
Lawrence Oscar Odhiambo

A Research Project Submitted to The Institute of Diplomacy and International Studies in Partial Fulfillment for The Degree of Master of Arts in International Conflict Management.

University Of Nairobi
DECLARATION

I Lawrence Oscar Odhiambo, hereby declare that this research project is my original work and has not been presented for a degree in any other university.

Signed .............................................................................. Date ......................................

Lawrence Oscar Odhiambo

This project has been submitted for examination with my approval as University Supervisor,

Signed .............................................................................. Date ......................................

Dr. Anita Kiamba.
ACKNOWLEDGEMENT

The success of this research, and indeed my Master's Degree, is an express manifestation of God's work. Without God's timely blessings, all would be in vain, just a dream. I am also very grateful to my supervisor of boundless abilities and patience, Dr. Anita Kiamba. Thank you for the precious time you invested to take me through this research. I also want to thank those who have stood by me since the conception of this thesis idea. I really appreciate all their inputs.

Last my Father, Isaac Johnson Onyango, for having established and supported the foundations of my education and to my Sibblings Evans, Luke, Phenus, and Anne who encouraged me to realize this dream. My wife Polly Kiende offered many interceding prayers so relentlessly that worked wonders.

Finally it is to authors such as Makumi Mwagiru whom I have generously cited here for having trail-blazed in this interesting and captivating field of international conflict management. To you I say thank you.
DEDICATION

To my precious son Leon Johnson Odhiambo
ABSTRACT

Post-election violence in Kenya in December 2007 led to bloodshed and displacement on a massive scale. Beyond the despair and anger over poverty, corruption, and the need for political change in the face of a fraudulent election, the riots also revealed the underlying tensions between ethnic groups that had been fueled by the presidential campaign. These tensions culminated in a clash between supporters of Raila Odinga, Kenya’s main opposition leader, and those of Mwai Kibaki, the incumbent president.

With the onset of violence, Kenya, once viewed as a relative haven of stability in the Horn of Africa, faced ethnic violence, a growing humanitarian crisis, economic disruption, and unresolved questions about its future political direction. The violence resulted in more than 1,000 deaths, at the hands of security forces and in violent ethnic clashes, as well as approximately 600,000 internally displaced persons (IDPs).

The magnitude of the trauma and structural violence that took place in Kenya after the fourth multi-party general election took both Kenyans and the international community, alike, by surprise. The severity of this conflict unfolded in a span of 59 days between Election Day, December 27th, 2007 to February 28th, 2008, when a political compromise was reached upon the AU’s intervention together with the brokering of a power-sharing by the then UN secretary general, Kofi Annan.
LIST OF ABBREVIATIONS

AU – African Union

BBC – British Broadcasting Corporation

CMC – Conflict Management Center

DAC - Development Assistance Committee

EAC – East African Community

ECK - Electoral Commission of Kenya

ECOMOG - Economic Community of West African States Monitoring Group

ECOWAS – Economic Community for West African States

GSU – General Service Unit

ICC – International Criminal Court

ICISS - International Commission on Intervention and State Sovereignty

IGAD – Inter-governmental Authority on Development

IPPG – Inter Party Parliamentary Group

MP – Member of Parliament

NATO - North Atlantic Treaty Organization

OAU – Organization of African Unity

ODM – Orange Democratic Movement

OECD - Organization of Economic Cooperation and Development

PNU – Party of National Unity

R2P – Responsibility to protect

SADC - South African Development Cooperation

UN- United Nations

UNGA - United Nations General Assembly
UNITA - National Union For The Total Independence
UNSC – United Nations Security Council
UNSG - United Nations Secretary General
US – United States
TABLE OF CONTENTS

Declaration ........................................................................................................................................... i
Acknowledgement. ............................................................................................................................. ii
Dedication ........................................................................................................................................... iii
Abstract ............................................................................................................................................. iv
Abbreviations .................................................................................................................................... v
Table of Contents ........................................................................................................................... vii

CHAPTER ONE: INTRODUCTION

1.1 Background of the study............................................................................................................. 1
1.2 Statement of the problem............................................................................................................ 2
1.3 Objectives of the study ............................................................................................................. 3
1.4 Literature review ...................................................................................................................... 4
1.5 Significance of the study........................................................................................................... 15
1.6 Theoretical framework ........................................................................................................... 16
1.7 Hypotheses .............................................................................................................................. 18
1.8 Research Methodology............................................................................................................ 18
1.9 Chapter outline ....................................................................................................................... 19

CHAPTER TWO: AN OVERVIEW OF CONFLICT INTERVENTION MECHANISM

2.1 Introduction............................................................................................................................... 20
2.2 Third party intervention in conflicts....................................................................................... 21
2.3 Role of regional organizations in conflict intervention.......................................................... 26
CHAPTER THREE: ANATOMY OF KENYA'S 2007/2008 ELECTORAL VIOLENCE

3.1 Introduction ........................................................................................................29
3.2 The electoral conflict ..........................................................................................29
3.3 The outbreak of violence ....................................................................................31
3.4 Intervention ........................................................................................................41

CHAPTER FOUR: A CRITICAL ANALYSIS OF THE AU’S INTERVENTION IN KENYA’S ELECTORAL VIOLENCE

4.1 Introduction ........................................................................................................52
4.2 AU’s intervention in Kenya and its responsibility to protect (R2P) .........................54
4.3 AU’s intervention in Kenya and the use of good offices ......................................58
4.5 Success and failure of AU in conflict intervention ..............................................66

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS ........................................71

BIBLIOGRAPHY .......................................................................................................75
Chapter One

