COTU	Central Organization of Trade Unions
CCP	Concerned Citizens for peace
DRC	Democratic Republic of Congo
EAC	East African Community
ECK	Electoral Commission of Kenya
EU	European Union
FPF	Former Presidents Forum
IGAD	Intergovernmental Authority and Development
ODM	Orange Democratic Party
PNU	Party of national Unity
PEV	Post Election Violence
UN	United Nations
US	United States

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Chapter 1

1.0 Introduction to the study

The post election violence conflict in Kenya raised the issue of international mediation as a means of third party intervention in internal conflict. The outbreak of violence in most parts of the country following the announcement of the disputed presidential results by ECK, posed a threat not only to Kenya but other countries in the region and the international community at large. As fighting ensued, the international community had to move in swiftly to salvage the situation even though internal violence is known to be the most difficult conflicts to settle by peaceful means especially through international mediation.

Sometimes, mediation has played little in the management of electoral conflicts since it is often viewed, as an abandonment of its legitimacy for a sovereign government to negotiate openly with the opposition or any group trying to claim legitimacy. Following the violence that erupted immediately after the announcement of the disputed presidential electoral results, the Kibaki government was not willing to negotiate with the ODM because by doing so, it would mean abandoning its legitimacy as the sovereign government. This made it a challenge for the international community to respond to this conflict through mediation.

What brought concern about the electoral violent conflict in Kenya to the international community was not because Kenya had gone the ways of other African countries but because it has always been referred to as 'an island of peace in a sea of turbulence.' As

the poll outcome fueled the simmering animosity among communities' residents in various parts of the country, the two main parties in the conflict adopted different strategies. While the Orange Democratic Movement's strategy was to escalate the political crisis by internationalizing it, Party of National Unity's strategy was to keep it domestic.

The government's initial rejection of the idea of international mediation did not provide a good platform for the entry of any third party to the conflict. However, the international community had a critical role to play due to the asymmetry of power in Kenya, lack of credible national institutions to resolve the crisis, the yawning chasm of trust between the antagonists and the respect of human rights and prevention of their further abuse or abrogation which is a universal principle.

Mediation arose when the Party of National Unity representing the government and the Orange Democratic Movement on the opposition side, failed to negotiate an agreement in regard to who was the rightful winner in the 2007 general elections. As violence escalated in many parts of the country, there was need for a third party to assist the parties with negotiations which they could not do by themselves because of mistrust. It is in this sense that mediation is seen as the conduct or continuation of negotiations in the presence of a third party.¹

As the third party made entry into the management of the electoral violent conflict, a lot of preparations were made and the parties involved engaged in various activities to pave

¹ Mwangi M, 'Diplomacy: Documents, Methods and Practice' (Nairobi, 2004) p. 120

way for the negotiations in the mediation process. This study seeks to analyze the preparatory phase by assessing how decisions were made, the behaviors and challenges experienced at this stage of managing the post electoral conflict in Kenya. The study will focus on the degree to which preparatory phase and the participation of parties at this level determined the outcome of the mediation process in the conflict resolution. It will examine the activities and challenges experienced during pre-mediation phase in an attempt to manage the electoral conflict. This analysis will be done within the context of the theory and practice of international mediation.

1.1 Statement of the research problem

Election is a common exercise not only in Kenya but in most countries of the world that practice democracy. Elections in Kenya have been a trigger for localised violence and displacement of persons since the advent of multi-party politics in the early 1990s. In 2007 the risks of post-election violence were more evident and therefore a threat to the state security, the region and international community. It was for this reason that the management of the violent conflict through mediation was crucial. Ignoring the violence would have lead to serious consequences one of which could have been the degeneration of conflict leading to the collapse of the state. This is what brought the issue of mediation as a form of third party in managing the electoral violent conflict in Kenya even though it was an internal conflict.

As the international community made entry to the conflict, it was necessary that substantive preparations be made to enable the two parties negotiate their conflict. There was need for the mediator and the parties to engage in certain activities during the pre-mediation phase to pave way for the mediation process. Hence, the study seeks to analyze the extent to which this phase influenced the outcome of the mediation process. The study will assess how decisions were made, the behavior of parties and the challenges experienced during this phase thus; contribute to the larger theory of mediation in conflict management.

1.2 Objectives

To assess the activities of the pre-mediation phase and the substantive preparation that was done by the parties with the assistance of the mediator that led to the negotiation and the success of mediation process.

To assess critically the challenges of pre-mediation phase in conflict management with specific reference to the electoral conflict in Kenya.

To examine the extent to which decisions were made in the pre-mediation phase. The study will bring into focus the interests of different parties in the electoral conflict and how they were harmonized to the crisis.

1.3 Literature review

Most literature on pre-mediation phase, focus on the initiatives of the mediators. This tends to emphasize the mediation efforts rather than the substantive preparation for the assisted negotiation. To sustain the argument that pre-mediation phase provides a useful level of analysis of the process of mediation, this section assess a variety of literature.

Internal conflicts are the most difficult of conflicts to negotiate.² This is because of the asymmetry of internal conflict which is a condition that creates impediment for any amicable solution, least of all a mediated solution.³ In such conflicts, it is the government's job to be responsive to the grievances of its people; and the insurgent's purpose is to draw attention to their grievances and gain redress.⁴ The meeting point of the two parties is in negotiation.

When parties to a conflict are unable to resolve their conflict by negotiation, the intervention of a third party is a possible means of breaking the impasse and producing an acceptable solution.⁵ In a conflict situation where mediation is an option, Merrils argue that the mediator enters conflict as an active participant, authorized and indeed expected to advance his own proposals and to interpret, as well as transmit each party's proposals to the other. He continues to state that the mediator makes his proposals informally based on the information supplied by the parties rather than his own investigations.⁶ This implies that whenever parties to conflict decide to withhold information from the

² Paul PR (ed), *Negotiating Peace: War Termination as a bargaining Process* (Princeton University press, 1983) p. 8

³ Zartman I W (ed), *'Elusive Peace, Negotiating an End to Civil Wars'* (Washington DC, 1995)

⁴ Paul PR (opp. Citation)

⁵ Merrils JG, *International Dispute Settlement* (London, 1984) p. 20

⁶ *Ibid*, p. 20-21

mediator, then he stands the risk of coming up with ineffective strategies that will be used in the process. The decision made at the pre-mediation level on how to manage the conflict depends to a greater extent on the information gathered at this stage.

When parties agree to mediation, and the mediator makes entry, he engages in certain activities in the pre-mediation phase. Mwangi divides these activities to external and internal of which, both are necessary components of the ability to deliver a successful outcome of mediation.⁷ He continues to argue that a lot of the activities in this stage involve some form of mediation between the parties, even though these may be informal.⁸ These activities are likely to determine the kind of preparation and decision made that will influence the negotiations.

Practitioners of international negotiation identify three stages of negotiation as pre-negotiation, negotiation and post negotiation phases.⁹ This knowledge is necessary since mediation comes in to assist with the negotiations between the conflicting parties. The pre-negotiation phase goes hand in hand with pre-mediation. Winham,¹⁰ in his model of negotiation, associates different problems and behaviors with each stage. He states that it is in the pre-negotiation that the problem is diagnosed and the decision is made to negotiate. Druckman,¹¹ on the other hand, describes the model of negotiation as the

⁷ Mwangi M, *Diplomacy: Documents, Methods and Practice* (Nairobi, 2004), p. 121

⁸ Ibid

⁹ Zartman IW (ed), *The Negotiation Process: Theories & Applications* (Beverly Hills: Sage Publications, 1978); FC Zagare, ' A Game- Theoretical Analysis of the Vietnam Negotiations preferences & Strategies 1968-1973' p. 111-132

¹⁰ Winham, GR, 'Practitioners Views of International Negotiation' (32 *World Politics*, 1979)p. 111-135 in J G Stein, ' Getting to the Table: Process of International Pre-negotiation' *International Journal*, (XLIV Spring, 1989) p. 231-236

¹¹ Druckman D, 'Four Cases of Conflict Management: Lessons Learned

process where pre-negotiation sets the stages upon which the negotiation will be carried and implemented.

Zartman in his political analysis of negotiation,¹² argues that negotiation as a political process, specifically explained in terms of power is an underdeveloped area of theory. He is particularly concerned with negotiations as a mode of decision-making. However, he falls short of mentioning the phase at which this decision-making is precipitated which is the pre-negotiation phase. Stein¹³ pursues this further by exploring the pre-negotiation phase rather than the more exhausted determinants and obstacles among participants at the negotiation stage.

In his analysis of the Zimbabwe negotiations in 1979, Keeley¹⁴ devotes a small portion to the pre-negotiation phase and only manages to give a conspicuous historical built-up to the crisis. He mentions various initiatives such as Kissinger's initiative in 1976-1977 bringing out the model of super-power influence on the outcome of negotiations; and the Anglo-American initiative between 1977-79 which stood out as a mediation effort rather than a substantive preparation for the negotiations.

Creating an environment for negotiation is crucial if the mediation process is to be successful yet full of challenges. Druckman emphasizes the idea of the composition of the negotiating team in continuous negotiations and the opening process. He further assesses the influence on negotiation that drives it towards settlement or impasse and

¹² Zartman IW, 'The Political Analysis of Negotiations: How, Who Gets What & When' *World Politics*, 1973. p. 385-399

¹³ Stein JG, 'Getting to the Table: Processes of international Negotiation' *International Journal*, p. 231-236

¹⁴ Keeley RV, 'Negotiating Zimbabwe's Independence' in IW Zartman, *Ripening Conflict, Ripe moment, Formular & Mediation* in D. Bendalimane & J.W McDonald Jr., *Perspectives on Negotiation: Four Case Studies & Interpretations*. P. 205-227

identifies these as the international atmosphere, the ripening process, and timing of mediation and third party decisions. His analysis however, overlooks the significance of effective pre-negotiation to determine the process of negotiation. It is therefore important that as these issues are analyzed, the mediator begins some engagements with the parties. These include talking to each of the parties conveying messages between them, and establishing that they are ready and willing to negotiate. Without such preliminary consultations, it will be difficult for the mediator to gain the trust of the parties, and make them confident that he can actually help them in their search for peace.¹⁵

Most studies on peaceful settlement of disputes have focused on the proposal for resolution and the timing of efforts for resolution as the key to a successful resolution of conflict.¹⁶ This analysis revolves around the willingness of the parties to negotiate without highlighting the preparations involved in the pre-negotiation phase and how this is likely to influence the process of mediation and the outcome of the entire process. It is at the ripe moment that parties grab the proposals available because it is at this moment that such proposals look attractive.¹⁷ But they also need to prepare substantially for the negotiations.

For the success of any mediation, Rubin suggest that the disputants must be motivated to settle or resolve the conflict, an opportunity for the mediator to get involved.¹⁸ The

¹⁵ Ibid, p. 123

¹⁶ Zartman IW, 'Ripeness: The Hurting Stalemate and Beyond', in P. Stern & D Druckman (eds), *International Conflict Resolution after the Cold War* (Washington, DC: National Academy Press, 2000)

¹⁷ Zartman IW, 'The Timing of Peace Initiatives: Hurting Stalemates and Ripe Moments', in J. Darby & R. Macginty (eds), *Contemporary Peacemaking: Conflict, Violence and Peace Processes* (London, 2001) p.

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¹⁸ Bercovitch & Rubin, *Mediation in International Relations: Multiple Approaches to Conflict Management* (London, New York, 1992) p. 251

primary objective of third party involvement is to influence or find a solution to a particular conflict. Mediators work to achieve this objective by using the available information. They rely on persuasion and applying the social-influence strategies. The intention to change, reduce or resolve a conflict is what legitimates the intervention even in an internal conflict of a state. What Rubin does not highlight is at what point the collection of information that will influence the negotiation is important. He also fails to show how the mediator will use the information to prepare for the mediation.

The mediator is often faced with the task of presenting to the conflicting parties an alternative that incorporates some of the goals of their first tracks while eliminating or reconciling their more conflictual elements.¹⁹ This is an element of pre-mediation. The parties are persuaded that the chances of effectively pursuing the conflict are slim. However, Zartman fails to show how the mediator achieves this at the beginning of negotiation.

One of the unique features of mediation is the intertwined interests of the parties involved in conflict and those of the mediator. In the absence of these interests, mediation would be neither invited nor accepted. Mediators invest political, material and other resources to the process which provides a rationale for their own motives and interests. One realizes that time as a resource is of the essence in any protracted situations and that in many cases the persistence and patience of the mediator will be sorely tested as the crisis seems to extend indefinitely. Nevertheless, mediatory involvement is absolutely required and

¹⁹ Zartman IW, Zartman IW, 'Ripe for Resolution: Conflict & Intervention in Africa' (New York: Oxford University Press, 1989) p. 269-270

should be applied to most, if not all, internal crises, as long as the parties to the dispute accept in principle the engagement of such outside intermediary actor(s).

This study therefore seeks to analyze the activities of the pre-mediation phase in the post election violent conflict in Kenya. The focus will be on pre-negotiation diplomacy as it assesses the preparation that took place at the pre-mediation phase. It will analyze the contributions of Orange Democratic Movement, Party of National Unity and the mediators leading to the round table negotiations.

1.4 Theoretical framework

This study is guided with two theoretical frameworks namely the theory of ripe moment and the theory of empowerment and disempowerment which are crucial in pre-mediation phase. The theory of empowerment is based on the idea that where two actors have a conflict, the stronger of the two would not be willing to enter into negotiations or any other peaceful method of resolving the conflict, precisely because it is in a greater position of greater strength and power.²⁰ The concern in the pre-mediation is therefore for the mediator to know how to change the asymmetrical relationship between the parties involved and how to persuade the stronger party to negotiate. This means in essence strengthening the position of the weaker party, at the expense of the stronger party who originally had more resources, and hence strength.²¹

²⁰ Mwagiru M, 'Conflict in Africa: Theory, Processes and Institutions of Management' (Nairobi, 2000) p.

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²¹ Groom AJR & K. Webb, 'Injustice, Empowerment and Facilitation in Conflict' *Journal of International Relations*. Vol. 13 (1987) p. 236-280

The asymmetrical relationship between unequal parties can also be done through disempowerment. This means reducing the power of the stronger party until there is some symmetry between the conflicting parties.²² This framework will help explain the realignment of the power relations between the government-PNU and ODM that made them more or less equal. This is an activity of the pre-mediation phase.

Mediation entry to a conflict which is an aspect of pre-mediation phase is tied to the perception and creation of a ripe moment in the conflict – either when the parties are locked in a mutual, hurting stalemate marked high by a recent or impending catastrophe; when unilateral solutions are blocked and joint solutions become conceivable; or when the ‘ups’ and ‘downs’ start to shift their relative power positions.²³ There are occasions when parties perceive the ripe moment by themselves but in most cases they are helped by the third parties. This can be in form of loss of foreign support or an increase in foreign pressure.

Zartman postulates that the majority of internal conflicts or civil wars always end with the surrender or elimination of one of the parties.²⁴ This implies that internal conflicts are so resistant to negotiations which make any mediation attempt difficult especially at the pre-mediation phase since the parties will be unwilling. Zartman therefore argues that the prospects for successful negotiations in an internal conflict depend on the ripe moment.²⁵

²² Mwagiru M, ‘Conflict in Africa: Theory, Processes and Institutions of Management’ (Nairobi, 2000) p.

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²³ Zartman 1989, p. 272

²⁴ Zartman IW, ‘Dynamics and constraints in negotiations in Internal Conflicts’, in IW Zartman, ed., *Elusive Peace: Negotiating an End to Civil Wars* (Washington DC: The Brookings Institution, 1995) p. 3

²⁵ Ibid, p. 8

Ripe moment as described by Zartman²⁶ in his various writings refers to the time when the parties to a conflict are ready for mediation, hence an activity of the pre-mediation phase. This study is therefore guided by the theory of ripe moment which will assist in assessing whether the point at which Annan and his team of eminent persons made entry to the electoral violent conflict was the ripe moment and whether the mediator helped to create this moment. The study also analyzes how this moment influenced the activities of the pre-mediation phase, thus influencing the mediation process.

1.5 Hypotheses

- The substantive preparations made by the parties with the assistance of the mediator determined the mediation outcome in the electoral violent conflict in.
- The major challenge in managing the electoral conflict was both parties to conflict giving pre-conditions under which they would negotiate.
- The decisions made to have a mediated solution to the electoral violent conflict was as a result of the parties involved realizing that it would be expensive for them to continue pursuing their hard-line positions.

²⁶ Zartman IW, 'Alternative Attempts at Crisis Management: Concepts and Processes' in G.R Winham (ed), *New Issues in International Crisis Management* (Boulder, Co.: Westview Press, 1988)p. 199-223; Also see Zartman, 'Ripening Conflict, Ripe moment, Formula and mediation' in D.B Bendahmane & J.W McDonald (eds), *Perspectives on Negotiations: Four Case Studies and Interpretations* (Washington: Foreign Service Institute, 1986) p. 205-227

1.6 Methodology

This study is an analysis of pre-mediation phase in conflict management a case study of the electoral violent conflict in Kenya-2008. The Kenyan case will enable detailed discussions on the activities of pre-mediation within the context of the electoral violent conflict hence deeper insight on the role this phase plays in the mediation process.

The study will use both primary and secondary data. Primary data is information gathered directly from respondents.²⁷ This will involve conducting interviews with participants of the Kenya National Dialogue Committee who were in charge of the mediation process of the electoral conflict in Kenya. The participants will be representatives of the primary parties to conflict – the Government and ODM, and a representative of the panel of mediators under the Auspices of AU.

The study will also consider the views of practitioners involved in the process of mediation in the electoral conflict. The selection of these participants are based on purposeful sampling²⁸ since they were part of the mediation process hence will be particularly informative about what happened during the pre-mediation phase and the activities they were engaged in preparing for the negotiations in the attempt to find solution to the Kenyan crisis.

The interviews will be semi-structured with open-ended questions yet specific in intent. This is to encourage the respondents describe the events of the pre-mediation phase as

²⁷ Donald K.K & Delno L.A.T, 'Proposal and Thesis Writing' (Nairobi, 2006) p. 100

²⁸ McMillan J.H, 'Educational Research: Fundamentals for the Consumer', 4th edn (USA, 2004) p. 113

they narrate their experiences. This structure will also allow the interviewees to reveal their opinions which will play a major role in the analysis of this study.

Interviews will therefore be administered in form of open ended questions. This will allow for greater flexibility in that the interviewer will be able to determine the wording of the questions, to clarify terms which are not clear and to control the order in which questions are presented. The interviewer will also be able to probe for any additional information and detail that is important for interpreting the results in this study.