Introduction

1.1 Background

Conflict is inherent in world society. The reoccurrence of conflicts and their impact on human development has led to the realization of the need to prioritize the management of conflict and to promote a culture of peace. It is one of the major themes in international politics.\(^1\) Conflicts occur at all levels of social life; the interpersonal, intergroup, inter-organizational and interstate. During the cold war period, conflicts were largely expected to occur across borders and between states. However, with the end of the cold war, conflicts occur more at the intra-state level, rather than the traditional inter-state level. When states experience internal conflict, rarely do they envisage it spilling over and threatening to destabilize their neighbors. When domestic conflicts spill over into neighboring states, they invariably threaten the ability of affected victim states to meet the basic security needs of their own people. This is particularly true of state systems in Africa, where regime legitimacy is often under challenge and borders are porous.\(^2\)

Protracted conflicts in Africa are often played out against the backdrop of deep poverty, illiteracy, and weak systems of governance. Undermined by unfavorable terms of trade, indebtedness and administrative failures, most states in Africa have failed to respond adequately

---


to the critical social needs of their citizens. In the most extreme cases, Africa's insecurity has been reflected by the traumatic episodes of collapsed and collapsing states. Almost invariably, state collapses are products of long-term degenerative politics marked by a loss of control over the economic and political space. As would be expected, collapsed states in Africa have had harmful spillover effects on neighboring countries. The overflow of refugees, heightened ethnic tensions in some cases, and the resulting diplomatic conflicts, have engaged substantial resources and efforts from the relatively stable countries that share borders with collapsed states. In the process, what were once thought to be mere domestic conflicts, out of the purview of international organizations like the United Nations (UN) and regional organizations like the Organization of African Unity (OAU), have now been internationalized. External actors have been drawn into what was technically civil war in order to restore peace and security. It has become increasingly apparent that Africa should develop the capacity to deal with its growing domestic security problems.

1.2 Problem Statement

One of the distinguishing features of Africa's political landscape is its many dysfunctional and protracted conflicts. This is made worse by lack of effective mechanisms to manage these conflicts. Where such mechanisms exist they are weak and, thus, social and political

---


relationships in the continent have been disrupted. This has had negative consequences, including the interruption of the development and the diversion of scarce resources to the management of these conflicts. Thus conflict management is an issue which has become inseparable with debates and discussions on Africa. This is because Africa is characterized by the many conflicts. Conflict management has therefore become integral in solving the problem of conflicts in the continent. Kenya has experienced electoral conflict/violence throughout its brief history as a nation. The intensity of 2007/2008 post-election violence in Kenya, however, was of a different magnitude. Consequently, this foresaw the then Chairman of the African Union, Kufuor and the then East African Community chairman, Kikwete play critical facilitative roles that paved the way for African personalities who intervened in the Kenyan electoral conflict. It is therefore essential to scrutinize, the role played by external intervention in managing the conflict.

1.3 Objectives

1. To establish whether the responsibility to protect (R2P) principle has enhanced the capacity of the African Union in managing conflicts.

2. To determine the effectiveness of the good offices used by the panel of the wise which is made-up of African personalities in intervening in conflicts.

1.4 Literature Review

Although one of the primary objectives of establishing OAU was to manage conflicts among member states, it has historically played a more reactive role in addressing threats to national and regional security. For a long time, the Organization was constrained by its Charter from intervening in internal conflicts. The Charter's preference for sovereignty and non-interference in the internal affairs of member states rendered it powerless to address situations of poor governance and the gross abuse of human rights. Furthermore, until recently, the institutions mentioned in the original OAU Charter were either irrelevant or simply ineffective as instruments to end or manage armed conflicts. The Commission on Mediation, Reconciliation and Arbitration, which was established in the 1960s, appeared to have been doomed from the start, as it was not designed to deal with internal conflicts. Nor was it mandated to prevent the outbreak of conflicts. This legal mechanism was created to encourage member states to submit their disputes for regional arbitration. Its lengthy and costly judicial process made the Commission unattractive to many would-be clients. In fact, the Commission was never used. It was dissolved in 1977, with OAU opting for other methods of conflict management. Above all, the Defense Commission, envisioned under Article XX of the OAU Charter, was never established.7

For well over three decades, therefore, various ad hoc commissions and committees of OAU member states undertook the responsibility of managing conflicts in Africa. Under the rubric of

preventive diplomacy, OAU and later sub-regional communities have extensively deployed the good offices of some prominent heads of state, the Secretary-General, and elder statesmen to mediate conflicts. They included mediating disputes over border and territorial claims, allegations of subversion by member states against member states, and, in a few cases, civil wars. A few successful mediation efforts include, notably, resolving the border disputes between Algeria and Morocco, Ethiopia and Somalia, and recently between Ethiopia and Eritrea. However, more often than not, these efforts were of limited lasting impact. This was, in part, because the OAU had no credible enforcement instruments — it could only appeal to disputing parties to adhere to the organization's principles. It was also, in part, because of the Organization's limited capacity to mount successful independent peacekeeping, peace enforcement or peace-building operations as was clearly evidenced by the Chad fiasco in the early 1980s as well as its inherent inability to restrain both Uganda and Rwanda from continued occupation of the north-east provinces of Democratic Republic of Congo from the late 1990s.

OAU's peacemaking efforts during the 1960s and 1970s were few and far apart. OAU has also contributed significantly in marshalling African military contributions for the UN peacekeeping operations at the height of the genocide in Rwanda. More recently, the Organization dispatched military observers in Burundi, Democratic Republic of Congo, and Ethiopia-Eritrea border. It has also observed elections in several dozen countries, including referenda on self-determination and constitutional reform. Its support to democratic processes, which serve to ensure peaceful and routine institutional mechanisms for managing competition in any society, is a valuable contribution to conflict prevention in Africa.
As the rate of intra-state conflicts skyrocketed in the 1990s, it became increasingly apparent that ad hoc conflict management arrangements of the 1970s and 1980s were not up to the task. At the 1993 OAU Summit in Cairo, African heads of state agreed to establish the Mechanism for Conflict Prevention, Management and Resolution. The Mechanism was charged with anticipating and preventing conflicts, and engaging in peace-making and peacebuilding activities. In cases of severe conflict, there is a provision for OAU cooperation with the UN in development of the peacekeeping strategy. Although the OAU principle of non-intervention in internal affairs was re-stated, the Mechanism was also charged with the task of dealing with internal conflicts in circumstances of gross human rights abuses and atrocities. The emphasis on anticipatory and preventive measures expressly aims at obviating the need to resort to the complex and resource-demanding peacekeeping operations that Africa can ill-afford. As OAU Secretary-General Salim Ahmed Salim remarked, "given that every African is his brother's keeper, and that our borders are at best artificial, we in Africa need to use our own cultural and social relationships to interpret the principle of non-intervention in such a way that we are able to apply it to our advantage in conflict prevention and resolution." 

The OAU Mechanism for Conflict Prevention, Management and Resolution is built around a Central Organ, with the Secretary-General and the OAU Secretariat as its operational arm. The

---


Central Organ is composed of the Bureau (the Current Chairperson of OAU, the immediate past Chair, and the in-coming Chair), three from each of the five subregions of Africa. The latter rotate annually. Ordinarily, it convenes every month at ambassadorial level, twice a year at ministerial level, and once a year at the level of heads of state. Unlike the Security Council, the Central Organ's decision-making procedures do not reflect the structural power balance of its members. Rather, decisions are taken simply by a consensus. Worse still, the OAU Mechanism does not provide for the norm of permanent members (major sub-regional powers) and non-permanent members on the Central Organ. The abstract norm of sovereign equality tends to reign supreme. Although it essentially performs the Security Council-type functions of reviewing the security situation of the continent, deciding on the course of action to be taken, the Central Organ lacks the requisite collective power to implement and/or enforce its decisions. If OAU’s intervention into Burundi was stalled because the Burundian government opposed it, UNITA failed to live up to the Lusaka Peace Accord, or the Comoros refused to enforce the OAU-mandated sanctions on the Anjou an separatist junta, then one can imagine how institutionally weak the collective will of the Central Organ inherently is. Viewed retrospectively, both the structural weaknesses of African states collectively and individually, as well as the organizational inadequacies of OAU’s Central Organ explains, in a large measure, the limited performance of the Mechanism for Conflict Management.

Most of the successful regional integration and collective security initiatives world-over have thrived on a strong and willing leadership which Robert Keohane aptly describes as the "theory
of hegemonic stability".\textsuperscript{10} The presence of a regional core or nucleus has the capacity to serve as a positive force for developing and nurturing a viable collective security arrangement. At the maximum, leaders are expected to assume a disproportionate cost burden of a collective security project as well as serve as the paragons of compliance of the regime's rules, norms, and procedures. Their commitment, reliability, and capability are expected to be beyond reproach. At the minimum, hegemonic leadership entails being able and willing to provide a mix of incentives and disincentives to members of the security regimes in order to ensure compliance. The hegemonic leader's economic strength and political stability, for instance, would bolster the region's economic vitality and political stability. It would also champion the cause of cooperation by pulling the less willing and the less able member countries along, as it may not be possible for all countries to move at the same time and pace. Arguably, the hegemony-centered regional or sub-regional security order would be more workable and effective than a larger body. It would provide the necessary leadership consensus on crucial issues such as "entry points" in conflict management, modalities for action, and cooperation and coordination with OAU partners. Such rules of procedure would make the larger body effective.\textsuperscript{11} The role of the United States in NATO, Germany in the European Union and South Africa in the Southern African Customs Union are excellent success stories of hegemony-centered cooperation arrangements in recent


times. By the same token South Africa, Nigeria, Egypt and Kenya have the capacity to play this strategic role within OAU as permanent members on the Central Organ as well as on the security and defense organs in their respective sub-regional organizations. It is simply common sense that countries which bear the burden of peace operations should have disproportionate decision-making powers.

Understandably, in the absence of a strong collective will and requisite intervention capacity within the OAU system, some African governments have not hesitated to by-pass the cumbersome and usually indecisive OAU Mechanism for Conflict Prevention, Management and Resolution. Recent peace enhancing initiatives include un-invited interventions by some African governments in neighboring countries in order to restore constitutional government, end threats to peace, and achieve peace enforcement.

The Secretary-General of OAU and the Conflict Management Center (CMC) serve as the Secretariat of the Mechanism as well as its implementation agency. CMC was established to serve not only as the research arm of the Mechanism, but most importantly, to strengthen OAU’s institutional capacity for conflict management. In this regard, the Center recruited about a dozen consultants through foreign-funded projects with the view of enhancing its analytical capacity. Furthermore, in order to facilitate the work of CMC, the Mechanism sanctioned the establishment of a continent-wide Early Warning System. When fully operational, the system is expected to provide reliable and accurate early warning information of developing conflicts and help experts to suggest various modes of response. Early warning and information management systems at OAU will have to be harmonized and coordinated with those at the sub-regional
levels. However, we should hasten to add that prompt and decisive response to crisis situations in Africa would largely depend on how the Central Organ is composed and structured.