Another source of data useful in this study is secondary source that will be collected from journals, internet sources, books and reports written by various bodies or institutions in regard to mediation process in the post election violent conflict in Kenya. This source is particularly important in this study since it is readily available and easier to access.

The information collected for this study will then be analyzed to reveal the activities that took place during the pre-mediation phase in managing the electoral violent conflict. The role this phase played to determine the negotiations and the outcome of the mediation process and the challenges experienced by the parties during the initial stages in the attempt to find a solution to the Kenyan crisis.

1.7 Significance of the study

In the post cold war era, there has been an increased wave of internal conflicts across Africa which is a threat to international, regional and national peace and security if not managed. Mediation as a means of peaceful settlement of disputes has been employed in various conflicts in Africa and beyond. Most literature have covered the mediation phase exhaustively and the focus on pre-mediation has been more on the initiative and the ripe moment which is key to mediation entry. However, there is need to look at the preparation often carried out at the pre-mediation phase by both parties to conflict and the mediator, and how this influences the mediation process.

This study is relevant in that it will add on to the contributions of literature by giving an analysis on the pre-mediation phase in conflict management. An understanding of the challenges experienced at the entry level is useful to mediation process because it is the conditions that prevail at the pre-mediation phase that determine how the process of negotiation is conducted and whether it will be successful or not.

By assessing the decision making process at the pre-mediation phase, this study will help to determine the useful policy recommendations for conflict managers on how to come up with effective strategies for the mediation at the initial stage.

1.8 Chapter outline

Chapter one of this study introduces the topic of research which is pre-mediation by first setting the broad context of the study, a brief background of electoral conflicts in Africa and the response of third parties particularly mediation to these conflicts. The other areas covered are the statement of the problem, objectives, hypothesis, theoretical framework, literature review and methodology of the study.

Chapter two highlights the mediation process by analyzing the three phases of mediation namely pre-mediation phase, mediation phase and post mediation phase to give a base upon which to discuss comprehensively the role that pre-mediation phase plays in the entire process.

Chapter three looks at the third parties and the mediation process which is important in the analysis of pre-mediation. This chapter discusses all the actors involved in the electoral violent conflict and the roles they played in its management.

Chapter four is an analysis of the electoral violent conflict which looks at the background of the electoral violent conflict in Kenya and the mediation entry to the conflict to set a basis upon which the analysis of the pre-negotiation activities are analyzed.

Chapter five gives a detailed analysis of the substantive preparatory activities by the parties to conflict, the mediator and other diplomatic activities that took place at the pre-

mediation phase in the electoral violent conflict that led to the outcome of the mediation process.

Finally, chapter six will provide conclusions of the study.

Chapter 2

2.0 The Mediation Process

Mediation as the core function of third party involvement is a more complex form of negotiation, meaning that parties continue to negotiate in the presence of a third party.¹ It arises where the parties to conflict have tried to negotiate their conflict mutually and have failed or reached a deadlock.² This prompts the parties to invite a third party to help them negotiate. It is in this sense that mediation is seen as a process of intervention by a third party or intermediary to facilitate or enforce a mutually acceptable settlement between the two conflicting parties.³

The process involves the interventions of credible and competent intermediaries who assist the parties in working toward a negotiated settlement on substantive issues through persuasion, the control of information, the suggestion of alternatives, and, in some cases, the application of leverage.⁴ Similarly, mediation can be seen as, an accommodative process of conflict management whereby parties in a conflict seek the assistance of, or accept an offer of help from, an individual, a state or organization to settle their conflict

¹ Mwangi M, 'The Water's Edge: Mediation of Violent Electoral Conflict in Kenya' (Nairobi, 2008) p. 15

² Mwangi M, 'Diplomacy: Documents, Methods and Practice' (Nairobi, 2004) p. 120; also Mwangi M, 'Conflict in Africa: Theory, Processes and institutions of Management' (Nairobi, 2006) p. 115

³ The definition is based on the works of many scholars, including Zartman and Ron Fisher

⁴ Fisher JR & Keashly L, 'The Potential Complementarity of Mediation and Consultation within a Contingency Model of Third Party Intervention', *Journal of Peace Research*. Vol. 28, No. 1, (1991) pp. 29-42; 30

or resolve their problem without resorting to physical force or invoking the authority of the law.⁵

Mediators assist the conflicting parties in several ways to settle and resolve their conflict. They may convene face to face meetings, moderate discussions, bring technical expertise to the table, develop new options for settlement, represent groups that are not present in the negotiation, and they also add resources that make negotiated agreements more appealing and realistic to each side.⁶

Since the mediator can only make entry to the conflict on the invitation of the parties to conflict, this shows that mediation is a voluntary process. Mediators do not coerce the partisans in a conflict toward any particular solution; rather, they provide a forum in which grievances can be aired, conflict narratives told, and the underlying interests of the parties explored so that a mutually accommodative solution can be found. This notion was clearly demonstrated in the electoral violent conflict in Kenya when the parties voluntarily accepted Kofi Annan as the chief mediator under the auspices of AU. Indeed, advocates of mediation often stress its participatory nature and the fact that the parties to the conflict maintain control over all decisions as one of the processes biggest strengths.⁷

⁵ Bercovitch J, et.al, 'Some Conceptual Issues and Empirical Trends in the Study of Successful Mediation in International Relations', *Journal of Peace Research*. Vol 28, No. 1, (1991) pp. 7-17;8

⁶ ibid

⁷ Bercovitch J & Houston A, 'The study of International Mediation: Theoretical Issues and Empirical Evidence, (1996), p. 11-38 in J Bercovitch, ed., *Resolving International Conflicts: The Theory and Practice of Mediation*. boulder, Co: Lynne Rienner

As the mediator enters conflict, the structure of a dyadic relationship is transformed into a triadic interaction. At the heart of this transformation are the mediator's attempts to affect the behavior, choice and perceptions of the conflicting parties.⁸ This means that a mediator enters a conflict to exercise some influence over the parties involved in the conflict. To do this, the mediator will have to interact with each party separately and with both together. The underlying principle here is to find an agreement or a resolution that is considered to be beneficial to all sides of a dispute.⁹

2.1 Phases of the mediation process

Mediation can be viewed as a dynamic and ongoing process¹⁰ that begins with a pre-mediation process and continues up to the post-mediation implementation and monitoring phase. The three distinct phases include Pre-mediation phase, the mediation phase and the post mediation phase. Each of these phases plays a major role in analyzing and understanding the complexities of the mediation process. Therefore, this section embarks on highlighting the activities of the three phases to establish their interrelations in order to pave way for the analysis of the pre-mediation phase in the electoral violent conflict in Kenya which is the focus of this study.

⁸ Bercovitch J, 'International Mediation' (1991), *Journal of Peace Research*. Vol. 28, No. 1. pp 3-6; 4

⁹ Centre for Humanitarian Dialogue and the Norwegian Ministry of Foreign Affairs, 'Mediating Today's Conflicts for Tomorrow's Peace: Improving Practice by Confronting Reality', Oslo Forum 2006, (Geneva: Centre for Humanitarian Dialogue, 2006) in T. Murithi & J. Hudson, 'UN Mediation Experience in Africa; A Policy Advisory Group Seminar Paper, (South Africa, 2006)p. 14

¹⁰ Vayrynen R, 'To Settle or to Transform? Perspectives on the Resolution of National and International Conflicts' in R. Vayrynen (ed) *New Directions in Conflict Theory: Conflict Resolution and Conflict Transformation* (London: Sage Publications, 1991) p. 1-25

2.1.1 Pre-mediation phase

In the pre-mediation phase which is the main focus of this study, the parties to conflict decide whether to engage in mediation or negotiations. Mediation is often considered when the parties are unable to hold direct negotiations on their own. In the electoral violent conflict, ODM and PNU were not able to hold direct negotiations since each of them felt that agreeing to such talks would require them to make great concession by agreeing to the fact that they either lost the election or that they were rigged into the office. The distrust that existed between the parties was so deep that they could not sit on their own to settle the conflict. This is what brought the idea of having the conflict mediated. In the process that the parties decide to have a third party assist them with the negotiations, they must agree at the preliminary stages on the identity of the mediator who might either be accepted or rejected by the parties. The decision to have a particular mediator must therefore be agreed on at the pre-mediation phase to pave way for the mediation process.

Once the mediator has gained entry into the conflict, there are activities both external and internal¹¹ that he must engage in. The external activities include doing a background on the conflict in order to understand the issues and the parties to conflict. This knowledge enables the mediator to develop strategies that will later be used in the mediation phase. Soon after Annan made entry to the electoral conflict, he toured different parts of the country to assess the situation on the ground and get information from the people affected to help him come up with the best approach to mediate the conflict. Most of the activities

¹¹ Mwangi M, 'Diplomacy: Documents, Methods and Practice' (Nairobi, 2004) p. 121

at this stage involve some form of mediation between the parties, even though these may be informal.¹²

To understand the conflict, the mediator examines the history of the conflict, identifies its causes and looks at its development. History plays an important role in conflict resolution because it helps to explain people's motivations, and justifies their actions in violent conflict. Hence, understanding the history of election violence was crucial at the initial stages of mediation to allow for the search of appropriate solution by the parties in the process of managing the electoral conflict.

In my view, the historical information was to help address the deep-seated problems Kenyans have experienced from the time of Moi regime. This is because there are memories often linked to conflicts. It is in the context that conflicts have memory¹³ that they can be understood. The people who participate in or experience conflict at one point tend to pass the anger to the generations that follow. This was likely in the electoral violent conflict because of the tribal clashes experienced in 1992 and 1997. These aspects of electoral conflicts in Kenya needed to be revealed to enable the mediators to propose effective approaches that would deal with both the present and the past of such violence.

Another aspect of understanding the conflict involves identifying the parties to the conflict and drawing up a strategic map of all the actors involved. The electoral conflict had the Party of National Unity and Orange Democratic Party as the main protagonist. Apart from these two primary parties there were other actors both visible and invisible who played an important role in the management of the conflict. After identifying all the

¹² Mwangiru M, 'Diplomacy: Documents, Methods and Practice' (Nairobi, 2004) p. 121

¹³ Rangarajan LN, 'The Limitation of Conflict: A Theory of Bargaining and Negotiation', (London: 1985)

parties and actors, the mediator needed to examine the relationships that existed between the parties involved in conflict and between parties and other actors. At this point the mediator could proceed to analyzing the issues in the conflict in order to reveal the interests and values underlying it.

During the pre-mediation phase, the conflict must be determined whether it is ripe for resolution or any other form of third party intervention. A conflict is ripe for mediation when the parties to it reach a hurting stalemate. The main question is whether there was a hurting stalemate in the electoral conflict. A hurting stalemate happens when both parties subjectively reach a conclusion that negotiation is the best alternative to continued fighting. The challenge with this idea is the fact that it is difficult for a third party who is an outsider to know objectively when the parties have reached this stage.

In the absence of a ripe moment, the mediator is supposed to help in creating ripeness. This is often done through empowerment and disempowerment of either of the parties. In empowerment, the weaker party is made stronger by giving it more resources. This helps to create parity between it and the other party in the conflict. On the other hand, disempowerment refers to making a stronger party weaker by denying it some of the resources that contribute to its strength. For example, refusal to recognize a government as legitimate.

The pre-mediation phase, in most cases determines the outcome of the process and if not applied wisely, can be an instrument of destruction.¹⁴ Therefore, in analyzing how pre-mediation can be used to influence the entire process it is crucial to understand the

¹⁴ Rubin JZ, 'Models of Conflict Management' (1994), *Journal of social Issues*. Vol. 50, No. 1, p. 33-45

dynamics of conflict in question and nature of the disputants. This helps to analyze the decision making process at the initial stages of making entry to a conflict in attempt to manage it. It therefore makes sense to establish conditions of effectiveness in order to establish the parameters of successful third party intervention. Rubin suggests the following three qualities as favoring such successful engagement: disputant motivation to settle or resolve the conflict in question; mediator opportunity to get involved, and mediator skill¹⁵ which are at the center of pre-mediation analysis.

At the time when a mediator or any third party is making entry to the conflict, he should have a clear idea on the outcome expected from the management of the conflict.¹⁶ The problem with this concept is the limitation of time. In the electoral conflict, the priority was to stop the killings and atrocities that were going on in most parts of Kenya. Annan's first step was to appeal to the principals and their parties to ask their constituents to stop violence that would then pave way for negotiations. A decision then had to be made whether the approach to electoral violent would be settlement or resolution.

2.1.2 The mediation phase

This phase is characterized by the parties to conflict coming to the negotiating table in the presence of a mediator to look into the substantive issues underlying the conflict. The main concern at this stage is the strategies developed by the mediator for use in the

¹⁵ Bercovitch and Rubin, 'Mediation in International Relations: Multiple Approaches to Conflict Management', (London & New York, 1992) p. 251

¹⁶ Mwangi M (2000)p.44,

process. The choice of wrong mediatory strategies can lead to the collapse of the entire process.

At the negotiation table, the parties to conflict are responsible for negotiating outcomes they feel they can live with. The mediator's role at this stage is to control the process in such a way that the parties do not accept an outcome they are not convinced about. The main problem posed at this level is therefore that of communication, perception and escalation resulting from them.¹⁷ At one point of the negotiations, the mediator may need to control the structure of communication by separating the negotiators.¹⁸ Such an intervention allows the mediator to sever, relay or modify communications for the sake of productive negotiation. There are also moments when he allows no communication especially if he feels that tacit bargaining in the absence of communication will lead to a quicker agreement.¹⁹ When he feels that relaying accurate information between the negotiators will facilitate the negotiation, he then keeps the line open and relays information in a neutral fashion.

Communication is an important strategy the mediator uses when direct contact between parties is impossible. His role is fairly passive as he channels information to the parties and facilitates cooperation but exhibit little control over the more formal process or substance of mediation.²⁰ As he controls the negotiators' communication, he also keeps in mind that their relationship and the rewards and costs emanating from it, are in part

¹⁷ Wall AJ, 'Mediation: An Analysis, Review and Proposed Research' *Journal of Conflict Resolution*, Vol. 25, No. 1 (1981), p. 162

¹⁸ Stevens CM, 'Strategy & Collective Bargaining Negotiations' (New York, 1963); Pruitt DG, 'Indirect Communication & the Search for Agreement in Negotiation,' *Journal of Applied Social Psychology*, Vol. 1, (1971) p. 204-239

¹⁹ Ibid

²⁰ Bercovitch & Houston, 'Why do they do it like this? An analysis of the factors influencing mediation behaviour in international conflict', *Journal of Conflict resolution*, Vol. 44, No. 2 (2000)p. 175

perceived ones which only they can describe or explain. Therefore, to effectively manage the relationship between the negotiators, the mediator requires comprehension and alteration of the perceived as well as the actual aspects of the negotiation. This sometimes requires each negotiator to obtain a preliminary picture of a situation and an outline of his position.²¹

During the negotiations, the mediator attempts to obtain valid perceptions and positions rather than bluffs, rallying calls and face-saving gestures in order to identify the negotiator's comparison levels, the real issues,²² any dispute that underlies the deadlock,²³ the concessions that the parties can make under given conditions,²⁴ and the level at which the dispute can be resolved. The mediator after identifying these issues then conveys this information to the negotiators in an attempt to modify their perceptions.

The mediator is sometimes required to apply the procedural strategies where he exerts more formal control over the mediation process with respect to the environment of the mediation. In this case, he may determine the structural aspects of meetings and control constituency influences, media publicity, the distribution of information, and the situation of power of the parties' resources and communication processes.²⁵ During negotiations, the mediator needs to manage the power relations of the negotiators. He can achieve this by affecting the content and substance of the bargaining process by providing incentives for the parties to negotiate or by issuing ultimatums. He therefore attempts to balance

²¹ Peters E, 'The Mediator: A neutral, a catalyst, or a leader', *Labor Law Journal*, Vol. 34 (1958), p. 764-769

²² *ibid*

²³ Burton JW, 'Conflict and Communication: The use of International Relations' (New York, 1969)

²⁴ Pruitt (1971), see *opp. citation*

²⁵ Bercovitch & Houston, 'Why do they do it like this? An analysis of the factors influencing mediation behavior in international conflict', *Journal of Conflict resolution*, Vol. 44, No. 2 (2000)p. 175

between the negotiators' total power positions.²⁶ This helps to reduce the probability that a stronger party will attempt to exploit the weaker and that the weaker party will abandon the relationship or seek to undermine the stronger position. The mediator may assist the weaker negotiator by providing information, advice or friendship or simply reduce the powers of the stronger party.

There are moments when the mediator is required to enter into the substance of the conflict. The mediator here helps to come up with a formula that provides a common understanding of the problem and its solution or a shared notion of justice to govern an outcome. During the Annan's mediation, his formulation strategies included structuring the agenda, suggesting how the parties should view the issues and suggesting possible solutions. The mediator can therefore assist in constructing agreement by suggesting possible solutions for settling differences. His proposal and defense of specific agreements underlie the most substantial alteration of the relationship and are significant enhancements of negotiation effectiveness. Throughout the negotiation, the mediator tenders several agreement points to the negotiators²⁷ and seeks to win their approval by accentuating the rewards and downplaying the costs that would emanate from each proposal. To do so, he highlights the negotiators common interests²⁸ and emphasizes the high joint outcomes accruing from mutual acceptance. At times his guidance will expand the agenda of negotiation giving the negotiators a broad area in which agreements yield higher rewards and lower costs to both sides.

²⁶ Young OR, 'Intermediaries: Additional thoughts on third parties' *Journal of Conflict Resolution*, Vol. 16 (1972), p. 51-65

²⁷ Stevens CM, 'Strategy & Collective Bargaining Negotiations' (New York, 1963); Pruitt DG, 'Indirect Communication & the Search for Agreement in Negotiation,' *Journal of Applied Social Psychology*, Vol. 1, (1971) p. 204-239

²⁸ Young OR, 'Intermediaries: Additional thoughts on third parties' *Journal of Conflict Resolution*, Vol. 16 (1972), p. 51-65

Another useful strategy at this level is that of fractionating the issues in conflict. This is because the issues in a conflict are never equally important. Any conflict will have issues that are of more concern to the parties than others. In the electoral violent conflict, it was most important to stop the violence then handle the electoral disputes. Structural violence which was triggered by the election results was at the heart of the conflict. It was therefore important for the parties to classify the issues into what needed immediate response and long term issues like reforms in the government institutions. This process of prioritizing issues requires that parties themselves help in fractionating the issues.²⁹ Mwangiri argues that the mediator's role is often limited in helping the parties fractionate the issues. Once the issues have been grouped, the mediator then encourages the parties negotiate the less contentious issues of which they can easily reach an agreement. This gives the parties a feeling they can reach mutual solutions to their conflict.