Besides the establishment of CMC, the Mechanism also created an OAU Peace Fund to support the organization's efforts relating to conflict management. The Fund is made up of financial appropriations of 5 per cent of the regular OAU budget, voluntary contributions from member states, as well as from sources within Africa. Moreover, the Secretary-General may, with the consent of the Central Organ and in conformity with the principles of the OAU Charter, accepted voluntary contributions from sources outside Africa. The question of the Peace Fund needs to be studied urgently in order to design a resource mobilization strategy. Included in future plans should be a comprehensive costing for the reconciliation and reconstruction activities that are conspicuously absent in the current Peace Fund mandate.¹²

Furthermore, the Mechanism mandates AU to cooperate and work closely with the United Nations in maintaining peace, security and stability for the continent. Various practical suggestions of cooperation and coordination between the two institutions have been offered. They include, among others, technical assistance, staff exchange, liaison offices, joint missions, training of forces and pre-positioning of equipment. Despite the polite diplomatic language used in most documents, the AU and the UN have yet to fashion out a mutually acceptable and shared vision of active partnership, cooperation, and coordination in responding to Africa's armed conflicts. While both organizations agree on the objectives of "improved consultation, exchange _______________

of information, and coordination of joint action", they are still to agree on the fine details of how to achieve them. Africa should take the lead. It should not expect `these goodies to be delivered on a silver plate'. However, Africa should be wary of seeking to stake out roles and tasks for regional or sub-regional organizations that are both unrealistic and relieve the international community from its primary obligation for global peace and security.

Since the establishment of the Mechanism of Conflict Management, AU has taken a wide- range of initial measures and initiatives aimed at anticipating and preventing conflicts on the continent. They include, among others, the development of an early warning system (still in rudimentary form) and an analytical capacity to provide the organization with advance notice of impeding conflict situations. Moreover, various preventive diplomacy efforts through the use of the AU Special envoys to crises areas (for example the Comoros, 1997; Congo- Brazzaville in 1993; Ethiopia-Eritrea in 1998; Cote d'Ivoire in 2000,) as well as limited preventive deployments to contain conflict escalation have been mounted. However, as earlier pointed out, largely because of AU's institutional and organizational inadequacies, most of its conflict management initiatives have had limited success. Summarizing the organization's performance at the beginning of the 1990s, the OAU Secretary-General lamented… "many times, we have looked around for OAU to

intervene constructively in a conflict situation only to find that it is not there, and when present, to realize that it is not adequately equipped to be decisively helpful\textsuperscript{14}.

Disenchanted and frustrated by UN and OAU record in peacekeeping and peacemaking efforts since the early 1990s, various African states, civil societies and international non-governmental organizations have assumed greater responsibility for conflict management as a means of creating an environment where peace, stability and democracy are the norm. At sub-regional levels, economic cooperation and integration arrangements such as ECOWAS, SADC, and IGAD have increasingly assumed the role of security cooperation and conflict management. They have gradually revised their treaties and Protocols to include the provisions for managing regional peace and security. Like AU, the sub-regional economic organizations have shifted from ad hoc arrangements of conflict management to systematic approaches and procedures. They vary enormously in both capacity and willingness to play a collective security role. Thus, through a process of learning, and indeed because of international political expediency, more controversial political issues have been brought into the field of cooperation and integration. This is what the neo-functionalist integration scholars have referred to as "spill-over effects"\textsuperscript{15}.

However, as various scholars have noted, sub-regional approaches to peace and security in Africa can only bring limited additional capabilities to conflict management. Regional and sub-regional alliances of the willing and able African states do not have the necessary wherewithal to


\textsuperscript{15} Caporaso, J. "\textit{Encapsulated Integrative Patterns versus Spillovers: The Case of Agricultural and Transport Integration in EEC}" International Studies Quarterly 14 (4) 19970:43-82.
bring security to the continent without continued engagement and support of the international community.\textsuperscript{16}

The formation of the AU was precisely aimed at finding African solutions to engage in intervention. The experiences of Somalia and Rwanda in the early 1990s, where state collapse and genocide were allowed to take place respectively, spurred on the African leadership to establish an AU with ‘teeth’. In this regard, the African leadership adopted a much more interventionist stance in the organization’s legal frameworks and institutions. However, the Côte d’Ivoire and Libya crises showed that the organization is far from being a solution to the problems afflicting Africa. Its performance in the Côte d’Ivoire crisis was lacklustre while in the case of Libya, it was first marginalized and then totally ignored by the UN. Generally in both cases the organization’s failure was self-inflicted because had it taken very strong, united and assertive stances when the crises first broke out, possibly it would not have been marginalized and ignored by the other actors.\textsuperscript{17} In the end, in both cases, the organization was saddled with problems, inter alia of fissures within its structure resulting in its intervention being weak. Its members did not speak with one voice, as is often the case, on many issues concerning the continent.


In the same light on January 9, 2008, the AU attempted peace negotiations in Kenya. Its initiatives proved futile because Odinga’s Orange Democratic Movement (ODM) rejected an offer of negotiations from Kibaki, saying they would be a “sideline” if not chaired by international mediators. This indicated that the ODM was not prepared to enter into serious talks that would be mediated by the AU chairman, Ghanaian President, John Kufuor, who arrived for crisis meetings with both sides. Ahmad Tejan Kabbah, the former president of Sierra Leone, also attempted mediation to the crisis in order to find national unity in Kenya. Unfortunately the AU’s intervention in Kenya illustrates the continuing African states reluctant to accept the principle of intervention in her member states’ internal affairs. A difficult problem involved in putting its doctrine in practice. Earlier, they accepted that state sovereignty would not be sacrosanct, yet African governments are deeply sensitive about external interference in their internal affairs. Although the AU attempted to mediate, its impact on the crisis was not profound, as it has paid less attention to the questions of crisis management and dialogue. On the hand, the regional organization’s ability or inability to intervene in Kenya is partly due to the historical legacy of non-intervention and continuing mistrust between its members. It is perhaps competition and disputes among African leaders that hampered cooperative approaches to the AU’s conflict management in Kenya as many of the AU member states are still reluctant to grant sufficient autonomy to the AU. The AU would be a more effective conflict manager if it had members with homogenous preferences, and if it had more democratic members. A homogenous organization is better suited for effective conflict management, while democratic organizations support lasting settlements in favor of the status quo. Thus this critical review concludes that the AU’s reluctance to intervene in Kenya is partly due to mistrust between its member states. With the
combination of the above factors, it is not difficult to understand why the AU has made little or no progress in Kenya. The futility in their attempt thus foresaw former UN Secretary General, Kofi Annan, step in the process of contacting the leadership in Kenya and brokered some power sharing arrangement.

1.5 Significance of the study

Conflict management is concerned primarily with two issues; the problem and its solution. Policy analysis involves examining these issues in a deliberate way to establish what the key issues are, the existing interventions and how they can be strengthened. It sensitzes the policy context to the conflict situations. The outcome of this analytical study will be the identification of the priority issues that the conflict management bodies need to take into account, an examination of existing conflict management policies and the identification of shortcomings in external intervention bodies such as the AU that require adjustment and informing conflict management strategies that will contribute to the effective management of African conflicts.

Strategic coordination in external intervention has been lacking in conflict management and peace building. The impact has been the wastage of resources, leaving key issues unaddressed or addressed through short term and ad hoc responses distracting from long term solutions. This study will seek to establish whether timely intervention that will hopefully cause actors to pause, reflect and situate themselves in conflict management process. The study will be essential providing an insight into the stages of conflict management in strengthening external actor’s particularly the AU in enabling them to respond appropriately to conflicts in Africa.
In this regard, the study will seek to bring out the reliability of the OAU/AU and its instruments of conflict management: which entails the use of good offices as adopted by the African Union and the panel of the wise which is made-up of African personalities in relation to their effectiveness in facilitating and mediating in conflicts in Africa. With the country and conflict of focus being Kenya and the post poll violence in Kenya in 2007/2008, the study will be of essence in bringing out the role played by the AU and to analyze the same, on whether the AU played much a role in managing the conflict or a lot is left to be desired from its governing policies and approach to this particular conflict. The result of this study may help to provide guidance to policy makers on the measures to be undertaken in the wake of conflicts of such magnitude in Africa, and Kenya to be précised. Furthermore, it will provide an understanding on appropriate instruments of conflict management and mechanisms to be employed. Ultimately, this study hopes to provide academic information to students in this field of studies and finally provide a basic foundation for other researchers for further research on any gaps that will be established.

1.6 Conceptual Framework

This study utilizes the concept of the ripe moment in understanding the reasons for the African Union’s intervention in the Kenyan post poll violence in 2007. The essence of the concept is that conflicts are ripe for resolution only when certain circumstances obtain, convincing the parties to negotiate rather than continue fighting.\(^{18}\) The ripe moment concept addresses the question of when it is desirable to intervene and when it is not appropriate to do so. In this regard, timing is

essential to the intervention processes. It also discusses and examines the effectiveness of different types of intervention. Effective intervention depends on having the appropriate and useful information. It also assesses how intervention can be sequenced to achieve a maximum impact in a particular context. Certain interventions can be ineffective in addressing a particular problem. It is therefore important to emphasize the link between recipients and interveners. The ultimate responsibility resides with the recipients of the intervention to internalize the goals of the intervention, which usually include the objective of bringing about positive change. In this regard, interventionism is really a process of norm promotion, from the perspective of both the interveners and those who are targets and recipients of intervention.

The timing and ripeness literature for intervention falls broadly into four categories.\textsuperscript{19} Citing Zartman\textsuperscript{20} and others, Mitchell proposes four ‘ripeness’ paradigms: the \textit{hurting stalemate model}, the \textit{imminent mutual catastrophe model}, the \textit{entrapment model} and \textit{enticement model}.

This study adopts the \textit{hurting stalemate model}- where no party can envision a successful outcome through continuing their current strategies, or an end to increasingly unbreakable costs. Zartman describes a mutual plateau which must be a flat, unpleasant terrain stretching into the future, providing no later possibilities for decisive escalation or graceful escape. The model assumes that the actors must make logical conscious decisions that they have both reached

\textsuperscript{19} Mitchel, C. “The Right Moment Notes on Four Models of Ripeness” Paradigms vol 9 No. 2 at pp 38-51.

hurting stalemate before they are able to abandon the conflict unanimously. Thus, the moment is ripe for negotiation when a stalemate arises in the conflict.

Thus, it is rightful to conclude that the AU’s intervention in the Kenyan case was influenced by the paradigms of dispute ripeness as explained by the hurting stalemate model.

1.7 Hypotheses

Based on the literature review, the study will be seeking to test the following hypotheses as guided by the objectives of the study and literature reviewed:

a. The responsibility to protect principle has not enhanced the capacity of the African Union in managing conflicts.

b. The responsibility to protect principle has enhanced the capacity of the African Union in managing conflicts.

c. The use of good offices as adopted by the AU is not effective in facilitating and mediating in conflicts.

d. The use of good offices as adopted by the AU is effective in facilitating and mediating in conflicts.

1.9 Research Methodology

Research design can be thought of as the logic or master plan of a research that throws light on how the study is to be conducted. Mouton argues that a research design serves to "plan, structure
and execute" the research to maximize the "validity of the findings". It gives directions from the underlying philosophical assumptions to research design, and data collection.