The parties involved in mediation need to decide whether the process will be conducted in one or several sessions. The urgency to find a solution to a conflict may call for only one session. However, having many sessions enable the parties to consider their positions during adjournments and to digest the position of the other party. They are also in a position to consult with their constituents hence avoiding the problem of re-entry.³⁰ The problem with adjournments especially if they are many may slow down the mediation process.

²⁹ Mwangiri M, 'Peace & Conflict Management in Kenya' (Nairobi, 2003)p. 90

³⁰ Mwangiri M, 'Diplomacy: Documents, Methods and Practice', (Nairobi, 2004) p. 125

2.1.3 Post mediation phase

Mediation is not just about around the table activity but also the parties selling the outcome of their mediation. The post mediation phase is mainly concerned with the implementation of the agreement reached during the negotiation process. It is during this phase that the parties to conflict find out whether the other was acting in good faith and whether it can deliver on the promises made during the mediation.

Often, security fears reach their peak during the implementation phase. Negotiated agreements are mostly fragile and difficult to put into effect. Parties to the conflict suffer anxieties that opponents will cheat on their commitments. It is therefore important that mediators act imaginatively to encourage all parties to live up to the agreements, and therefore produce an environment that promotes credible commitment.³¹ Another fear is often the fact that during ceasefires that allow for mediation to take place, the parties' constituents could be re-arming themselves in readiness to act incase the mediation collapses or better still if they feel that the agreement failed to cater for their interests.

The main problem faced during post mediation is that of re-entry. This can undo the entire mediation process especially when the constituents reject the agreement reached during mediation. This can happen when the parties involved in the peace agreement are unable to sell it to their constituents whom they claimed to represent their interests and

³¹ Rugumamu SM, 'Conflict Management in Africa: Diagnosis of Current Practices and future prospects' (Ethiopia, 2002) p. 17

therefore act on their behalf. This may happen if the parties failed to consult their constituents during the mediation making them feel sidelined in the process.

The structure of mediation usually widens at this phase as many actors even those not directly involved in the mediation process come in to assist in the implementation of the agreement. They may come in as financiers even though the ideal situation would be not to require outside sources of funding.³² This is to prevent these actors from controlling the mediation process. The outside actors may also play the role of monitoring elections or rerun or simply to exert pressure for reforms of institutions.

The post mediation phase is also characterized by the process of reconstruction and reconciliation which is usually long, arduous and expensive. After the parties to electoral conflict agreed on National Accord by the two principles signing the peace agreement, the coalition government was faced with the challenge of ruling over a traumatized population, wrecked economy, resettling internally displaced persons and restoring trust of the populace on government institutions.

Mending relations and restoring trust were and have continued to be the primary challenges faced by the grand coalition government after signing the National Accord. The relations need to mend between different communities bringing in the past, present and the future to prevent bitter memories of the past from poisoning visions of the future. This however does not mean restoring the past but defining new roles and sound relations between people, ethnic groups and between people and authorities.³³ Nevertheless, the

³² Mwagiru M, 'Diplomacy: Documents, Methods and Practice', (Nairobi, 2004) p. 125

³³ Rugumamu, *ibid*

challenge of rebuilding a society after a violent conflict, if approached as a common task, can heal relations and restore dignity, trust, and faith in the future as people learn to cope with the past. This is the problem Kenya has to deal with at the moment together with reforming the institutions to avoid experiencing the same problem in the next general election.

Having highlighted the three phases of mediation, in my view the pre-mediation phase plays a major role since it establishes the basis upon which the mediation will be conducted. The mediation cannot take place unless the mediator makes a successful entry with the consent of the parties. It is at this point that the mediator understands the conflict to enable him come up with strategies to be used in the mediation. More so it is at this point that the parties have to be convinced to consider and accept mediation as a method to manage their conflict. It is therefore on this basis that this study embarks on analyzing the pre-mediation phase of the electoral violent conflict. The intention is to analyze its activities and to determine how decisions at this level affected the outcome of the mediation process.

Chapter 3

3.0 Third parties and the mediation environment

3.1 Role of third parties in managing conflict

In attempt to manage electoral violent conflict, there are a number of third parties involved to play a vital role in its management. Their role especially those not involved in the conflict are usually done in the context of peaceful management of the conflict. This is a concept clearly articulated in Article 33 of the Charter of the United Nations which mentions various methods of peaceful management of conflict. These include negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements¹ of which mediation was the method applied to manage the Kenyan conflict.

Although, mediation is a voluntary process, it may be initiated, which means it can be suggested, appealed for or offered by the conflicting parties, the mediator or any other concerned party.² The need for mediation is often influenced by the conflicting parties' and mediator's understanding on the role the mediator should play in managing the conflict. This implies that the mandate, legitimacy and authority of the mediator are to some extent determined by who initiates the mediation process³ and the timing of

¹ Article 33, Chapter IV, Charter of the United Nations

² Bercovitch J & Houston A, 'Why Do They Do It Like This? An Analysis of the Factors Influencing Mediation Behavior In International Conflicts,' *The Journal of Conflict Resolution*, Vol. 44, No. 2 (2000) p. 182

³ Kaufman and Duncan (1992) in Bercovitch J & Houston A, 'Why Do They Do It Like This? An Analysis of the Factors Influencing Mediation Behavior In International Conflicts,' *The Journal of Conflict Resolution*, Vol. 44, No. 2 (2000) p. 182

intervention in terms of the conflict phases and the state of the parties' current negotiations.

The above factors are likely to determine the acceptability of a particular mediator; the role, bounds and expectations within which a mediator may act to manage the conflict and the type of strategies to employ.⁴ Also the initiation of mediation, choice and acceptance of a mediator are largely dependent on the parties', mediator's or any other third parties' perceptions of the resources and skills a mediator may have to offer. It may also depend on their expectations of how the outcome of the conflict may be influenced by the intervention of a specific mediator and the level of commitment and urgency of the parties to achieve a solution.⁵

The third party's role in mediation like in the case of Kenyan electoral violent conflict is usually to influence the disposition of the parties to conflict to make them remain flexible to their own goals and to enlarge the measure of their readiness to compromise.⁶ Hence, the mediator must begin by seeking whether the parties prefer to withdraw their demands or change positions to continued conflict and whether they are willing to accept some settlement short of their unilateral objectives.⁷ This implies that the mediator needs to influence the process with regard to the issues in conflict.

The involvement of third party mediation is normally connected with the low level of trust between conflicting parties as well as positions and strategies they chose and which

⁴ Kolb 1983; Riffa 1982 in Bercovitch & Houston (2000)

⁵ Kauffman and Duncan in Bercovitch and HAuston (2000)

⁶ Pechota V, 'Complementary Structures of Third-Party Settlement of International Disputes' (New York, 1971) p. 15

⁷ Holsti KJ, 'Resolving International Conflicts: A Taxonomy of Behavior & some figures on Procedures', *The Journal of Conflict Resolution*, Vol. X (1966) p. 272-291; 277

have already brought to the state of conflict. The third party mediation process can therefore be viewed as one form of confidence- building exercise.⁸ This is because the disputants' faith and commitment in the process stems largely from the expectation that the mediator will be fair. Where mediators seem to be biased or to favor one of the parties to conflict, they run the risk of breaking the bond of trust which in turn undermines the integrity of the process.

In the initial phase of mediation which flows to the subsequent stages of mediation, a third party in this case the mediator contributes to the shaping of the contending parties' predispositions.⁹ The mediator's task at this level is to remove any form of suspicion and help the parties to conflict believe that the communications they receive from each other about their intentions and dispositions are correct and that they are genuine in their pursuit for a resolution. To maintain this element of trust in the negotiations, the mediator must then observe certain unwritten rules which include telling lies by the parties, misrepresentation, impugning of motives, execution of all written and verbal agreements, and the maintenance of procedures that facilitate rather than block communication.¹⁰

Third party takes different forms. Fisher and Keashly developed a typology of third party intervention which is composed of six processes: conciliation, consultation, pure mediation, power mediation, arbitration and peace keeping.¹¹ For the purposes of this study, the focus will be on pure mediation since the analysis is on the pre-mediation

⁸ Rugumamu SM, 'Conflict Management in Africa: Diagnosis of current Practices and Future prospects' (Ethiopia, 2002) p. 16

⁹ Pechota V, Pechota V, 'Complementary Structures of Third-Party Settlement of International Disputes' (New York, 1971) p. 16

¹⁰ Ikle FC, 'How Nations Negotiate' (New York, 1964) p. 87

¹¹ Fisher JR & Keashly L, 'The Potential Complementarity of Mediation and Consultation within a Contingency Model of Third Party Intervention', *Journal of Peace Research*. Vol. 28, No. 1, (1991) pp. 29-42;

phase in managing the electoral violent conflict. Mediation as a method of peaceful management of conflict is a more complex form of negotiation. It means that parties continue to negotiate in the presence of a third party.¹² The mediator therefore enters conflict to assist the parties continue with their negotiations which had become deadlocked.

As third party enters into conflict, it should be with the consent of the conflicting parties which gives it legitimacy. The purpose must also be clear which is mostly in case of mediation, to assist the parties terminate their conflict by mutual agreement. The third party entering into a conflict needs therefore to respect the autonomy of the parties to decide on the extent and final effect of the mediator's involvement.¹³ The approaches to the parties should be clear that whatever move the third party makes whether procedural or substantive, are non-committal to the course of action that the contending parties may take either individually or jointly. This means that making substantive proposals in the mediation attempt may not be a good start for the mediation process when the parties' positions differ greatly and when the spirit of accommodation has not been sufficiently developed.

The entry of a third party into a conflict makes it complex due to the multiplicity of interests and values. According to Mwangi,¹⁴ the complexity of a conflict is determined by the number of parties, issues and interests involved. The conflicting parties receive either direct or indirect support from third parties, which, in turn, has their direct or

¹² Mwangi M, 'the Water's edge: Mediation of Electoral Violent Conflict in Kenya' (Nairobi, 2008) P. 15

¹³ Pechota V, Pechota V, 'Complementary Structures of Third-Party Settlement of International Disputes' (New York, 1971) p. 13

¹⁴ Ibid, p. 49

indirect interest in the conflict.¹⁵ This is an indication that conflict rarely involves only two parties. The primary parties of the electoral violent conflict, PNU and ODM were surrounded by a multiple of third parties both visible and invisible. These third parties had their own interests to pursue in the conflict and its management. Moreover, the conflict was settled through the involvement of third parties in form of mediation and facilitation.

3.2 Types of third party

This section seeks to analyze the range of third parties that enter into conflict during the process of mediation. Third parties could either be formal or informal but for the sake of this study, the focus is more on the official third parties. In order to analyze the range of mediators it is important to mention that the range of mediators usually fall in three main categories; individual mediators, states and organizations which could be governmental or non-governmental.

As third parties enter into conflict, they operate on different levels: governmental, regional and international. The mediators may therefore be representatives of international organizations, regional organizations or government. The third party mediation in the electoral violent conflict was conducted under the auspices of a regional body, the AU with the approval of the UN.

¹⁵ Kristine B & Karaev Z, 'Playing Cat-and -Mouse: Conflict and Third –Party mediation in post-Soviet Space', *The online Journal of Peace and Conflict Resolution*, Vol. 6, No. 1 (2004) p. 2

According to Bercovitch and Schneider,¹⁶ individual mediation is conducted by individuals who do not fulfill an official or representative function. They enter to mediate conflict at their own capacities depending on their capabilities and resources, their ability to perform the required tasks, knowledge, skills and experience.¹⁷ While these individuals may not have the ability to commit the kinds of resources to conflict de-escalation that representatives of governments and international organizations do, they have the capacity to bring international media attention and access to public officials to the table.¹⁸ Even though such parties enter into conflict as individuals, they also add to the complexity of the mediation environment since they come with their own different beliefs, values and attitudes which vary with those of the parties to conflict. The kind of strategies individuals are likely to apply in mediation are more directly related to their capabilities and subjective experiences than to the external and contextual stimuli that impinges on them.¹⁹

Non governmental organizations have also become important third party participants in finding solutions to political conflicts. Such organizations play their full part in the mediation of such conflicts. In their mediatory role, they can afford to be more creative and less inhibited in the positions they advocate.²⁰ Hence, they are commonly associated with the element of impartiality. This however does not mean that they are likely to be chosen as mediators especially in political conflicts. This is because representatives of

¹⁶ Bercovitch J & Schneider G, 'Who Mediates? The political Economy of International Conflict Management' *Journal of Conflict Research*, Vol 37, No 2 (2000) p. 147

¹⁷ *ibid*

¹⁸ Bruce WD, 'third Party Intermediaries and the Transformation of Violent Intrastate Conflicts' (A Draft Paper, 2007)p. 5

¹⁹ *ibid*

²⁰ Bercovitch and Schneider, 'Who Mediates? The political Economy of International Conflict Management' *Journal of Conflict Research*, Vol 37, No 2 (2000) p. 148

NGOs lack the capacity to oversee formal agreements or commit economic or military resources necessary for achieving peace, but they are often considered to have a better ability to connect to the needs of the grassroots, have a better sense of emerging conflicts, and have the flexibility to respond quickly as conditions change on the ground.²¹ NGOs are active in peace and conflict work, as formal NGOs, social movements such as, civil society organizations²²

Governments on the other hand represent states which are considered political actors. States will in most cases want to engage in third party mediation in pursuit of their interests. States have different motives to be involved in conflict management in other states. These may include moral concerns, interests in regional stability or sometimes from their ambitions to establish a geopolitical hegemony.²³ Other reasons include the states' concern about their own security – economic, political, military or humanitarian especially when challenged by a conflict in a neighboring country. Therefore, states will act as third party mediator when they expect and receive benefits from their involvement.²⁴

States are significant actors as third parties because of the resources they are able to mobilize in the process of finding a solution to a conflict and even the reconstruction activities during the implementation phase. Bruce argues that states are capable of devoting resources to rebuilding political and economic institutions, fund the work of

²¹ Richmond (2003) in Bruce WD, 'third Party Intermediaries and the Transformation of Violent Intrastate Conflicts' (A Draft Paper, 2007)

²² Clark (2003), p. 4 in Bruce WD, 'third Party Intermediaries and the Transformation of Violent Intrastate Conflicts' (A Draft Paper, 2007)

²³ Kristine B & Karaev Z, 'Playing Cat-&-Mouse: Conflict and Third Mediation in Post Soviet Space' *The Online Journal of Peace and Conflict Resolution* (2004) p. 4

²⁴ Fisher R, 'Methods of Third Party Intervention', *Berghof Handbook for Conflict Transformation* (2001), p. 10

civil organizations and even guarantee loans necessary for post conflict economic liberalization.²⁵ It is these resources and the authority states have that make parties to conflict yield to them. However, they also have limitations which include lack of neutrality, their ideological, economic and strategic interests in the outcome of the conflict which makes the mediation process complex.

After looking at the three categories of third party involvement, it is important to note that the position of a third party mediator and that of the conflicting party should always be considered. This is because third party mediators, whether individuals, governments or non-governmental organizations act as if pursuing some interests in the conflict and its outcome. Zartman and Touval argue that the interests and motives of mediators can be described in the context of power politics. Their argument is that mediators are rarely 'truly indifferent to the issues and terms being negotiated.'²⁶ Mediators will therefore choose strategies depending on the degree of influence they enjoy over conflicting parties or one of the parties.²⁷

The kind of strategies used by the mediator and the form of third party mediation influences the degree of success in mediation process. The success can be evaluated in terms of the rate of settlement (peace or no peace), satisfaction of parties, change in relationship between the conflicting parties and compliance with the agreement.²⁸ This shows that the role of the third party mediator does not end when a deal has been struck

²⁵ Bruce WD, 'third Party Intermediaries and the Transformation of Violent Intrastate Conflicts' (A Draft Paper, 2007) p. 9

²⁶ Touval S & Zartman W, 'International Mediation in Theory and Practice,' Westview, Boulder (USA: 1985), as quoted in Fisher, 2001, p.11

²⁷ Kristine B & Karaev Z, 'Playing Cat-&-Mouse: Conflict and Third Mediation in Post Soviet Space' *The Online Journal of Peace and Conflict Resolution* (2004) p.4

²⁸ Fisher R, 'Methods of Third Party Intervention', Berghof Handbook for Conflict Transformation (2001), p13

but it continues to the implementation of what was agreed on by the conflicting parties. This is what leads to the analysis of the role of third parties in the three phases of mediation.

3.3 Role of third parties in the mediation process

Third parties play a crucial role in the three phases of mediation. In the pre-mediation phase, third party is concerned with ensuring there is a ripe moment. At this point, the mediator does not take a passive role but is engaged actively to enable the conflicting parties reach a hurting stalemate. This implies the notion that third party can induce the ripe moment or create it. Zartman, in his influential work, argues that it is at the ripe moment that a third party can intervene into conflict.²⁹ It is at this moment that the third party mediator should come into play and employ their strategies to bring the conflicting parties to negotiation table and to reach or enforce an acceptable solution.³⁰ The third parties are free to apply a variety of strategies to achieve this in order to reduce the likelihood of intransigence by a conflicting party or even prevent a stronger party from imposing its unilateral solution.³¹ It is therefore important to note that any mediation attempt before this objective or constructed ripe moment is not likely to bring satisfactory results.³²

²⁹ Zartman W, 'Alternative Attempts at Crisis management: Concepts and Process,' in Winham G, *New Issues in International Crisis Management*, Boulder, Westview Press, 1989

³⁰ Kristine B & Karaev Z, 'Playing Cat-&-Mouse: Conflict and Third Mediation in Post Soviet Space' *The Online Journal of Peace and Conflict Resolution* (2004) p.3

³¹ *ibid*

³² David C & Dane R, 'Evolutionary Models and Third Party Intervention in Ethnic Conflict', The Norman Paterson School of International Affairs, Carleton University, (1999)

Dixon in his phase-based approach, argues that the effectiveness of third party mediation varies at different stages of the conflict.³³ This implies that any intervention by third party mediators should be measured and matched to the stage of the conflict. Using Zartman's concepts of ripeness and hurting stalemate,³⁴ it is obvious that interventions by third parties are likely to take place when conflicting parties have experienced violence.

Kressel argues that at the pre-mediation level, the mediator seeks to familiarize himself with the conflict in order to establish the groundwork upon which his later actions are built.³⁵ The purpose for this is to reduce the degree of complexity and uncertainty inherent in any political conflict by producing information about the conflicting parties and issues. The mediator therefore works to achieve some convergence of expectations by reducing distortion, ignorance, misperception or unrealistic intentions.³⁶

The mediator may use a non directive strategy which is more proactive and gives the conflicting parties a chance to arrive at a mutually acceptable solution with a minimum assistance from the mediator. For instance the mediator suggests a neutral location for mediation and even controls the number and identity of parties to affect the structure of mediation.³⁷

During the mediation phase, the mediator can play a more active role to help the parties to conflict redefine issues and even find a formula for the resolution of their conflict.

³³ Dixon WJ, 'Third Party Techniques for Preventing Conflict Escalation and Promoting Peaceful Settlement,' *International Organisation* Vol 50:4 (1996)

³⁴ Zartman W, 'Alternative Attempts at Crisis management: Concepts and Process,' in Wnham G, *New Issues in International Crisis Management*, Boulder, Westview Press, 1989

³⁵ Kressel K, 'Labor Mediation: An exploratory survey' Albany, (New York, 1972)p. 13

³⁶ Bercovitch J, 'Social Conflicts and Third Parties: Strategies of Conflict Resolution', (Westview, 1984)p.

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³⁷ Kleiboer M, 'Understanding Success and Failure of International Mediation,' *The Journal of Conflict Resolution*. Vol. 40, No. 2 (1996) p. 375

Sometimes, the mediator may use his leverage to manipulate the parties into agreement.³⁸

However this depends more on the type of the mediator and such an active strategy can only be successful if the conditions were ripe for resolution, otherwise, this may ruin the credibility and acceptability of the mediator.³⁹

The role of the mediator does not end when the parties to conflict reach an agreement to resolve the conflict. He continues to play his mediatory role even at the post mediation phase where the parties are to implement their agreement. Therefore, the mediator is charged with the responsibility to stay on to ensure that what was agreed on during the negotiations has been implemented. He stays on to maintain pressure on the parties to the conflict to moderate their activities and live up to the agreements which they have signed.⁴⁰

3.4 Mediation environment

The mediation environment is composed of the parties and negotiators' constituents, the mediators' constituents and third parties who affect or are affected by the process and outcome of the mediation.⁴¹ The role of the third party at this level is to reconcile the different views and interests of the conflicting parties and their constituents. This is due to the fact that the relationship of all the parties involved in this environment is

³⁸ *ibid*

³⁹ Kochan TA, 'Step by step in the Middle East from the perspectives on timing of international mediation process.' In *Dynamics of Third Party Intervention: Kissinger in the Middle East*, edited by Rubin JZ, (New York, 1981) p. 126

⁴⁰ Bruce WD, 'third Party Intermediaries and the Transformation of Violent Intrastate Conflicts' (A Draft Paper, 2007) p. 8

⁴¹ Wall AJ, 'Mediation: An Analysis, Review, and Proposed research', *Journal of Conflict Resolution*, Vol.25, No. 1, (1981) p. 158

influenced by their expectations, the rewards and costs incurred as they deal with each other⁴² in the mediation process. Each party interacts with more than one party in the mediation process and in each reaction, the rewards and costs spring from the mediation environment. This indicates that the sources of the benefits that parties and especially the mediator gets are derived from the whole process of mediation.⁴³

The interaction of the parties involved in the process is determined by the goals each of them intends to achieve. The parties therefore come up with strategies to enable them get the desired outcome from the mediation. At the onset of any mediation process, the parties to conflict tend to pursue absolute gains and when this fails, they then adjust their behavior which is determined by an alternative outcome.

On the other hand, the mediator will also pursue his goal with his main reward being an agreement between the two conflicting parties.⁴⁴ The argument is that the mediator's desire is to reach an agreement at a minimum cost to him. In addition, the mediator might want the negotiation to proceed slowly or rapidly to conform to the societal norms, to enhance his reputation or please his constituency.

In the electoral violent conflict the mediation environment was made up of the parties to conflict and a multiple of third parties who influenced the management of the conflict. In the pre-mediation phase, it was necessary that all these parties were identified and their relationships known so that their influence is controlled during the mediation phase.

⁴² Thibaut JW & Kelley HH, 'The Social Psychology of Groups' (New York, 1959)

⁴³ Mitchell CR, 'The Motives for Mediation' in C.R. Mitchell & K. Webb (eds), *New Approaches to International Mediation* (Westport, CT.: Greenwood Press, 1988) p. 29-51

⁴⁴ Kochan TA & Jick T, 'The Public Sector Mediation Process', *Journal of Conflict Resolution*, Vol.22, (1978) p.209-240 ; Pruitt DG, 'Indirect Communication and the Search for Agreement in Negotiation', *Journal of Applied Social Psychology*, Vol. 1, (1971) p. 204-239; Stevens CM, 'Strategy and Collective Bargaining Negotiations', (New York, 1963)

Hence, the need to analyze the constituents, audiences and allies involved in the electoral conflict which is the next chapter.

3.4.1 Parties to the electoral violent conflict

The two principle parties involved in the electoral violent conflict were the Party of national Unity and Orange Democratic Party. ODM-Kenya was also a party since it was a close contestant in the 2007 general election whose results emanated to physical violence. The Electoral Commission of Kenya was a party because it was accused by the ODM of rigging the elections in favor of President Kibaki in the closely contested presidential elections.⁴⁵ The ECK which determined the winner of the presidential election on the basis of their final vote count declared Kibaki the winner having garnered the highest number of votes 4,584,721, against his opponent Raila Odinga with 4,352,993 votes. These parties comprised of different individuals with different personalities and backgrounds with the key principals being President Mwai Kibaki of PNU and Raila Odinga of ODM. The parties had constituents whom they were answerable to, allies at national, regional and international level and audience who affected the management of the conflict.

3.4.2 The party constituents

The two main antagonists, the PNU and ODM had a relationship with their constituents. These involved people to whom the parties were answerable, and in whose interests they

⁴⁵ Mwagiru M, 'The Water's Edge: Mediation of Violent Electoral Conflict in Kenya,' first edition (Nairobi, 2008) p. 9

professed to be fighting.⁴⁶ At the center of the electoral conflict were the voters who turned up in large numbers to elect the leaders they wanted and the victims of the violence that ensued. The other category of constituents included the youth whose numbers made them an important focus in the campaigns of the political parties, church and other parties that publicized the political parties during campaigns. These constituents were geographically divided with each party having its specific stronghold. ODM covered the Rift Valley and the Western Part of Kenya with PNU covering Central, Eastern and some sections of the Rift Valley. The principals of both parties, President Kibaki and Raila were not only answerable to their party members but to their constituents. This contributed to the complexity of the conflict.

The political leaders adopted different behaviors in the conflict because of the varied interests they were pursuing. ODM in its search for a solution to the violence was more sincere in its reception to mediation in comparison to PNU because the party felt that the talks would be a good strategy to restore the prestige it lost internationally in the violence.⁴⁷ However, it had to reconcile its decisions to its constituents who were demanding nothing less than the presidency. The party leaders could not assume these demands since they were answerable to their constituents in whose interests the leaders claimed to be fighting for. The public statements the party made had to be addressed to its constituents. This led the ODM to come up with pre-conditions for mediation one of which was the call for Kibaki to resign.

⁴⁶ Mwagiru M, 'Conflict in Africa: Theory, Processes and Institutions of Management', (Nairobi,2006) p.

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⁴⁷ ibid

PNU on the other hand, also had pressure from its constituents for Kibaki to stay put as the president. Therefore, as much as PNU leaders believed that something had to be done, they did not feel compelled to make serious commitments to the management of the conflict.

The two parties, in my opinion did not control the violence. Thus, in order to restore the state authority and prevent violence from escalating, the local leaders in ODM and PNU strongholds and the people had to be convinced that their grievances were being addressed and that concrete measures were being rapidly implemented. While political leaders tried to give a lip service to peace initiatives and appealed for calm in public meetings, local leaders and traditional chiefs continued to make highly inflammatory statements. Even when the ODM team learned that the Rift Valley violence against PNU supporters would endanger its political legitimacy and lose its international sympathy hence leverage, the leaders could not make their supporters to accept the return of the displaced PNU supporters.⁴⁸ Thus the situation on the ground remained extremely tense and a threat to the peace initiatives.

The mediator's role was therefore to improve the parties' relationship with their constituents during the mediation process by claiming responsibility for proposals and agreements. He was charged with the responsibility of ameliorating the relationship by cooperating with the negotiators to convince the party constituents that the negotiators were bargaining tenaciously and staunchly defending the constituents' interests.⁴⁹

⁴⁸ International Crisis Group: Kenya in Crisis, Africa Report No. 137-21 (February, 2008)

⁴⁹ Kerr C, 'Industrial Conflict & its Mediation' *Journal of Sociology*, Vol. 60 (1954) p. 230-245

3.4.3 Party Allies

Both ODM and PNU had allies who were national, regional and international. Allies are those actors who for ideological, cultural and legal reasons, support one side or the other in the conflict.⁵⁰ National allies included business individuals and organizations that funded the parties in their elections. These allies also had their supporters regionally and internationally. From the regional allies, Uganda seemed to be in the position that the elections in Kenya proceed as they were, including their outcome.

The international allies comprised of state, individual and business allies. The state allies were more visible through their resident diplomatic missions in Kenya. The most outspoken of the international allies were the western allies, particularly the United States, the European Union, with Britain coming as a member of the EU and Kenya's former colonizer. They supported the ODM with the notion that the underdog is always right. This was an assumption that made them to support only one side in the conflict. The other countries such as China and Japan maintained neutrality, a position observed by the United Nations and African Union.

3.5 Third party identities

Third parties can adopt different identities depending on whether they come from inside the conflict environment or outside. Some third parties have the characteristics of both contexts. Hence, there are three kinds of third parties who contribute to the management

⁵⁰ Mwagiru M, 'Conflict in Africa: Theory, Processes and Institutions of Management' (Nairobi, 2000) p. 50

of conflict. These include endogenous, exogenous and heterogeneous third parties. It is important at this point to analyze the interaction of the identities of third parties involved in the management of the electoral violent conflict.

3.5.1 Endogenous third parties

Endogenous parties come from within the conflict which puts them in a better position to manage the conflict since they understand the conflict and its parties. However, due to the close association with the conflict and its parties, they stand the risk of not being able to maintain the distance required in order to secure the outcome that will resolve the conflict.⁵¹

At the onset of the electoral violent conflict, there were calls that the country attempts to use its own respected peacemakers who were not partisan in the conflict. This was contrary to ODM's insistence that they would only engage in talks in the presence of an international mediator.⁵² The call for internal mediator was because they stood a better chance of understanding the issues involved. Therefore, a section of church leaders including the retired Anglican Church Archbishop, Dr. David Gitari and the former presiding bishop of the Methodist church in Kenya, Dr. Lawi Imathiu were opposed to the idea of foreign mediation in the political crisis they considered an internal affair. What they failed to understand was the fact that the conflict had been internationalized and hence had the attention of the entire international community. ODM on the other hand insisted for an outsider because they felt he would be neutral.

⁵¹ Mwagiru M, 'Conflict in Africa: Theory, Processes and Institutions of Management' (Nairobi, 2000)

⁵² As quoted in various media interviews with the ODM officials.

In the conflict, different third parties including individuals and organization from within the country offered various activities in an attempt to manage the violence that followed the announcement of the disputed presidential results. For instance, the Concerned Citizens for Peace spearheaded by the retired ambassador Kiplagat, retired army General Sumbeiywo and General Opande. This group made an initiative to help manage the conflict but was rejected by the ODM party. This was a clear indication that a mediator⁵³ must be accepted by all parties to conflict if he is to offer mediatory services.⁵⁴ Hence, this group could not mediate in the electoral conflict even though they were better placed in as far as understanding the issues to conflict was concerned.

The Central organization of Trade Unions also volunteered to initiate talks between President Kibaki and Raila to talk over the disputed presidential results in order to help stem the violence that was going on in most parts of the country. COTU's intention was not to mediate but to play a facilitative role to assist the parties analyze the electoral conflict in search for a mutually acceptable solution.⁵⁵

3.5.2 Exogenous third parties

Exogenous parties come from outside the conflict. They are less emotionally involved in the conflict which enables them to bring other perspectives from outside in the management of the conflict in question. But, they may not fully understand the dynamics of the conflict and the parties involved.

⁵⁴ Mwagiru M, 'The Water's Edge: Mediation of Violent Electoral Conflict in Kenya,' first edition (Nairobi, 2008) p. 17

⁵⁵ *ibid*

In the electoral violent conflict, there were a number of exogenous third parties including states, international organizations such as the UN, regional institutions and organizations such as EAC, AU and EU. The internationalization of the conflict is what brought it to the attention of these parties who expressed their views on the need to have a peaceful resolution to the conflict. They contributed to the management of the conflict by suggesting the appropriate methods to be used and the suitable mediators for the conflict.

The AU which was in charge of the mediation process, appealed for calm asking the leaders to embrace dialogue and consultation in order to find a solution to the problem.⁵⁶

This initiative was important if the parties to conflict were to engage in mediation. The UN through its Secretary General Ban Ki-moon also appealed for the Kenyan leaders and political parties to 'resolve their differences peacefully through dialogue..' in addition, the prime minister Gordon Brown of the United Kingdom called on African Union and Commonwealth to reconcile Kibaki and Raila since the EU Observer Mission had declared that the Kenyan electoral process had fallen short of international standards.⁵⁷

Both the UN and the AU called on the parties to resolve the conflict peacefully. This was in line with the philosophy entrenched both in the UN charter and the AU Constitutive charter. Chapter VIII of the UN charter provides for the use of regional arrangement for the maintenance of international peace and security.⁵⁸ This was clearly demonstrated in the electoral conflict when the UN gave AU the mandate to find a peaceful solution to it.

⁵⁶ Mwangi M 'The Water's Edge: Mediation of Violent Electoral Conflict in Kenya,' first edition (Nairobi, 2008) P. 19

⁵⁷ Mwangi M 'The Water's Edge: Mediation of Violent Electoral Conflict in Kenya,' first edition (Nairobi, 2008) P. 20

⁵⁸ Article 53 states that the Security Council shall, where appropriate utilize such regional arrangements or agencies for the enforcement action under its authority.

The electoral conflict also came to the attention of the international community because of the violence that rocked the country leading to humanitarian crisis and the problem of internally displaced persons. These issues fall under the principles of both the AU and UN. Hence the AU intervention in the electoral conflict was as prescribed by its charter.

3.5.3 Heterogeneous third parties

These are parties who possess the dual characteristics of endogenous and exogenous parties. They may be engaged to the conflict and at the same time not party to it. In case of the electoral violent conflict, ODM- Kenya possessed these characteristics, in that it contested the elections with Kalonzo Musyoka as its presidential candidate. But this party together with its supporters did not refute the presidential results nor engaged in violence as ODM.⁵⁹

The ODM-Kenya party leader, Mr. Musyoka, who was a contestant for presidency later became the Vice President of Kenya making him part of the PNU camp. His attempt to reconcile Kibaki and Raila was not fruitful because he was personally interested in the conflict and its outcome. Hence, he was not a suitable third party to mediate in the electoral conflict. This brings out the notion of impartiality in mediation. According to Touval,⁶⁰ the mediator must not be impartial provided he possesses certain resources the parties in the conflict value. In the electoral conflict, Musyoka would have provided the parties to conflict with his experience from the Somali and Sudan peace process, but the

⁵⁹ ⁵⁹ Mwagiru M 'The Water's Edge: Mediation of Violent Electoral Conflict in Kenya,' first edition (Nairobi, 2008) P. 21

⁶⁰ Touval S, 'Biased Intermediaries: Theoretical and Historical Considerations' *Jerusalem Journal of International Relations*, Vol. 1 (1975) p. 51-70

fact that his party joined PNU soon after the elections were over, he could no longer play the role of a peacemaker since he was seen as someone who wanted to reap where he did not sow. On this ground, this study concludes that Musyoka was not impartial but that was not to harm his ability to mediate the conflict and deliver a successful outcome.

The efforts by Kalonzo Musyoka to play a third party role in managing the electoral violent conflict, raises an important issue on whether a third party can manage conflict when he is an actor and has interests in the conflict. Bercovitch⁶¹ explains that the entry of a mediator into a conflict which transforms its structure from a dyad to a triad makes the mediator a party to conflict. This shows that the question of impartiality is not important since the mediator pursues his own interests just as the parties to conflict.

Kalonzo's appointment as the Vice president was not to interfere with his role in trying to restore peace in the country. However his role as a third party was influenced by the psychological link to the conflict and to the parties involved. This made ODM to reject his appointment as the chairman of a reconciliation team appointed by president Kibaki in the mediation process. What ODM and others who had the feeling that Kaolonzo was an insider did not understand was the fact that he was a competitor to Raila and was thus closer to the conflict. This made him the best candidate to represent the government as far as the negotiations were concerned. Nevertheless, Kalonzo was unable to maintain the distance that a third party needs in order to act as an effective mediator.⁶²

⁶¹ Bercovitch J, 'Social Conflict and Third parties: Strategies of Conflict Resolution' (Boulder, CO.; Westview Press, 1984)

⁶² Mwagiru M 'The Water's Edge: Mediation of Violent Electoral Conflict in Kenya,' first edition (Nairobi, 2008)

3.6 Strategic map of third parties

Before Annan, there was a strategic map of third parties who tried to make entry to the conflict. Soon after violence broke in Kenya, following the disputed presidential results, Archbishop Desmond Tutu of South Africa flown in immediately hoping to mediate the conflict. Others included the former Presidents Forum (FPF), consisting of former heads of state in Africa. These were Keumile Masire of Botswana, Joachim Chisano of Mozambique, Benjamin Mkapa of Tanzania and Kenneth Kaunda of Zambia.⁶³ This group did some unofficial facilitation hoping to lay grounds for the Annan mediation by convincing the hardliners from both sides to move away from their hard-line positions.⁶⁴

The western allies which included the European Union and the United States all rallied behind the mediation team of eminent persons from Africa led by Koffi Annan under the auspices of African Union. The backing by the international community left the two parties with no choice but to find concessions to the conflict. The international community was ready to inflict Kenya with sanctions and this was clearly evident when most western countries slapped travel bans on political leaders who were trying to block the negotiations.