The research design for this study will be a descriptive and interpretive case study that will be analyzed through quantitative methods. The research will heavily rely on documentary sources. Thus, it will entail document analysis, and the justification for deploying this method will be discussed.

Findings will be drawn in chapter four, while conclusions made and finally recommendations proposed in chapter five.

I.9 Chapter Layout

1.0 Chapter One: This will capture and present the study with the background information pertaining to the topic under study.

2.0 Chapter Two: Conflict Intervention.

3.0 Chapter Three: African Union’s Intervention in Kenya

4.0 Chapter Four: Document analysis on AU’S success and failure.

5.0 Chapter Five: Conclusions/and recommendations.
Chapter Two

An Overview of Conflict Intervention Mechanism

2.1 Introduction

The idea of peaceful management of conflict is central to modern international relations, diplomacy and international law. The philosophy of peaceful management of conflict is pragmatic, and encompasses two ideas. The first is that in the normal course of interactions actors in the system (whether international, regional, national, or sub-national) should always intervene in conflicts and manage the same using peaceful means. The second idea is the pragmatic realization that conflicts may nevertheless happen – since conflict is endemic in all systems – and that whenever it does, peaceful methods should be used to bring the violent conflict to an end. 21

The methods of peaceful intervention and management of conflicts are clearly spelt out in article 33 of the United Nations Charter. The article requires that; “The parties to any conflict....shall, first of all seek solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.” 22


These methods which may be deployed in any intervention may also be classified into either legal methods or non legal methods. Thus the classification depends on whether the issues in contention are either legal or political. They can also be classified into coercive and non coercive methods. Where coercive methods are deployed in an intervention then it means that the parties to the conflict have little or no autonomy. On the other hand, non coercive methods denote that the parties to the conflict have autonomy about the forum, the third parties involved such as the mediators and the outcome. In order to have a proper understanding of intervention in conflicts then a discussion on the various methods used should be posited. Thus, this will be better addressed by this study while answering the questions: *who intervenes when a conflict occurs? How should they intervene?*

### 2.2 Third Party Intervention in Conflicts

In the study and practice of conflict management, the role of third parties is best seen in the context of peaceful management of conflict. Article 33 of the UN charter best answers the question posited earlier in this study on who should intervene in a conflict, when and how. Its brings out the methods through which third parties should use in peacefully managing conflicts and among them are litigation, arbitration, negotiation, mediation, facilitation and the like.\(^{23}\) In the contemporary world, mediation has proved to be the most popular method of peaceful management of conflicts by third parties. These methods deployed in the search for a resolution during conflict management are what have been described by Boutos-Ghali as peace-making. He

refers to it as the action to bring hostile parties to agreement, essentially through such peaceful means as those foreseen in chapter VI of the charter of the United Nations.\textsuperscript{24}

Third parties such as mediators can be \textit{individuals, states, international organizations, or non-governmental organizations such as religious groups} like churches. Individuals who feel they have a calling to mediate can undertake informal mediation and try to facilitate communications between the parties in conflict. Individuals offer to mediate because they wish to change the course of a conflict, influence it, gain access to political leaders, impose their ideas on conflict management, or enhance their status. This makes it clear that no individuals, states or international organizations mediate for altruistic reasons.\textsuperscript{25} Their interventions may also be formal where they act as representatives of governments, or international organizations. Formal individual mediation is less flexible than informal and usually takes place within formal structures of diplomacy which emphasize procedures.

States also play an immense role in third party intervention. They do a lot of mediations. The reason is that are often and still largely regarded as the most significant actors in the international


system. When states mediate, they do so through individuals. The outcome of such mediations depends on the quality of the mediator, the leverage he has in terms of resources at his disposal.26

On the other hand international organizations have become a salient actor in international relations. They offer services that sometimes states cannot offer. The organizations range form universal organizations such as the United Nations, regional organizations like the African Union, and sub-regional organizations such as the East African Community, the Intergovernmental Authority on Development among others. Such organizations intervene in conflicts to try and fulfill the obligations set out in their charters. They also intervene in conflicts to try and do something about the conflicts in their member state which might affect their political interest, to preserve a structure of which they are part.27 Having established the identity of third parties in conflict management as ranging from individuals, states, to international organizations then in the same light they may be viewed as either endogenous or exogenous.

In assessing the involvement of third parties in the Kenyan Electoral violence, a multiplicity of third parties involved can be drawn. Third parties involved in this conflict included Archbishop Desmond Tutu of South Africa, who had flown in hoping to mediate in the conflict,28and whom some media commentators claimed had been sidelined by ODM. Others included the Former


President Forum (FPF), consisting of former heads of state in the continent, including, Ketumile Masire of Botswana, Joachim Chisano of Zambia, Benjamin Mkapa of Tanzania, and Kenneth Kaunda of Zambia. The team met former President Kibaki, ODM leader Raila Odinga, and former President Moi of Kenya. The FPF did some unofficial facilitation and which laid ground for the Annan mediation. Thus, they facilitated some ‘secret’ discussions with moderate members of parliament from both divides of ODM and PNU. The conflict was eventually intervened and mediated by former UN Secretary General Kofi Annan and a team of eminent African persons namely Graca Machel, and Benjamin Mkapa of Tanzania. Ugandan president Museveni, as chairman of summit of East African Community, and the commonwealth, was also in Nairobi to mediate in the conflict.