Zartman⁶⁵ argues that the perceptions of the parties about the conflict and the mediation can have an effect on the outcome. When the parties' perception about the conflict, why there is conflict and the issues in the conflict diverge, this affects their ability to reach a

⁶³ Mwangi M 'The Water's Edge: Mediation of Violent Electoral Conflict in Kenya,' first edition (Nairobi, 2008) P. 32

⁶⁴ *ibid*

⁶⁵ Zartman IW, *Conflict and Resolution: Contest, Cost and Change in Resolving regional Conflict, International Perspectives* (Newsbury Park, 1991) p. 11-22

negotiated solution.⁶⁶ Mediation entry to the electoral violent conflict posted a problem due to divergent views held by both ODM and PNU. Both parties had varied perceptions about each other and about the conflict. The distrust that existed between the parties was precipitated by their perceptions about each other. In regard to the conflict, while ODM called for international attention, PNU insisted on the fact that violence was minor and did not require the attention of a third party as the government was capable of containing it.

When violence continued to escalate with the killings in Naivasha and Nakuru, the government began to change its perception about the conflict, hence became more lenient to mediation. On the other hand, Annan's perception was positive and he believed that an outcome would be attained. This hope made him to take risk in mediating the conflict.

The conflict was eventually mediated by Kofi Annan and a team of eminent persons from Africa namely Benjamin Mkapa, the former president of the republic of Tanzania and Graca machel, the former first lady of South Africa. Other persons included the Ugandan president Museveni who facilitated the conflict as chairman of the Summit of the East African Community and Commonwealth.⁶⁷ The election observers also contributed to the management of the conflict. However, many of them seemed to take sides concluding that it was only the government that rigged the elections.

⁶⁶ Mwangi M 'The Water's Edge: Mediation of Violent Electoral Conflict in Kenya,' first edition (Nairobi, 2008)

⁶⁷ Mwangi M 'The Water's Edge: Mediation of Violent Electoral Conflict in Kenya,' first edition (Nairobi, 2008) p. 33

The strategic map of actors clearly demonstrated the willingness of third parties offering to mediate the electoral conflict. The form of entry was both official and unofficial. Most of the unofficial attempts were in form of facilitation to try and convince the two principles, Kibaki and Raila to agree for discussions hence paving way for the official mediation that was conducted by Kofi Annan under the auspices of African union.

Chapter 4

4.0 The pre-mediation phase in the Kenyan conflict

In any mediation process, long before parties come to the mediation table, there are negotiations and consultations that take place and sometimes substantial agreement is reached at an early stage. The parties may therefore come to the table merely to ratify the agreements reached during the pre-mediation phase.¹ This indicates the crucial role pre-mediation plays in determining the outcome of the mediation process.

During the pre-mediation phase, the mediators undertake an analysis to familiarize themselves with the conflict. This includes examining to understand the nature of conflict by looking at the issues in the conflict, parties and their interests, and actors involved options and alternative solution available to the key actors.

Creation of a condition of ripeness in the conflict is very crucial at this stage as it creates an opportunity for the initiation of the mediation process. This is the point at which the parties to conflict are ready to negotiate or open for third party intervention. Their willingness to talk in the presence of a third party is what brings in the concept of a mediator to assist in the negotiations.

This chapter therefore gives an analysis of the issues highlighted above to pave way for the assessment of the substantive preparations made for the negotiations in the electoral violent conflict and the challenges experienced during the process.

¹ Mwagiru M, *Diplomacy: Documents, Methods and Practice* (Nairobi, 2004) p. 121

4.1 The electoral conflict

The electoral violent conflict that followed the 2007 general elections was precipitated by the flawed presidential elections, issues of power and functionality of institutions.² The violence erupted suddenly immediately the ECK announced the presidential results on 30 December, 2007. Compared to the previous electoral conflicts experienced in Kenya, this conflict differed from the 1992 and 1997 which experienced physical violence before the voting and died off as soon as the election results were announced.³ But the 2008 electoral violent conflict occurred soon after voting.

Electoral violence behaves like any other conflict and can therefore be analyzed by dividing it in three stages: pre- election, election, and post election activities. In the pre-election stage there is often the mass mobilization of citizens during the campaign period.⁴ The campaigns increase the chances for conflict among supporters of competing candidates and parties.⁵

In 2007, the campaign season was relatively peaceful with no incidences of physical violence. This was confirmed by different observer missions who reiterated that the election process up to the voting level was successful and it only lost credibility with respect to tallying of votes and the announcement of presidential results.⁶ Nevertheless, there was structural violence generated from long standing issues with a certain amount of indoctrination and incitement, preceded by inflammatory statements made by political

² International Crisis Group: Kenya in crisis ,Africa Report No. 137-21 (February 2008) p. 24

³ Mwangi M, 'The Water's Edge: Mediation of Violent electoral Conflict in Kenya' (Nairobi, 2008) p.1

⁴ Fomunyoh C, 'Mediating Election related conflicts' a background paper (2009) p.8

⁵ ibid

⁶ These observations were made by Kenya Elections Domestic Observers Forum, The East African Community Observer Mission and the Commonwealth Observer Mission.

leaders during the campaigns before the general elections. Famunyoh argues that the campaign period creates avenues for opportunistic leaders to stir negative emotions and sway public opinion or manipulate their supporters in ways that can exacerbate tensions and spark conflict.⁷

During the campaign period, some candidates were not able to travel freely to all parts of the country and pre-election messages by some parties, often spread in local languages, appealed to ethnic identification and incited fear of and hostility towards fellow Kenyans of different ethnic origins.⁸

On the Election Day, given the heightened sensitivities around it, good election laws usually provide confidence-enhancing measures that contribute to civil conduct on this day.⁹ In Kenya, election laws provide for the secrecy of the ballot and for voters to cast their ballots free of any encumbrances. Such laws provide for vote counting to be conducted in public view, generally at the polling site where the ballots were cast, with preliminary results announced at the same site and the official announcement of official results in a timely manner.¹⁰ However, there are times when actions of the polling officials and party representatives violate the law and are therefore susceptible to generating conflict. Following the large number of voters who turned up to cast their ballots on the election day, most polling stations were relatively peaceful, but the poor conduct of the polls, especially the vote counting and announcement of results,

⁷ Famunyoh C, 'Mediating Election related conflicts' a background paper (2009) p. 8

⁸ ibid

⁹ ibid

¹⁰ ibid

compounded with lingering mistrust and hostilities during the pre-election phase is what led to the outbreak of post election violence.

The conflict occurred in different patterns which were spontaneous, organized and retaliatory.¹¹ The first phase began immediately after the announcement of the contested election results, when ODM supporters took to the streets in protest, especially in Kisumu and the Nairobi slum areas.¹² The second wave consisted of organized attacks in the Rift Valley which appeared to have targeted non-Kalenjins and those perceived as opponents of the ODM party, including the Kikuyu, Kisii and Luhya communities. In retaliation, gangs of Kikuyu youths subsequently attacked non-Kikuyu groups in Naivasha, Nakuru and Mathare.¹³

The violence that broke soon after Kibaki was announced and sworn in as the president of Kenya, was therefore as a result of the outrage felt by Orange Democratic Movement partisan who saw victory being snatched away from them. The issue ODM had in the conflict was their belief that President Mwai Kibaki stole the election, hence was illegally in office. ODM claimed that Kibaki government had no legal or moral basis to rule the country. ODM therefore resorted to mass action as a strategy to the conflict in order to galvanize the anger of their supporters.¹⁴

The most affected region with organized attacks was however, the North Rift region. This was because though the violence was sparked by the disputed elections, it had its roots in

¹¹ These forms of violence are reflected in the reports of different organizations including KCHR, KNCHR, explaining the post election violence; January, 2008

¹² Sarah Bayne, 'Post-election Violence in Kenya: An Assessment for the UK Gogernment' April, 2008

¹³ Report by UN Human Rights Team on Post-Election Violence in Kenya, 2008

¹⁴ Mwangiri M, 'The Water's Edge: Mediation of Violent electoral Conflict in Kenya' (Nairobi, 2008) p. 3

the deeply entrenched, long-festering anti-kikuyu sentiment within certain segments of the Kalenjin, particularly the Nandi and Kipsigis communities who continued to feel aggrieved by the settlement of Kikuyus in their home areas after independence.¹⁵

The electoral violence was also deeply rooted in the constitution which rested more power on one arm of the government –the president, failing to equilibrate the power in government institutions. This created a crisis of authority and legitimacy for all government institutions, particularly in the opposition-dominated areas. The law enforcement, the judiciary and the electoral commission appeared compromised especially after ECK denied full access to observers and party agents to the tabulation of results at the national level.¹⁶ The government institutions were perceived not to be part of the solution but part of the problem hence, making the conflict not institutionalized.

This led the ODM supporters to develop capabilities that would give them leverage to obtain more favorable outcome in the conflict. They resorted to violence as a form of leverage to bargain for presidency, a position they claimed was stolen from them. We can therefore deduce that the violence which broke shortly after Kibaki was announced the president was as a result of the ECK not being able to handle the complaints from both contestants. Hence, the ECK failed to find a better form of leverage to settle the dispute which could have been to postpone the announcement of the presidential results.

The Party of National Unity, on the other hand, believed that president Kibaki was constitutionally declared the winner by a constitutional organization, that he was the

¹⁵ Ibid

¹⁶ EU Observation Mission Kenya, Final Report on General Elections 27 December, 2007 (3 April 2008),p1

commander in chief of the armed forces having been sworn in by the chief justice, and the mass action used by ODM was therefore not authorized by the law.¹⁷

The government also used the humanitarian crisis to create international leverage against the opposition and to support its claim that it was in control and able to restore calm. The movement of a few hundred Internally Displaced Persons out of the North rift by the government served to divert international attention from the flawed election to the ethnically based violence.¹⁸ This indicated the complexity of the violence which started as outbursts following the election results, but later took a new angle of ethnicity.

These issues are important for the analysis of pre-mediation phase since they greatly determine the decision of the parties on the issues to negotiate and whether the management of conflict should be a settlement or resolution. In the electoral violent conflict, the settlement was limited to ending the violence to pave way for the peaceful process. The parties were then to engage in negotiation to address the values in the conflict. Therefore, the deeply structural violence demanded a different approach to the conflict hence a resolution.

4.2 Ripeness of the conflict

Scholars differ over the ripeness of conflicts but the concern is whether there was a ripe moment and at what point was electoral violent conflict amenable to mediation. Zartman in his study states that ripeness is a function of a mutually hurting stalemate, where the parties' sense a precipice or a point where they will both be dramatically worse off if

¹⁷ Cabral Pinto, 'Kenya needs to nurture culture of non-violent mass action, *Saturday Standard*, 19 January, 2008, p.11 in M. Mwangi, *The Water's Edge: Mediation of Violent Electoral Conflict in Kenya* (See opp. Citation)

¹⁸ International Crisis Group: Kenya in Crisis, Africa Report No. 137-21 February 2008

fighting continues.¹⁹ This is the moment when third party mediator should come into play and employ their strategies to bring the conflicting parties to negotiation table to reach or enforce an acceptable settlement.²⁰

Analysts have frequently highlighted the importance of proper timing of mediation initiatives for achieving successful outcomes. Any conflict passes through certain stages. Young observes that certain stages are more amenable to outside intervention than others.²¹ Therefore it is important to initiate mediation at such a ripe moment. The problem comes in identifying what constitutes such moments.²² A few days after violence broke in Kenya, there were attempts made by different third parties to look for a solution to the conflict. An instance was a discreet attempt at a political settlement between ODM and PNU initiated and facilitated by the World Bank resident representative, Colin Bruce.²³ This however collapsed soon even before John Kufuor the then AU chairman left the country since this was not the ripe moment. The hardliners in the Kibaki camp convinced him to disown the document because they believed the Kibaki government had the machinery to outweigh ODM protests. Another attempt was by the Nobel Peace Prize winner and a South African Archbishop Desmond Tutu. But this was not the ripe moment.

¹⁹ Zartman, *Ripe for Resolution: Conflict and Intervention in Africa* (New York, 1989) p. 268

²⁰ Zartman W, 'Alternative Attempts at Crisis Management: Concepts and Process,' in G. Winham, *New Issues in International Crisis Management* (Boulder, Westview Press, 1989)

²¹ Young OR, *Intermediaries: Third Parties in International Crisis* (New York, 1967), p. 19-20

²² Kleiboer MA, *Ripeness of Conflict: A fruitful notion?* (1994) *Journal of Peace Research*, Vol. 31. p. 109-116

²³ The East African, 'Kenya: Kufuor's Whistle- Stop Diplomacy Was only to pave way for Annan (14th January 2008) in The Crisis Group International: Kenya in Crisis. African Report No. 137, (21 February 2008) p. 21

At the beginning of crisis, ODM had little option for putting pressure on the government other than the combination of mass action, violence and internationalization of the crisis, a strategy they tried to advance. However, the calls for mass action did not bring large numbers to the streets. Instead it produced enough negative media images to keep international attention alive, maintain travel advisories and generate continuing diplomatic pressure. Zartman points increased foreign pressure as way of creating a ripe moment with a possibility of the parties considering a negotiated settlement.²⁴ As the electoral conflict escalated into violent confrontation, intensive diplomatic pressure was promptly expended in order to achieve an early mitigation to the conflict.

Later, ODM used threats of total economic paralysis to leverage its power and ultimately compel the sitting government towards a negotiated settlement. Its officials were convinced that unless they hurt the Kibaki establishment's property and sources of income, it will not make concessions. The government on the other hand, used repression to try and contain the situation.

The presence of valid spokespersons to represent their parties is also important in creating a ripe moment. Zartman argues that there is need to be representative of all the significant political forces and factions for the respective protagonists. Most importantly, the spokespersons need the necessary authority to have their constituencies accept a negotiated outcome.²⁵ Just before Kufuor arrived in Kenya, the government spokesman Alfred Mutua had downplayed his role in Kenya claiming that he was coming to take a cup of tea since he was a friend to Kibaki. He also reiterated the government stand on

²⁴ Zartman IW, 'Dynamics and Constraints in Negotiations in Internal Conflicts' in I.W Zartman, ed., *Elusive Peace: Negotiating an End to Civil Wars*. (Washington DC, 1995) p. 18

²⁵ Ibid. p 22-23

negotiation before the arrival of Annan stating that the government was not negotiating for power but engaging in talks to restore peace and calm in the country. During the same period as the international community gave their stand in regard to the mediation process, the state department spokesman Sean McCormack of the United State issued a statement in line with the threat by the international community to cut any legal aid to the government if the political crisis was not resolved.

This is what allows for a 'formula for a way out.'²⁶ This formula refers to the process that enables the parties to negotiate an end to the conflict while satisfying their respective needs or interests.²⁷ The key to such a formular according to Haass is that it involves sufficient compromises on both sides so that leaders can make a case to their members that the national interest was protected.²⁸

When Kofi Annan arrived in the country, there had been several weeks of violence and both parties realized it would not be easy to achieve a unilateral outcome. With the escalation of violence, there was more to loose if conflict was to continue. That was the ripe moment and both groups were now willing to listen to each other and talk. Both parties came into terms with the reality of continued and costly fighting that rocked most parts of the country. This question of ripeness of the electoral violent conflict was important because unless the ODM and PNU were ready to negotiate, the mediator would have wasted his time trying to mediate.

²⁶ Ibid, p 18

²⁷ Salla EM 'Creating the Ripe Moment in the East Timor Conflict' *Journal of Peace Research*, Vol. 34, No. 4 (1997), p. 451

²⁸ Haass Richard, 'Ripeness and Settlement of International Disputes' *Survival*, Vol 30, No. 3 (1988) p. 246

At the time when Annan was expected in the country, the parties had not reached a hurting stalemate and they needed to search for a formula to create the hurting stalemate that would be subjectively perceived by the parties to conflict. This is what led to the strategies of empowerment and disempowerment of ODM and PNU.

4.3 Creating a hurting stalemate

Third parties can sometimes create a hurting stalemate by employing a variety of strategies instead of taking a passive position only to pass judgment of misguided interventionary efforts. The main challenge is how to create a favorable condition rather than wait for them to appear.²⁹ The strategy can be to reduce the likelihood of intransigence by a conflicting party or prevent a stronger party from imposing its unilateral solution.³⁰ The most important point is that any attempt of mediation before the ripe moment is not likely to bring satisfactory results.³¹

The concepts of empowerment and disempowerment are at the center of creating the ripe moment where parties have failed to reach a hurting stalemate. This happens when there is power parity between the conflict parties which make it difficult to have mediation. This parity needs to be controlled at the initial stages of mediation to bring the parties involved to a level where they will have negotiation that is acceptable to all. The third party therefore empowers the weaker party to make it stronger; and disempower the stronger party to make it weaker so that both parties are equal in power.

²⁹ Rubin Jeffrey, 'The Timing of Ripeness and the Ripeness of Timing', in L. Kriesberg & S Thorston, eds, *Timing the De-escalation of International Conflict*, (New York, 1991)p. 240

³⁰ Kristine B. & Karaev Z, 'Playing Cat -and -Mouse: Conflict and Third Party Mediation in Post-Soviet Space.' *The Online Journal of Peace and Conflict Resolution* 6.1 Fall: 192-209 (2004)p. 3

³¹ David C & Rowlands D, 'Evolutionary Models and Third Party Intervention in Ethnic Conflict' (Carleton University, 1999)

Most mediation analysts³² indicate that a marked power disparity will strengthen the stronger party's view of the mediator as a stumbling block towards the achievement of victory in conflict. Such a disparity reinforces the stronger party's unwillingness to accept mediation in the first place and also, enhances its reluctance to make any concession or compromises during mediation essential for attaining successful results. Since President Kibaki and his aids were firmly in control of state machinery, the PNU camp was unwilling to accept any process that risked invalidating Kibaki's election.

To create a hurting stalemate and force the Kibaki administration to engage in mediation, the international community refused to recognize the government as legitimate. This however did not hold waters since the succession of Kibaki government was constitutional according to Kenyan laws. It was true that there were disputes about the presidential election, but the nature of the conflict did not qualify the international community to respond by threatening not to recognize the Kibaki government.

The international community used threat to instill a sense of urgency on the parties, especially the government side, which had more to lose if violence continued. The US through its assistant secretary of state Fraser Jandayi issued a statement, prior to the arrival of Kofi Annan and his team of eminent persons that it could not conduct business as usual in Kenya.³³ The EU also threatened to review its relations with Kenya if a solution to the conflict was not found. This meant that Kenya would not transact business

³² Touval S, 'The peace brokers: Mediators in the Arab-Israeli Conflict,' 1948-1979 (New jersey, 1982) p. 9; Young OR, 'Intermediaries: Third parties in international crisis' (New jersey, 1967) p. 43-4; Zartman IW, 'Explaining disengagement. In *dynamics of third party intervention: Kissinger in the Middle East*, edited by Rubin (New York, 1981) p. 150 ; Kriesberg L, 'Social conflicts' (New jersey, 1982) p. 274

³³ Mwangi M The Water's Edge: Mediation of Violent Electoral Conflict in Kenya,' first edition (Nairobi, 2008)p. 77

with most countries from this bloc. This came on the backdrop of the findings made by the EU election observers on the irregularities that had to be investigated and a solution found in order to restore peace back to the nation.

The international donors made it clear that they would not give aid to Kenya until the results of the presidential election were resolved. They suspended funding to some of the government programmes, particularly the governance, justice, law and order sector reform programme. This affected the Police, Kenya National Commission on Human Rights, national registration bureau, national youth service, the anti-corruption commission, and the law reform commission.³⁴

Although, the issue of donor funds did not create ripeness for negotiations, since Kenya had grown to a level where a greater percentage of its budget resulted from its revenue collection. This meant that the aid from the western countries only benefited the grassroots projects. Hence, cutting such aid would not impact on the government. Instead, it would only affect the ordinary people who the international community claimed to protect. In my view this was not an effective leverage. Nevertheless the international leverage especially the west continued to ensure that the political leaders were brought together to agree on negotiation.

The imbalance of power between the entrenched head of state and the leader of opposition made the negotiation of a political settlement extremely difficult. Kenya's institutions were weighed towards the PNU coalition despite its defeat in the

³⁴ Mwagiru M, 'The Water's Edge: Mediation of Violent Electoral Conflict in Kenya,' first edition (Nairobi, 2008) p. 85

parliamentary elections. The constitution also worked in their favor since it did not provide a credible judicial process for settling electoral disputes. While presidential and parliamentary candidates would have needed to prepare for lengthy court proceedings if petitions were filed, they would continue to enjoy all the benefits of office since they had been declared winners, hence no incentive to make concessions. As a result the government became opposed to mediation which Modelski tries to explain as follows: 'it goes strongly against the grain of human nature to seek a negotiated solution when one can be imposed by merely demanding it.'³⁵ The government was therefore determined to adopt a more legalistic route to finding a solution to the conflict.

The Government strategy was to use the state machinery to tame the ODM and its allies through heavy-handed repression against demonstrators, extrajudicial killings if necessary intimidation and occasional corruption³⁶ to show the opposition not to expect any concession.

For a mediator, power inequality between the disputants is an important source of role hindrance, because the mediator's goal is often to assist parties to compromise.³⁷ Kressel argues that the higher power party is bound to be sensitive to the implied premise upon which the mediator's activities would be based, namely that 'as the party controlling more of the pie, will none the less be asked to do less of the eating.'³⁸ This is the notion the Kibaki government had when it finally agreed to mediation. Yet I believe that it was

³⁵ Modelski G, *International settlement of internal wars*. In *international aspects of civil strife*, edited by Roseneau J (New jersey, 1964) p. 149

³⁶ ODM feared the buying of its parliamentarians by PNU ahead of the election of the speaker and tried to impose a public vote so that any defector would immediately be identified.

³⁷ Kleiboer M, *Understanding Success and failure of International Mediation*

³⁸ Kressel K, 'An exploratory analysis of role strain in international mediation. In *dynamics of third party intervention: Kissinger in the Middle East*,' edited by Rubin JZ (New York, 1981)p. 226-52

the mutual recognition of the two parties and their legitimacy as Deutch³⁹ puts it that mattered in the management of the electoral violent conflict.

Due to the unambiguous power advantage that PNU had as the government, it tried to make the path of settlement clear by indicating that it was ODM that was expected to make concession. The government strategy was therefore to give priority to peace, dialogue and reconciliation while maintaining that electoral disputes be settled in courts. This implied that they were only willing to accept mediation if ODM acknowledged that Kibaki's government was legitimate thus its subsequent willingness to make greater concession. This posed a major challenge in the mediation entry to the conflict because it endangered the process.

Organsky⁴⁰ and Wright⁴¹ claim that power parity may endanger successful mediation because it stimulates competition that may lead to escalation and a show down of force in an attempt by each party to upset the power. ODM's strategy to invalidate the presidential results was first to claim a share of executive power. To avoid such show downs, Annan arranged for a Kibaki-Odinga meeting followed by an agreement on the format and agenda of negotiations. The panel's strategy was to build confidence in the process by reassuring PNU and the government on its objective. Both the name given to the talks – Kenyan National Dialogue and Reconciliation – and the sequence of the issues on the agreed agenda were concessions which put emphasis on the violence and downplayed the importance of a settlement to the electoral dispute. This was the only

³⁹ Deutch M, 'The Resolution of Conflict: Constructive and Destructive processes' (New Haven, 1973) p

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⁴⁰ Organski AFK, 'World politics' (New York, 1960) p. 293

⁴¹ Wright Q, 'The Escalation of International conflicts' (1965), *Journal of Conflict Resolution*. Vol. 9 p.

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way to make entry to the negotiations and prevent any showdowns that would lead to escalations.

4.4 Kufuor's good offices

Even though the use of good offices is not mentioned anywhere in the UN charter or in the AU's Constitutive Act, its practice has become common in response to the necessity to manage conflicts in international relations. It is a way in which third party intervenes in order to try and avoid a conflict from escalating, by facilitating the parties to move towards negotiations or the use of any other peaceful means to manage conflict.⁴² Good offices can be undertaken with or without the parties' invitation. However, it is necessary that the person using good offices be accepted by the parties in the conflict if it is to yield positive results.

The use of good offices in managing the electoral violent conflict was an intervention by the African Union to help pave way for the mediation process. It was intended to facilitate negotiations between PNU and ODM who were the main antagonists in the conflict. The then AU chairman, John Kufuor, arrived in the country on 7th January, 2008 to try and bring the two principals of the conflict to agree to mediation. He applied a one-on-one approach by meeting Kibaki and Raila separately in consultation to find a compromise position acceptable to both parties and agree on a framework for negotiation. Kufuor's good offices was faced with many challenges and by the end of his three days facilitation, the two parties were still on deadlock. The major setback was the blame

⁴² Stein JG, 'Getting to the Table: Process of International Pre-negotiation', *International Journal*, XLIV (1989) p. 232

game that the two parties played on each other. For ODM, Kibaki was not receptive to international mediation leading to his failure to honor the mediation. While for PNU, it was ODM that was not responding to the mediation proposals through Kufuor's office.

The issue was that the Kibaki government wanted to be recognized as legitimate which ODM was not ready to accept. ODM's proposal was that Kibaki resigns, to allow for the retallying of votes and a re-run be conducted on presidential elections only. These pre-conditions set by both parties made it difficult for them to agree on the nature of talks and hence the issues that should be at the center of mediation. It was therefore necessary that Kufuor found a way of trying to make the parties make concessions to enable them agree on the framework of their negotiations.

Just before Kufuor arrived in Kenya, Kibaki decided to name half of his cabinet. The argument was the need for the government to remain functional as the talks picked up. This move raised protests from different parties with US seeing it as a hindrance to the solution they had proposed from the onset that the solution to the violence must be one that included ODM as part of the government.

Another challenge was posed by the multiple negotiation tracks that were taking place at the time when Kufuor was conducting his facilitation as the official third party. Up to the time Kofi Annan began his engagement, there were a number of tracks active in the management of the electoral violent conflict. There was the official one conducted by Kufuor, a US front by assistance secretary Jendayi Fraser, the earlier attempt made by

Desmond Tutu, the retired Presidents Forum, and the one by Colin Bruce of World Bank.⁴³ All these efforts were diverse at their capacity and all attempted to get an outcome that was useful in the process.

At the end of the three day mission of Kufuor, his good offices managed to get the two parties agree to mediation and accept the third parties who would serve as mediators in the negotiation process. The team of mediators selected was to operate under the auspices of AU. Kufuor's team comprised of eminent persons from Africa, namely Graca Machel and Benjamin Mkapa the ex-president of Tanzania. This team was chaired by the former UN secretary general, Kofi Annan. The main challenge at this point was that the mediator was not to be the wishes of the parties to conflict only, but somebody the western community approved. This made it obvious the western intentions and their keenness to prescribe to the mediators what they should do and what sort of outcome they wished to reach in this conflict.⁴⁴

Kufuor's expectation on the mandate of the mediation team was clear in his statement when he said the team should urge the political parties to overcome the divisions and disputes over the election outcome, engage in a genuine process of reconciliation without putting any pre-conditions, address the disputed issues, agree on a way to share power in order to win the confidence of Kenyans and Kenya's international partners.⁴⁵

⁴³ Mwagiru M, 'The Water's Edge: Mediation of Violent Electoral Conflict in Kenya,' first edition (Nairobi, 2008) p. 64

⁴⁴ Ibid, p. 67

⁴⁵ ibid

Chapter 5

5.0 Activities of pre-mediation Phase

The pre-mediation phase encompasses the preparatory activities which are crucial in determining the mediation process and its outcome. Even though this phase might fail to develop to the mediation phase, it provides a session where parties to conflict are able to reassess their relationship.¹ It is therefore a phase that is essentially concerned with negotiating the mediation. Stein argues that this phase is capable of bringing important political benefits independent to the process especially where the intention to enter into it was not to get to the negotiating table.² During this stage of the process, planning of the negotiation takes place with the help of the mediator. The preparation includes securing an agreement to negotiate and on what issues, drawing up the agenda for the negotiations, agreeing on the venue and choosing the representatives who will conduct the actual negotiation.

Whenever this phase is not handled properly, the entire mediation process is at risk of failing. The effects are likely to be felt during the mediation phase which in turn influences the outcome of the process.³ Therefore, this phase requires a lot of preparation by the parties and diplomatic activities which sometimes can be time consuming and very complex depending on the nature of conflict. Yet, in most cases this phase is handled hastily as a result of the pressure to find a solution to the conflict quickly.

¹ Janice G. Stein, 'Getting to the Table: Process of International Pre-negotiation' *International Journal*, Vol. XLIV (1989) p. 231-236

² Stein, see the opposite Citation, p 232

³ *ibid*

This chapter focuses on the preparatory activities by the parties to conflict, the mediator and other third parties evident during the pre-mediation phase of the electoral violent conflict. The intention is to analyze the role this phase played in the management of the conflict and the challenges experienced at this stage of the mediation process.

5.1 The parties' activities

The primary parties to the electoral violent conflict, PNU and ODM, engaged in various activities in the preparatory phase of negotiating the electoral conflict. The first important task for them was to agree whether to engage in the mediation and to accept the mediators. Initially, PNU was opposed to international mediation because it considered it interference to the domestic affairs of Kenya⁴ and that the electoral conflict was a Kenyan problem.⁵ Their position was that ODM needed to use a legal framework and present their allegations on poll results to the court.⁶

'Recalling that the 2007 general election was the 10th to be held in Kenya, the results were not the only ones to be disputed. Indeed, in the past those that lost and had claims went to court and the matter adjudicated within a year.'⁷

PNU was also reluctant to negotiate with ODM whom they believed lost on disputed presidential elections and the pressure that came from its constituents for Kibaki not to relent his presidency.⁸ But this position later changed when PNU stated its willingness to meet with the opposition without pre-conditions.⁹

⁴ Interview with Gichira Kibara, Secretary, Justice and Constitutional Affairs, August 2010

⁵ President Kibaki's brief to the chair of African Union. <http://www.mfa.go.ke/mfacms/index>

⁶ Interview with Gichira Kibara, Secretary, Justice and Constitutional Affairs, August 2010

⁷ Wetangula gives envoys a briefing on the post election situation. <http://www.mfa.go.ke/mfacms/index>

⁸ Interview with Gichira Kibara, Secretary, Justice and Constitutional Affairs, August 2010

⁹ Wetangula gives envoys a briefing on the post election situation. See opposite citation

As the government, PNU initiated the mediation process by sending a delegation headed by Foreign Minister Moses Wetangula to Ghana to have discussions with the then AU Chairman President John Kufuor after his three days visit to Kenya on the way forward.¹⁰ Another delegation was sent to the EU which signified the government's commitment and willingness to find a solution to the poll crisis and to stabilize security in the country.¹¹

ODM on the other hand could not hold any direct negotiations with PNU due to lack of trust and was only opened to negotiations on condition that they were conducted in the presence of an international mediator. They also demanded that mediation be witnessed by several people to allow for transparency in the process.¹²

The major challenge at this point was the divergent positions and pre-conditionality both parties held. While PNU demanded that ODM accept Mwai Kibaki as the duly elected and legitimate president of Kenya, ODM felt that there was a vacuum in the presidency and called for Kibaki's resignation.¹³ Therefore, the mediator was charged with the responsibility to reconcile these views and have a common ground to ensure that both parties were ready to sit together and find a solution to the political crisis facing the country at that point which would in turn ensure smooth running of the mediation process.¹⁴

¹⁰ Interview with Moni Manyange, AU Desk in the Ministry of Foreign Affairs, August 2010

¹¹ Interview with Gichira Kibara, Secretary, Justice and Constitutional Affairs, August 2010

¹² Mwangi M, 'The Water's Edge: Mediation of Violent electoral Conflict in Kenya' (Nairobi, 2008)

¹³ Interview with Moni Manyange, AU Desk in the Ministry of Foreign Affairs, August 2010

¹⁴ ibid

The parties had the responsibility to agree on the issues that were to be the focus of the mediation process. Both PNU and ODM raised significant issues which formed the basis of the framework for the negotiations. Their varied views on fundamental issues led to the negotiation of the pre-negotiation agreement that was led by the chief mediator Kofi Annan. The issues agreed upon through consultation of the parties are what underlined the agenda of the negotiations.

Each party selected the negotiators to represent them in the negotiation. The party of National Unity initially set up a ten member committee who analyzed the poll results and later proposed three delegates that represented it in the negotiations.¹⁵ They included Sam Ongeru, Martha Karua, Mutula Kilonzo and Gichira Kibaara as their liaison officer. This selection was a representation of the parties that made up the coalition of Party of National Unity and for the region balancing.¹⁶ The party also selected Dr. Ludeki Chweya as an alternate liaison officer and the team was led by Martha Karua¹⁷.

ODM on the other hand selected William Ruto to lead the delegates, Sally Kosgei and Musalia Mudavadi with Karoli Omondi as their liaison officer.¹⁸ However, the teams were later expanded by increasing one more person on both sides when ODM requested to have a lawyer in their negotiating team.¹⁹ As a result, James Orengo joined the team of negotiators representing the ODM side while Moses Wetangula was added to the PNU

¹⁵ Interview with Gichira Kibara, Secretary, Justice and Constitutional Affairs, August 2010

¹⁶ Interview with Gichira Kibara, Secretary, Justice and Constitutional Affairs, August 2010

¹⁷ ibid

¹⁸ Mwangi M., 'The Water's Edge: Mediation of Violent electoral Conflict in Kenya' (Nairobi, 2008)

¹⁹ Interview with, Gichira Kibaara, Secretary, Justice and Constitutional Affairs, August 2010

side to ensure balance on both sides.²⁰ The responsibility of the teams was to negotiate the schedule of the negotiation but under Kofi Annan.

After naming the delegations, the panel of mediators used a strategy that helped to build confidence in the process. They allowed the teams representing the primary conflicting parties to come up with a name suitable for the negotiations that were taking place. Hence, the name 'Kenya National Dialogue and Reconciliation.'²¹ Delegates from both sides agreed on the name because it brought out the need for national unity and the responsibility the leaders had to reconcile Kenyans.²² The name given to the talks also gave the impression that the government had not broken down and was still in control.²³

The venue for negotiations was a crucial factor to be considered at this point. Since ODM declined to hold any negotiations within the government offices because this would legitimize Kibaki's government,²⁴ several venues were proposed including KICC and even the AU offices. Even though both parties were comfortable with KICC, the government declined to fund it.²⁵ Annan therefore proposed Serena and since it was funded by the UN,²⁶ it became a suitable venue because it was neutral to both parties and was also central and convenient for the team of mediators who were staying in the same hotel. PNU agreed to this arrangement, since they had a greater responsibility as the

²⁰ *ibid*

²¹ "Kenya national Dialogue and Reconciliation: Annotated Agenda and Timetable", mimeo, 28 January 2008

²² Interview with Gichira Kibara, Secretary, Justice and Constitutional Affairs, August 2010

²³ Interview with Gichira Kibara, Secretary, Justice and Constitutional Affairs, August 2010

²⁴ *Ibid*

²⁵ Interview with Gichira Kibara, Secretary, Justice and Constitutional Affairs, August 2010

²⁶ *ibid*

government to find a solution to the crisis.²⁷ Both the name given to the talks and the choice of venue was a strategy to make the process Kenyan.

5.2 Diplomatic activities

The pre-mediation phase of the electoral violent conflict was characterized by various diplomatic activities. There was the diplomacy by the chief mediator Kofi Annan and his team of eminent persons from Africa, President Museveni's facilitation from Uganda and the diplomacy at IGAD and the African Union.

5.2.1 Museveni's Facilitation Diplomacy

President Museveni of Uganda facilitated the negotiations at the capacity of the EAC chairman. His facilitation went hand in hand with Annan's diplomacy. He was concerned with the implication of the conflict that was being felt in the region and the impact the conflict had on his country. In his diplomacy, president Museveni held meetings with president Kibaki, the ODM team and other third party actors including Kofi Annan, the former president of Mozambique-Joachim Chissano, Ann Tibajuka of the United Nations and several heads of diplomatic missions based in Nairobi.²⁸

When Museveni met with the ODM party, the issues raised, were allegedly rigged elections, the evidence the party had, and their proposal on how to solve the crisis.²⁹ The

²⁷ ibid

²⁸ Mwangi M, 'The Water's Edge: Mediation of Violent electoral Conflict in Kenya' (Nairobi, 2008) p. 96

²⁹ Ibid

party wanted president Kibaki to admit that he rigged the elections and a presidential re-run be conducted to restore hope back to Kenyans.³⁰

Museveni in his diplomacy, made various proposals on what would help manage the conflict. First, he suggested that a judicial commission of inquiry be set to investigate claims on the faulted presidential results in order to determine the winner of the elections.³¹ This was so because both parties had accused each other of rigging the elections. Second, he proposed that PNU and ODM establish an interim administration that would enable them to share power³² and third, he recommended an investigation to the poll violence.³³

However, the parties failed to agree on these proposals. Each of them wanted a different approach in dealing with the issues raised by Museveni. While ODM welcomed the idea of sharing power, the government side was adamant because they saw ODM as being responsible for the civil unrest and violence that followed the announcement of presidential results.³⁴ PNU was however ready to accommodate ODM in a government of National Unity for the purpose of restoring stability back to the country.³⁵

On setting up the judicial commission, the government insisted on being the legitimate authority to select the members. The argument was that the government had the mandate

³⁰ Ibid

³¹ Mwangi M, *The water's Edge: Mediation of Violent Electoral Conflict in Kenya* (Nairobi, 2008)p. 96

³² ibid

³³ ibid

³⁴ Mwangi M, *The water's Edge: Mediation of Violent Electoral Conflict in Kenya* (Nairobi, 2008) p. 97

³⁵ Interview with Gichira Kibara, Secretary, Justice and Constitutional Affairs, August 2010

to come up with a body that would look into the dispute and advice on the matter so that it could take necessary action to find a solution to the conflict.³⁶ ODM on the other hand insisted they had to be involved in the exercise to create balance and avoid biasness from the government side.³⁷ Therefore, it was necessary that the commission comprise members selected by both parties. The two parties also proposed the time frame of three months upon which the commission was to conclude its investigation.