Having made an attempt to answer the question on who should intervene in a conflict and how, it is right to put the same perspective side by side with the Kenyan electoral conflict in a bid to understand conflict intervention better. Thus, put in the Kenyan electoral context the philosophy conflict intervention and management being peaceful, required that if there was a conflict or a dispute about elections or their outcomes, the parties should have sought peaceful means to resolve. Had this been done no violence would have ensued in the country. The pragmatic aspect of the philosophy realizes that in the face of the emotional responses to electoral outcomes, the

parties, or some of them, may have resorted to violence. And if this happened, as it did in Kenya, Peaceful methods should have been resorted to in ending the conflict and resolving all issues related to it.\footnote{Mwagiru, M. (2008). \textit{The Water's Edge: Mediation of Violent Electoral Conflict in Kenya}. IDIS, Nairobi.p.37.}

Be it as it may, intervention, whether by military means or not, is only successful when it also establishes some form of a nation-building process that will prevent the area from becoming a security threat yet again.\footnote{Francis Fukuyama, \textit{Nation-Building}: Beyond Iraq and Afghanistan (Baltimore, MD: Johns Hopkins University Press, 2006).} The UN tries to maintain peaceful relations among states, but also addresses conflicts within states. The UNSC has diplomatic and non-coercive tools available such as mobilizing broad support for diplomatic efforts, fact-finding missions to raise visibility, and direct negotiations to prevent violence. Thus, the UN has the most advantages for preventing mass atrocities since “it can help with early, quiet diplomacy aimed at building a nation’s own capacity for acquiring necessary skills and institutions.”\footnote{Hamburg, D. A. (2010), \textit{Recent advances in preventing mass violence}. Annals of the New York Academy of Sciences.p.205-207.} In case these efforts are not sufficient, successful humanitarian interventions need (1) sufficient political and economic but also military power as a backup; (2) enough financial resources; and (3) the perception that it is a legitimate prevention effort.\footnote{Ibid} Most important for the international community is to be prepared to take a pro-active stance in helping nations or groups in trouble rather than waiting for disaster to strike. Escalating conflicts can reach a point where both parties find the further use of confrontational
tactics either unworkable or unwise.\textsuperscript{36} Preventive diplomacy has a range of measures available, among them good offices, facilitation, mediation, shuttle diplomacy, and multiparty engagement.\textsuperscript{37}

\textbf{2.3 Role of regional mechanisms in conflict intervention}

It has already been mentioned that Africa’s endeavor to be in control of its destiny has a long history and occupies a central place in African political thought, past and present. One of the manifestations of this in present-day Africa is the rise to prominence of the political ideal of ‘African solutions to African problems’ in the discourse on peace and security in Africa. To appreciate the profound importance of this political ideal, it is important to understand the immediate historical and political factors that led to its genesis.

While it is clear that the political ideal of ‘African solutions to African problems’ has its roots in the Pan-African movement,\textsuperscript{38} its immediate origins are linked to two related developments. The first one is the end of the Cold War and the emergence of a new global order in which Africa ‘lost’ its geo-strategic value and was called upon to deal by itself with the mess that the legacies

of colonialism and the Cold War left. \(^{39}\) The second one is the change in the nature of conflicts, which led to the recognition that Africa needs to develop its own means for overcoming the challenges of peace and security facing it.

Hence, from its establishment in 2002, the AU has had more clout to intervene when conflict threatens to happen or happen. In its Constitutive Act the principle of non-interference in internal affairs was applied to member states among themselves, but the immediately following principle was ‘The right of the Union to intervene in a Member State ... in respect of grave circumstances, namely war crimes, genocide and crimes against humanity’\(^{40}\). A further principle was ‘The right of Member States to request intervention from the Union in order to restore peace and security’\(^{41}\). The same principles were endorsed in the Protocol for the establishment of the Peace and Security Council of the AU\(^{42}\). The shift of focus from prevention to intervention inevitably

---


has brought about change in the reaction from member states. In prevention - oriented organization sufficient consensus may usually be attained; but in an intervention-empowered union, differences of opinion and/or commitment can often be expected.

Thus, the role of regional organization in conflict intervention cannot be overlooked since they are recognized as conflict intervention and management mechanisms by article 33 of the UN charter. They also use methods prescribed by the same article and tend fulfill their mandates and obligations as per their charters. The violent electoral conflict in Kenya raised issues regarding the intervention in the conflict by international, regional, and sub regional organizations. Both the use of the good offices by the chairman of the African union, and later the visit of the secretary general of the United Nations underline the salience of intervention. Intervention in this context means the various actions by third parties aimed at influencing the direction of events in a sovereign state.\textsuperscript{43} The intervention by the African Union consisted of the use of chairman Kufuor’s good offices, and the support of the mediation that was conducted by Kofi Annan. An in depth analysis on the role played by the good offices will be discussed in chapter four of this study after looking into an anatomy of the electoral conflict in Kenya in the next chapter.

Chapter Three


3.1 Introduction

This chapter will look at the anatomy of the electoral conflict in Kenya and examine why widespread violence erupted in the wake of Kibaki’s presidential re-election. This chapter is structured in three parts by looking at the electoral conflict and examining the actors involved, the outbreak of violence and the consequent intervention.