The main problem faced with this facilitation was not just on the disagreement on how to handle the proposal made by Museveni, but ODM's perception towards Museveni. They did not take his proposals seriously because they felt he was a friend to the president hence not neutral in the conflict.³⁸ His proposals also gave a quick solution to the problem and would not get to the root causes of the conflict.³⁹ This view was shared by the government side when Wetangula stated in a meeting with IGAD foreign ministers:

'In our national dialogue, we must seek to address all underlying problems rather than rash for quick-fix solutions. In this regard, we view the ongoing dialogue as essential to long term strategies to address these challenges and in providing us with durable solutions.'⁴⁰

Both parties therefore wanted a lasting solution that will stand the test of time. ODM party also could not give the government a chance to use its state machinery to influence

³⁶ ibid

³⁷ bid

³⁸ Interview with Gichira Kibara, Secretary, Justice and Constitutional Affairs, August 2010

³⁹ ibid

⁴⁰ President Kibaki's speech at the AU summit meeting in Addis Ababa. <http://www.mfa.go.ke>

the solution to the problem.⁴¹ Hence, they rejected the proposal to have the election petition filed in high court.

Museveni's facilitation played a major role at the pre-mediation phase in that along side Annan's diplomacy, he managed to contribute to bringing the two principals agree to have negotiations. His meeting with President Kibaki and Kofi Annan made it possible for the face-to-face meeting that was held on 24th January 2008, between the two principals.

5.2.2 The mediator's activities

The chief mediator in managing the electoral violent conflict was the former UN Secretary General Kofi Annan. He was assisted by a team of eminent persons from Africa. They included Tanzania's former president Benjamin Mkapa and Graca Machel, the former first lady of South Africa. The AU chairman John Kufuor nominated koffi Anna to lead the mediation process whose acceptance by the conflicting parties was important since it gave the process authenticity.⁴² The AU secretariat also selected the team of eminent persons proposed by Annan to assist him in the mediation process.⁴³ This is because the African Union was mandated to find a solution to the Kenyan conflict.⁴⁴ This played a major role in laying down a framework upon which the mediation process took place. Hence they engaged in various diplomatic activities at the

⁴¹ Mwagiru M, ' The Water's Edge: Mediation of Electoral Conflict in Kenya' (Nairobi, 2008)

⁴² Interview with Moni Manyange, AU Desk in the Ministry of Foreign Affairs, August 2010

⁴³ Interview with Gichira Kibara, Secretary, Justice and Constitutional Affairs, August 2010

⁴⁴ Interview with Moni Manyange, AU desk in the Ministry of Foreign Affairs, August, 2010

pre-mediation level to get the two parties agree to go to negotiation table and on the issues to negotiate.

Upon his arrival, Annan had to establish and stabilize the process. He therefore began his diplomacy by stating that he did not come with a solution but was ready to listen to both parties to help them find a solution to the crisis facing Kenya at that time.⁴⁵ He took a neutral position and did not give blueprint for settlement, but rather gave a picture of those aspects that most concerned him and his team which included bringing ODM and PNU closer to the substance of the conflict and to make them aware of their perceptual differences.⁴⁶ This was a strategy that opened the parties to conflict to negotiate with the understanding that Annan was not there to impose any solution. His role was to clarify the situation for the negotiators and establish a protocol for negotiations.⁴⁷

In his first day in Kenya since the violence broke, Annan met with a cross section of interested parties. These included the speaker of National Assembly, President Yoweri Museveni, former presidents Benjamin Mkapa and Joachim Chissano and the ODM leadership.⁴⁸ The meetings helped him to understand the issues that led to the conflict and the perceptions of the parties involved towards the conflict. By understanding the conflict, Annan was able to rationalize his moves and come up with strategies and techniques suitable for the real situation facing Kenya at that moment.

⁴⁵ Kofi Annan as quoted by the media in an interview soon after his arrival in Kenya

⁴⁶ Interview with Moni Manyange, AU Desk in the ministry of Foreign Affairs, August 2010

⁴⁷ Jackson E, 'Meeting of Minds: A Way to Peace Through Mediation', (New York, 1952)

⁴⁸ Mwangiri M, 'The Water's Edge: Mediation of Electoral Conflict in Kenya' (Nairobi, 2008) p. 98

The strategy Annan used was to meet with the parties to conflict separately. He therefore conducted shuttle diplomacy from the Orange house, State house and Serena Hotel to meet the party leaders and the team of negotiator.⁴⁹ Through this, the parties provided him with information and made offers that enabled him to look for reciprocity between the parties.⁵⁰ This also allowed the parties to define their goals, communicate effectively with each other and come to an agreement on the issues to negotiate as far as the electoral violent conflict was concerned. At the same time Annan was able to lay out his perceptions of the issues involved in the Kenyan conflict, and interpret their complexities to the parties.⁵¹

Annan was also charged with the role to suggest basic principles, procedures and mechanisms through which the negotiation was to be conducted.⁵² He saw the need and urgency to end the violence that was escalating in most parts of the country hence the need to find a solution to the political crisis that was as a result of claims of vote rigging at the presidential level.⁵³ This was a short term solution to the conflict that was to be followed by a long term solution. He therefore proposed the need to allow the parties to deal with the historical land issues, injustices and unequal distribution of resources dating back to the pre-independence period. This later proposal was to be realized by the parties once they agreed to embrace mediation as a way of finding a solution to the conflict.⁵⁴ The first proposal was to channel the initial discussions towards areas in which the

⁴⁹ Interview with Moni Manyange, AU Desk in the Ministry of Foreign Affairs, August 2010

⁵⁰ *ibid*

⁵¹ Jackson E, E, 'Meeting of Minds: A Way to Peace Through Mediation', (New York, 1952)

⁵² Young OR, 'Intermediaries: Additional Thoughts on Third Parties' *Journal of Conflict Resolution*, Vol. 16 (1970) p.51-56

⁵³ Mwangiri M, 'The Water's Edge: Mediation of Electoral Conflict in Kenya' (Nairobi, 2008)

⁵⁴ *ibid*

negotiators were felt to agree⁵⁵ which was to end the violence. This helped to raise the outcome that accrued to the negotiations and reinforce the negotiators and parties during the mediation phase.

5.2.3 Diplomacy at the regional organizations

The electoral violent conflict in Kenya just like any other conflict took place within a particular conflict system and therefore needed attention by the regional organizations. If the conflict was not managed, there were fears of having its repercussion in the region since Kenya's instability would have generated spillover effects in the neighboring states. It was on this basis that the electoral violent conflict became the center of focus to AU, IGAD and EAC. These organizations considered the conflict in Kenya a threat to the region if not managed and resolved quickly.

Soon after the violence broke out in Kenya, these regional organizations expressed concern on how to resolve the crisis. President John Kufuor and Yoweri Museveni visited the country in their capacities as chair of African Union and East African Community respectively.

The African Union played a major role in the management of the electoral violent conflict in that it had the mandate to find a solution to the conflict. It therefore facilitated the mediation process and through the good offices of the then Chairman, John Kufuor,

⁵⁵ Jackson E, 'Meeting of Minds: A Way to Peace Through Mediation', (New York, 1952)

nominated the chief mediator and other eminent persons from Africa who led the mediation.⁵⁶

During the same period, the Kenyan conflict formed the center of discussions in the AU summit and foregoing ministers meeting that took place in Addis Ababa. ODM insisted on sending a delegation to these meetings claiming that they were the winners of the 2007 general elections and therefore had the right to be represented in the AU meetings. At a meeting held between Moses Wetangula, Minister for Foreign Affairs and the chairman of the African Union Commission Alpha Omar Konare in Addis Abbaba, the AU chair revealed that ODM leader Raila Odinga had written to him requesting that an ODM delegation be allowed to attend the AU meeting.⁵⁷ This was a way in which ODM intended to increase their pressure on the Kibaki government.⁵⁸ Unfortunately, their delegation was denied accreditation in the AU since according to the AU constitutive act and international law they were not recognized as a government delegation.⁵⁹

ODM wanted an opportunity to address the summit and air their grievances so that the AU could take appropriate action in resolving the conflict. To prevent ODM from attending the meetings the government ensured that only one delegation was allowed to represent Kenya in the meeting. This was in line with the diplomatic procedures of AU.

⁵⁶ Interview with Moni Manyange, AU desk in the Ministry of Foreign Affairs, August 2010

⁵⁷ Wetangula Meets the Chairman of the African Union Commission in Addis Ababa.
<http://www.mfa.go.ke/mfacms/index>

⁵⁸ *ibid*

⁵⁹ Interview with Moni Manyange, AU desk in the Ministry of Foreign Affairs, August 2010

Hence, ODM representative was purely locked out leaving the Kibaki government with the sole right of representation at the meeting at the foreign minister's meeting.⁶⁰

The subject of discussion in the AU summit meeting encompassed the Kenyan conflict which was at the heart of it splitting the summit with some heads of state arguing that ODM would have been allowed a representation in the summit since they were the aggrieved party to conflict.⁶¹ However, this move was denied by the Kibaki government whose stand was that AU diplomacy was only for states and as the head of state he was the one with the mandate to represent Kenya, while ODM being an opposition of the government did not have a standing at the AU according to the diplomatic rules. These different points of view created a rift as far as the Kenyan conflict was concerned in the AU summit.⁶²

While addressing the AU summit in Addis Ababa, president Kibaki argued that the Kenyan conflict needed a solution that will address the underlying issues of the conflict.

'I remain committed to our common search, as Kenyans, for a political solution that will seek to identify and address, not just the immediate actions that we must take to restore full normalcy, but also long-term measures that respond to the underlying problems.'⁶³

He also stated that power sharing was not enough to resolve the conflict. This view was shared by Alpha Konare who reckoned that power sharing was far from being a

⁶⁰ Mwagiru M, 'The Water's Edge: Mediation of Violent Electoral Conflict in Kenya, (Nairobi, 2008)

⁶¹ ibid

⁶² ibid

⁶³ President Kibaki's speech, at the AU Summit Meeting in Addis Ababa. [http:// www.mfa.go.ke](http://www.mfa.go.ke)

convenient solution to the problem if there was no good governance and respect for democratic principles.⁶⁴

‘The solution does not lie in power sharing...if the democratic process has to be followed to the end, and the final end should be sharing of the cake, then we shall never have peace because there will always be unsatisfied and dissatisfied parties.’⁶⁵

As far as the allegations of irregularities were concerned, he wanted them to be channeled through the Kenyan legal framework. This was important in that it helped the mediator to come up with a clear strategy on how to handle the negotiation after knowing the stand of the government and also what ODM was demanding.

The issue in the IGAD foreign minister’s meeting was the need to resolve the Kenyan conflict. The foreign ministers proposed that the Kenyan conflict be resolved within the constitutional and legal frameworks.⁶⁶ At the same time, in the IGAD summit of heads of states that was attended by president Kibaki, who argued that the electoral conflict that occurred in Kenya was a normal phenomenon in any democracy,⁶⁷ wanted the ODM party to follow the constitutional and legal framework for their allegations of irregularity by petitioning them to the courts. IGAD did not have a parallel initiative but they expressed solidarity and support to the AU initiative that was led by Koffi Annan.⁶⁸

⁶⁴ Wetangula Meets the Chairman of the African Union Commission in Addis Ababa. <http://www.mfa.go.ke>

⁶⁵ Konare’s speech, during his opening address to the Executive Council in Addis Ababa. <http://www.mfa.go.ke>

⁶⁶ Mwangi M, ‘The Water’s Edge: Mediation of Violent Electoral Conflict in Kenya, (Nairobi, 2008)

p. 101

⁶⁷ *ibid*

⁶⁸ Statement by Seyoum Mesfin at IGAD Foreign Affairs Ministers meeting hosted by Wetangula at the hotel Intercontinental, Nairobi on 8th February, 2008. <http://www.mfa.go.ke>

5.3 The framework for mediation

Mediation is often carried out in a defined framework whose basic dimensions are agreed upon between interacting parties including the third party.⁶⁹ Hence, the framework for mediating the electoral violent conflict had the proposals of both parties to conflict and those of the mediator. It contained what the PNU government and ODM saw as fundamental to the political crisis and the basis of the agenda for the mediation. Thus, the framework contained the views of PNU, ODM and Annan's team.

At this point of pre-negotiation, both parties raised significant issues that Annan had to mediate in order to bring the two sides to the negotiating table. At the same time he raised what he saw as crucial if the conflict between the two parties was to be resolved. This was possible because of the fact that a mediator can help in creating a framework for the mediation and at the same time is free to contribute proposals for a solution.⁷⁰ Annan's major task was therefore to get the parties to agree on a framework that would specify the agenda and rules of the negotiation. His responsibility was to mediate an agreement that would get the two parties round the table.⁷¹ His team therefore facilitated the negotiation of the agenda to ensure that what parties held as fundamental to the management of the conflict were included in the agreement. Annan's greatest challenge at this point was to deal with the hardliners in both PNU and ODM camps whose intentions were to drag the timing of negotiations hence causing the mediation to fail.⁷²

⁶⁹ Pechota V, 'Complementary Structures of Third-Party Settlement of International Disputes' (New York, 1971) p. 14

⁷⁰ Muhlen A, 'International Negotiations: Confrontation, Competition, Cooperation with many Inter-cultural facts and case studies' (Makerere University, 2006) p.135

⁷¹ Interview with Moni Manyange, AU Desk in the Ministry of Foreign Affairs, August 2010

⁷² *ibid*

5.4 Setting the agenda

This is one of the most important activities in the pre-negotiation stage. It is the point at which decisions are made which will have eventual consequence in the mediation process hence determining its outcome. Setting the agenda involves making the decision about what should be included or excluded from the negotiations.

The agenda in managing the electoral violent conflict was proposed by Annan and agreed upon by the two parties involved in conflict through the mediation of Annan.⁷³ It was important for the parties to agree on the agenda in order to control the decision making process. The parties therefore presented their views to Annan on what should be the subject of negotiations. Both PNU and ODM came up with issues they wanted to be discussed in the negotiations and the framework of the mediation process. They offered various terms of agreement that were mediated by Annan and which later formed the pre-negotiation agreement.

ODM as a party to the electoral conflict demanded that Kibaki accepts that he lost the presidential elections to Raila Odinga. They wanted Kibaki to resign in order to pave way for a re-run under an interim government which was to allow for power sharing in line with the formula determined by each party's strength in parliament.⁷⁴

Raila specified his agenda for the negotiation by stating his position that he was willing to participate in an interim government that would organize for another election in three months. He also demanded that the elections be conducted by a completely independent

⁷³ Interview with Gichira Kibara, Secretary, Justice and Constitutional Affairs, August 2010

⁷⁴ Namunane B, 'Annan's Agenda for Peace' in the Daily Nation, 29th January, 2008. p. 2

electoral commission.⁷⁵ His condition was that the negotiations be based on President Kibaki's acceptance that the elections were compromised. He wanted an internationally constituted body to be appointed to examine the controversial results of the 2007 general elections. This body was to recommend the modalities and procedures for resolving the conflict and the international community was to facilitate its appointment.⁷⁶

On the other hand, Kibaki made his agenda clear should he negotiate with Raila. In a meeting that involved Raila Odinga and President Kufuor, as the chairman of AU, Kibaki demanded that ODM leadership recognize his government and that he was the legitimately elected president of Kenya according to the constitution of Kenya.⁷⁷ Another issue he pointed out was for ODM to urge their supporters to stop the violence that was going on in most parts of the country. He was therefore concerned with ending the violence and restoring stability back to the country.⁷⁸

Instead of an interim government proposed by ODM, PNU proposed a government of National Unity that would accommodate ODM by offering them a non-executive prime minister's post and a few cabinet positions.⁷⁹ This was clearly demonstrated by Kibaki appointing half of the cabinet just before the arrival of chief mediator Kofi Annan which was a clear indication that there was a government in control⁸⁰. Even as Kibaki showed the willingness to accommodate ODM in his government, PNU's stand was for ODM to

⁷⁵ Mwangi M., 'The Water's Edge: Mediation of Violent Electoral Conflict in Kenya, (Nairobi, 2008) p. 47

⁷⁶ Ibid

⁷⁷ Interview with Gichira Kibara, Secretary, Justice and Constitutional Affairs, August 2010

⁷⁸ Ibid

⁷⁹ Interview with Gichira Kibara, Secretary, Justice and Constitutional Affairs, August 2010

⁸⁰ Ibid

file their allegations to a court of law. Their claim was that only the courts had the power to declare a constitutionally sworn in president as illegitimate and therefore out of office.⁸¹ In addition, they ruled out a power sharing deal proposed by ODM and a re-run of the presidential elections.

To reconcile the issues raised by both parties to conflict, the agenda captured what the parties considered to be the bottom line of the conflict. Hence, the sequence of the issues on the agreed agenda were concessions which put emphasis on the violence and down played the importance of a settlement to the electoral dispute. The agenda for example, stated that the crisis revolved around the issues of power and functionality of institutions and the resolution for the conflict required adjustments to the constitutional, legal and institutional frameworks.⁸²

Annan as the chief mediator also had substantive and procedural issues that were to be considered in the mediation process. The procedural issues played an important role in that it gave the mediation team the authority to mediate the Kenyan conflict. Therefore the first crucial issue was to ensure that Anna and his team of eminent persons from Africa were recognized as the official mediators in the conflict. Second, both the PNU and ODM had to commit themselves to the mediation process and the outcome of the negotiations. This commitment is what made part of the pre-negotiation agreement. Lastly, both parties appointed a team of negotiators headed by a liaison officer. In total, the proposal needed three negotiators and a liaison person.

⁸¹ *ibid*

⁸² 'Kenya national Dialogue and Reconciliation: Annotated Agenda and Timetable', mimeo, 28th January, 2008

The substantive issues on the other hand included the immediacy to end the escalating violence. This was an issue both the ODM and PNU needed to address before they embarked on discussing any other matter. Therefore, the party leaders needed to appeal to their supporters to stop fighting and to give mediation a chance with an assurance that their grievances were being addressed. The next issue was to find a solution to the disputed presidential elections. The proposal needed that parties address the allegations of rigging the presidential vote counting and to come up with a solution that was acceptable to Kenyans. Finally, the mediation was to address the deep seated constitutional problems, land issues and unfair distribution of resources which were economic in nature.

5.5 The pre-negotiation agreement

The pre-negotiation agreement spelt out the agenda for the negotiations which formed a strong foundation upon which the mediation took place. The first item on the agenda was an immediate action to stop violence and restore fundamental rights and liberties. The second item was to address the humanitarian crisis, promote reconciliation, healing and restoration. The third item was to solve the disputed presidential election in order to overcome the current political crisis. While the final item was to design long term solutions to the inequalities in the country which included solving land issues and reforms both to the constitution and some of the most important institutions such as the judiciary.⁸³

The signing of the pre-negotiation agreement came after several negotiations to help the parties have common grounds on the kind of discussions they would have round the

⁸³ Sarah Bayne (April, 2008), Post Election Violence: An assessment for the UK Government.

table.⁸⁴ The end of the pre-negotiations was marked by a face-to-face meeting involving the two principals but this time with the team of negotiators from both sides.⁸⁵ This meeting was important for the mediation process because it made the leaders to commit themselves in public that they were willing and ready to work together to re-unite Kenya, ensure the restoration of peace and stability to the country and end the electoral violence.⁸⁶

The signing of the pre-negotiation agreement was conducted at the Nairobi County Hall instead of the president's office at Harambee House where the two principals held their first face-to-face meeting in the public giving their commitment to find a solution to the crisis Kenya was facing at that particular time. The selection of this venue was important since it symbolized the parliament which was a representation of all.⁸⁷ This second meeting marked the official launching of the mediation phase. This was done on 29th January, 2008. Its significance was reflected by the tension between the parties on that day evidenced by the delays to conduct the meeting. There was confusion in the sitting arrangement which placed President Kibaki between Annan and Raila signifying that Kibaki was the chair of the mediation process. However, this was later rectified putting Anna between Kibaki and Raila.⁸⁸

Kofi Annan as the chief mediator gave a clear timetable on how the issues in the agenda would be dealt with. He therefore allocated four weeks as the timeframe to allow for the

⁸⁴ Mwangi M, 'The Water's Edge: Mediation of Violent Electoral Conflict in Kenya, (Nairobi, 2008)

⁸⁵ ibid

⁸⁶ Interview with Gichira Kibara, Secretary, Justice and Constitutional Affairs, August 2010

⁸⁷ ibid

⁸⁸ Mwangi M, 'The Water's Edge: Mediation of Violent Electoral Conflict in Kenya, (Nairobi, 2008)

mediation phase. Even though this enabled the negotiators to focus on the negotiation within the allocated time, it put pressure on them to come up with a solution according to the schedule set in the timetable. Finally the signing of the pre-negotiation agreement marked the end of the pre-mediation phase and ushered in the mediation phase. The signing of the pre-negotiation agreement symbolized the commitment of both principles in finding a solution to the crisis and laid down the rules of engagement.⁸⁹ It also tied both parties (ODM and PNU) to the process⁹⁰ and signified their ownership of the process.⁹¹ The agreement also raised the perceived probability of an outcome in the negotiations that were to follow.

In my view, the pre-mediation phase played a major role in the mediation process of the electoral violent conflict by setting a basis upon which the negotiations between the primary conflicting parties were conducted. It was at this point that the principals gave their commitments to find a solution to the crisis by signing the pre-negotiation agreement which tied the two principals to the process and enabled the chief mediator to work with both teams involved in the conflict in finding a solution to the Kenyan crisis.

⁸⁹ Interview with Gichira Kibara, Secretary, Constitutional Affairs, August 2010

⁹⁰ Ibid

⁹¹ Mwangi M, 'The Water's Edge: Mediation of Violent Electoral Conflict in Kenya, (Nairobi, 2008)

Chapter 6

6.0 Conclusion

This study focused on the pre-mediation phase in the attempt to manage the electoral conflict that rocked Kenya in early 2008. The paper analyzed the dynamics of the preparatory phase by the parties to conflict and the mediator in order to establish the role this phase played in determining the outcome of the mediation process and the challenges phased by the parties concerned to find a solution to the conflict.

In the attempt to manage the electoral violent conflict, it was evident from this study that substantial work was done in the initial stages of mediation. Even though the time was short owing to the pressure to find a solution to the conflict and resolve the political crisis, the activities of the pre-mediation phase played a major role in the mediation process and its outcome. The three phases of mediation contributed a lot to the management of the electoral violent conflict. Nevertheless, this study underlined in particular the role of pre-mediation phase in the mediation process. The emphasis was that even before parties gather round the table for negotiations in the presence of a third party, a lot of negotiations would have taken place even with the assistance of the mediator to reach some important agreements that form the basis of the negotiations.

The study noted that the mediator's role at the pre-mediation level was important because he was charged with the responsibility of mediating negotiations about the framework for mediation, setting the agenda and ensuring that the parties to conflict reach an agreement

to negotiate. His major role at this level was to act as a channel of communication between the two parties, gather their views on the issues they believed to would have caused the conflict and then propose a way forward to finding a solution.

It was also evident that parties to conflict made important decisions at the pre-mediation level as far as managing the electoral conflict was concerned. Both PNU and ODM had to make a decision to negotiate and agree on the issues to discuss in relation to the political crisis facing Kenya at that point. They also had to accept the panel of eminent persons from Africa who under the auspices of AU mediated the electoral conflict. This clearly indicated that the parties rather than the mediator were the ones in charge of the decision making process hence responsible for the outcome of the mediation process.

In the pre-mediation phase, the mediator was able to get to the bottom line of the conflict by analyzing the issues surrounding it. Here the mediator was dependant on the information the parties to conflict provided. Nevertheless, this was made easier in the Kenyan crisis due to internationalization of the electoral violent conflict. By the time the mediator arrived in Kenya, he had followed the events of the conflict in the media which gave him a good base to begin.

The pre-mediation phase in the electoral violent conflict provided a base through which PNU and ODM as the primary parties saw the need to reach concession as far as finding a solution to the conflict was concerned. However, it was important at this stage not only to focus on the primary parties but the entire mediation environment that made the

process complex. The contributions of the audience in the conflict, party allies and other third parties had to be reconciled in order to have a successful mediation process and to avoid the problem of re-entry at the implementation phase.

This phase did not end without challenges. The major setback was the hard-line positions both parties maintained in the beginning. The mediator had to assist the parties to arrive at a point where they considered their interests and that of the nation instead of clinging to their positions. There was also lack of trust between the parties and the fear of being shortchanged in the process. The pre-negotiation agreement therefore laid down clear rules to ensure that both parties worked towards a common goal which was to find a lasting solution to the political crisis experienced in Kenya following the disputed presidential election results.

Despite the challenges, it was clear that the preparations made at the pre-mediation phase were important in determining the entire process and its outcome. It paved way for the mediation passé by ensuring that parties were committed to the process by signing the pre-negotiation agreement. What remained was to ensure that the parties were sincere in the process to allow for the implementation of the issues agreed on at the post-mediation phase.

Appendices

Appendix 1

Interview with Gichira Kibara, Secretary, Justice and Constitutional

Affairs in Nairobi, 31st August, 2010

1. What activities did the PNU as a party to the electoral violent conflict, engage in preparation for the negotiations?
2. Initially, PNU was not for mediation, why and what led to the change in position of the party on the need to engage in mediation?
3. What criteria did the party use to select its representatives in the mediation process?
4. What was the Party's contribution in regard to the name given to the talks- National Dialogue and Reconciliation?
5. What was the party's contribution in deciding on the venue to conduct the mediation?
6. What was the party's position in regard to Museveni's proposal in his facilitation of mediation process?
7. What were the core issues raised by the Party in regard to the management of the conflict that were to be discussed in the mediation process?
8. What was the importance of having to sign the pre-negotiation agreement just before the negotiations?
9. What challenges did the party experience at the pre-negotiation phase?

Appendix 2

Interview with Moni Manyange, AU desk at the Ministry of Foreign

Affairs in Nairobi, 6th August, 2010

1. What role did AU play in initiating the mediation of electoral violent conflict in 2008?
2. Why did the parties agree to engage the AU in their negotiation?
3. Who selected the panel of mediators to manage the electoral violent conflict?
4. Why eminent persons from Africa?
5. What activities did the Annan team engage in at the pre-negotiation stage of the mediation process?
6. What was Annan's role at the pre-negotiation phase?
7. Why did the AU secretariat reject ODM's request to send a delegate to the head of summit meeting that took place in Addis Ababa?
8. What challenges did AU experience in trying to have the parties to conflict agree to mediation?

Bibliography

- Adedeji A (1999), Comprehending and Mastering African Conflicts; Zed books, London
- Bercovitch Jacob (1997), Mediation in International Conflict: An Overview of Theory & A Review of Practice, in I. William Zartman and Lewis Rasmussen, eds., Peacemaking in International Conflict. Washington, D.C.: USIP Press
- Bercovitch J. ed. (1996), Resolving International Conflicts: The Theory and Practice of Mediation. Boulder & London: Lynne Rienner
- Bercovitch J & Houston A (1996), 'The Study of International Mediation: Theoretical Issues and Empirical Evidence', p. 11-38 in J. Bercovitch, ed., *Resolving International Conflicts: The Theory and Practice of Mediation*. Boulder, CO: Lynne Rienner
- Bercovitch J and Jeffrey Z. Rubin, eds. (1992), Mediation in International Relations: Multiple Approaches to Conflict Management. Houndmills & London: Macmillan/New York: St. Martin's Press
- Bercovitch J, et.al (1991), 'Some Conceptual Issues and Empirical Trends in the study of Successful Mediation in International relations', *Journal of Peace Research*. Vol. 28, No. 1, p. 7-17
- Bennett G (1957), 'How To Get The most From Mediation,' *Labor Law Journal*, Vol. 8, p. 532-535

Bruce WD (2007), 'Third Party Intermediaries & the Transformation of Violent Intrastate Conflicts'. A draft paper

Coleman Peter (1997), 'Redefining Ripeness: A Social Psychological Perspective', *Peace and Conflict: Journal of Peace Psychology*, Vol. 3, No. 1, p. 81-103

David C & Dane R (1999), 'Evolutionary Models & Third Party Intervention In Ethnic Conflicts.' The Norman Peterson School of International Affairs, Carleton University

Dirk Berg-Schlosser & Raine Siegler (1990), 'Political Stability & Development: A Comparative Analysis of Kenya, Tanzania & Uganda': London, Lynne Rienne Publishers

Dixon WJ (1996), 'The Party Techniques for Preventing Conflict Escalation & Promoting Peaceful Settlement,' *International Organization*, Vol. 50, No 4

Fisher JR & Keashly (1991), 'The Potential Complementarity of Mediation and Consultation within a Contingency Model of Third Party Intervention', *Journal of Peace Research*, Vol. 28, No. 1, p. 29-42

Fisher JR (2001), 'Methods of Third Party Intervention', Berghof Handbook for Conflict Transformation

Goldstein JS, (2001), International Relations, 4th ed. New York

Haas RN (1988), 'Ripeness and the Settlement of International Disputes', *Survival*, Vol. 30, No. 3 p. 232-251; 247

Holl E Jane (1995), Progress Report. Carnegie Commission on Preventing Deadly Conflict; Washington DC

Holsti KJ, (1966) 'Resolving International Conflicts: A Taxonomy of Behavior & some figures on Procedures', *The Journal of Conflict Resolution*, Vol. X p. 272-291

Jackson E (1952), 'Meeting The Minds: A Way to Peace Through Mediation,' New York, McGraw Hill

Janice Gross Stein ed. (1989), Getting to the Table: The Process of International Pre-negotiation; Baltimore, Johns Hopkins University Press

Keith Webb (1988), 'Morality of Mediation,' in New Approaches to International Mediation. Edited by Mitchel CR & Keith Webb; Westport, Greenwood

Kerr C (1954), 'Industrial Conflict & its Mediation' *Annex Journal of Sociology*, Vol. 60, p. 230-245

- Koffi Annan (1998), The Causes of Conflicts and the promotion of Durable Peace and sustainable Development in Africa. Report of the Secretary General to the United Nations Security Council, 52 session
- Kochan TA & Jick T (1978), 'The Public Sector Mediation Process' *Journal of Conflict Resolution*, Vol. 22, p. 209-240
- Kochan TA (1981) 'Step-by-Step in The Middle East from the Perspectives on Timing of International Mediation Process.' In *Dynamics of Third party Intervention; Kissinger in the Middle East*, edited by Rubin JZ, New York
- Kaufman and Duncan (1992) in Bercovitch J & Houston A, 'Why Do They Do It Like This? An Analysis of the Factors Influencing Mediation Behavior, In International Conflicts,' *The Journal of Conflict Resolution*, Vol. 44, No. 2 (2000)
- Kristine B & Karaev Z (2004), 'Playing Cat-and -Mouse: Conflict and Third -Party mediation in post-Soviet Space', *The online Journal of Peace and Conflict Resolution*, Vol. 6, No. 1
- Lall A (1966), 'Modern International Negotiation: Principles & Practice'; New York, Columbia University Press
- Lesch Ann Mosely (1989), The Sudan-Contested National Identities: Bloomington, Indiana University Press
- Mwagiru M (2008), The Water's Edge: Mediation of Violent Electoral Conflict in Kenya, (first edition) Idis, Nairobi Kenya

Mwagiru M (2006), Conflict in Africa: Theory, Processes and Institutions of Management; CCR Publications, Nairobi

Mwagiru M (2004), Diplomacy: Documents, Methods and practice; Institute of Diplomacy and International Studies, Nairobi

Muhlen A (2006), 'International Negotiations: Confrontation, Competition, Cooperation with many Intercultural facts and case studies'; Makerere University Printery, Kampala

Pechota V (1971), 'Complementary Structures of Third-Party Settlement of International Disputes'; United Nations Institute for Training and Research, New York

Peters E (1958), 'The Mediator: A Neutral, A Catalyst, or A Leader,' *Labor Law Journal*, Vol. 34, p. 764-769

Pruitt DG (1971), 'Indirect Communication & the Search for Agreement in Negotiation,' *Journal of Applied Social Psychology*, Vol. 1, p. 204-239

Rubin J (1991), 'The Timing of Ripeness and the Ripeness of Timing', in L. Kriesberg & S. Thorston, eds, *Timing the De-escalation of International Conflicts*; New York: Syracuse University Press, p. 237-246; 240

Samuel Huntington (1996), The Class of Civilization and the Remarking of the World order. Touchstone, Rockefeller Center, New York

Shannon Field (ed) (2004), Peace in Africa: Towards a Collaborative Security Regime; Johannesburg, Institute for Global Dialogue

Salla EM (1997), 'Creating the Ripe Moment in the East Timor Conflict,' *Journal of Peace Research*, Vol. 34, No. 4, p. 449-466

Simkin WE (1971), 'Mediation & the Dynamics of Collective Bargaining,' Washington DC, Bureau of National Affairs

Stephen J. Steadman (1996), 'Negotiation & Mediation in Internal Conflict,' in the International Dimensions of Internal Conflicts. Edited by Michael Brown; Cambridge, MIT Press

Stevens CM (1963), 'Strategy & Collective Bargaining Negotiations'; New York, McGraw Hill

Thibaut JW & Kelley HH (1959), 'The Social Psychology of Groups'; New York, John Wiley

Touval S. (1992), Gaining Entry to Mediation in Communal Strife; New York, Routledge

Touval S & Zartman W, 'International Mediation in Theory and Practice,' Westview, Boulder (USA: 1985), as quoted in Fisher, 2001

Wall AJ (1981), 'Mediation: An Analysis, Review and Proposed Research,' *The Journal of Conflict Resolution*, Vol. 25, No. 1, p. 157-18

Young OR (1972), 'Intermediaries: Additional Thoughts on Third parties,' *Journal of Conflict Resolution*, Vol. 16, p. 51-65

Zartman IW (2001), 'The Timing of Peace Initiatives: Hurting Stalemates and Ripe Moments', in J. Darby & R. Macginty (eds), *Contemporary Peacemaking: Conflict, Violence and Peace Processes*; London

Zartman I.W (2000), 'Ripeness: The Hurting Stalemate and Beyond', in P. Stern & D Druckman (eds), *International Conflict Resolution after the Cold War* ;Washington, DC: National Academy Press,

Zartman I.W (2000), 'Inter-African Negotiations and state Renewal,' in J. Harbeson & D. Rothchild (eds), *Africa in World Politics*: Boulder, Westview

Zartman I.W (1989), 'Ripe for resolution: Conflict & Intervention in Africa.' Updated edition: New York, oxford University press

Zartman I. William & Maureen Berman (1982), 'The Practical Negotiator: New Haven',
Conn. Yale University Press

Zartman, I. William, ed. (1995) 'Elusive Peace: Negotiating an End to Civil Wars;'
Washington, D.C.: The Brookings Institution

Zartman I W (1995), 'Dynamics and Constraints in Negotiations In Internal Conflicts', in
I.W Zartman, ed., *Elusive Peace: Negotiating an End to Civil Wars*. Washington DC:
The Brookings Institution

Zartman IW (1988), 'Alternative Attempts at Crisis Management: Concepts and
Processes' in G.R Winham (ed), *New Issues in International Crisis Management*.
Boulder, Co.: Westview Press

Zartman IW (1986), 'Ripening Conflict. Ripe moment. Formula and mediation' in D.B
Bendahmane & J.W McDonald (eds), *Perspectives on Negotiations: Four Case Studies
and Interpretations*, Washington: Foreign Service Institute

<http://www.hrcentre.org/files/elections> Mediating Election Related Conflicts; A
Background Paper, July 2009

<http://se1.isn.ch/serviceengine/Files/ISN/101890/ichaptersection> Kenya in Transition:
Mediation, Power Sharing and Constitutional Reform

<http://www.mfa.co.ke/mfacms/index>. Hon Wetangula Hosts IGAD Foreign Affairs
Ministers. Friday, 08 February 2008

<http://www.mfa.co.ke/mfacms/index>. hon. Moses Wetangula Meets the Chairman of the
African Union Commission

Sarah Bayne (April, 2008), [Post-election Violence: An Assessment for the UK
Government](#)

EU Observation Mission Kenya, Final Report on General Elections 27 December, 2007
(April, 2008)

Report by Human Rights Team on Post-election in Kenya, 2008

International Crisis Group: Kenya in Crisis, Africa Report. No. 137, 21 February 2008.