3.2 The Electoral Conflict

Voters went to the polls on 27 December, 2007. In the weeks that had preceded the election, opinion polls suggested that the gap between the two main presidential candidates had narrowed significantly. While the atmosphere in many polling stations was tense, and though numerous bureaucratic delays occurred in several locations, voting itself went relatively smoothly and peacefully. While any hope of a swift declaration of the result was quickly shown to be optimistic, there seemed little initial reason for concern about the management of the election. The next day the International Republican Institute, one of the few foreign observer groups in the country, gave the election its provisional approval. As attention switched from voting to counting, the mood across the country began to change. Over the following three days, great

44 International Republican Institute, Preliminary findings of IRI’s international election observation missions’, Press release, December 2007.
confusion was created by the process of tallying and reporting the results. All official results were meant to be announced at the press centre set up by the Electoral Commission of Kenya (ECK) at the Kenyatta International Conference Centre in central Nairobi. But delays in announcing results from the presidential election caused great frustration. As the delay lengthened, so suspicion of government malfeasance grew. Supporters of the government and members of ethnic groups that were thought to be its supporters living in areas dominated by the opposition quickly came to fear that they would be the target of violent protests against any rigging. In Busia, on the Ugandan border, on 28 and 29 December local opposition activists warned Kikuyu residents—that they were to be evicted imminently.45

Despite the delay, expectations of an Odinga victory were also growing. On the basis of the first batch of declared results, which came overwhelmingly from ODM strongholds, Odinga's supporters thought their man was on his way to State House. Crowds in Kisumu celebrated victory for Odinga. The main newspapers agreed, and the morning editions on 29 December effectively called the election for him. By the afternoon of the same day, the situation had changed. As Samuel Kivuitu, the chairman of the ECK, began to announce a series of results from Kibaki's heartlands, ODM leaders in attendance at the tallying centre tried to stop him. They claimed to have concrete evidence of rigging from the constituencies being announced. These constituencies, it later turned out, were those from which the European Union observers'...
mission reported irregularities.\textsuperscript{46} After listening to representations from all parties, Kivuitu decided to postpone the announcement until the following day and instigate an overnight investigation of the results.

3.3 The Out-break of Violence

The first protests began shortly afterwards in Kisumu, Mombasa and Nairobi. Control was quickly regained by the police, but tension remained high across the country into the following morning, 30 December. One of Kericho's Kikuyu residents, Dr Njoroge, waited for the results: 'By the third day we were all very anxious and afraid.'\textsuperscript{47} In Nairobi, a security cordon was put in place around key government buildings and the building where the results were being announced. The media and observers waited there for much of the day for the final declaration, which everyone now expected would announce Kibaki as the winner. ODM members made one last attempt to block announcement of the result before the building was cleared. Taken to a secure room with only the state broadcaster for company, Kivuitu finally announced the results in the late afternoon. Kibaki had, he reported, won the presidential election by more than 200,000 votes. He then hurried the short distance to State House to deliver the certificate declaring the result to the president. A swearing-in ceremony was hastily organized and, as the sun set, Kibaki began his second term in office.


\textsuperscript{47} Kimani Njogu(ed.), \textit{Healing the wound}: Personal narratives about the 2007 post-election violence in Kenya, Nairobi, 2009, p. 27.
It was with incredulity that Kenyans watched these events unfold live on television. An election that had been called for Odinga just a day before had now been won, so it was claimed, by Kibaki - and by a surprising margin. The president's supporters celebrated the unexpected victory, but elsewhere violence erupted almost immediately. In Kericho, 'within no time we now started seeing fire in the towns people shouting and screaming and we could see smoke all over the town. We soon heard gunshots and this continued into the night.' In the hours that followed the results, some supporters of Odinga attacked individuals and groups they thought had supported Kibaki. Some of this was spontaneous: 'It was terrible and every person who was perceived to be from a particular tribe was kicked out of his house and the house set on fire,' recalled Salome Njeri. She and her family, Kikuyu residents of Busia, fled to the local police station, where they spent the next eight months. In the two months that followed the disputed election, at least 1,133 Kenyans were killed, thousands of women raped and property widely destroyed. The violence took three forms. The first - and, in terms of fatalities, statistically the least significant - constituted protests against the result itself. As the reports of domestic and foreign observers made clear, the elections were at best marked by significant irregularities, the extent of which made it impossible to declare a true winner; at worst they had been fixed. According to ODM's spokesman Salim Lone, 'The robbery was blatant.' For his part, Kibaki

48 Ibid.
was insistent that 'he won the election fairly'.\textsuperscript{51} The truth was somewhere in between: rigging took place on both sides, the paper trail was retrospectively tampered with, and the margin of victory for either candidate was almost certainly tiny. As the US embassy's analysis put it: 'We do not think it will ever be possible to tell definitively who actually won the election.'\textsuperscript{52} But it is important to note that confusion and obfuscation of the result was a deliberate policy of the PNU. The ECK had been packed with Kibaki's allies earlier in the year: nineteen of the institution's twenty-two members had been appointed by the president. Nine of the appointees were labelled by ECK Chairman Samuel Kivuitu ahead of the election as 'the riggers'.\textsuperscript{53} Moreover, as the American ambassador reported, the tallying centre in Nairobi was the subject of a break-in on the night the election result was declared. 'We do not know what was taken or altered,' Ranneberger wrote, 'but since there was heavy police security around the ECK, we can only conclude that it was an inside job.'\textsuperscript{54} Kibaki fiddled and Kenya burned. Although the ODM won the most seats in the parliamentary elections, this was of little comfort to the supporters of Odinga. The ODM's leaders put a plan for civil disobedience into action, calling on Kenyans to protest against the result of the presidential vote. Looting and vandalism were reported in Nairobi, Mombasa and Kisumu. In some places this was particularly targeted at businesses and other property owned by Kikuyu, on account of that community's support for Kibaki and the PNU. The extent of these

\textsuperscript{51} Ranneberger To state department, 29 January 2008; 08NAIROBI1312; Wikileaks cable viewer website, 2011.

\textsuperscript{52} Ibid

\textsuperscript{53} Ibid

\textsuperscript{54} Op Cite
protests was, however, limited. A massive security operation was mounted to prevent the civil disobedience campaign gathering pace. Sites for demonstrations were blocked off and, with live television and radio broadcasts suspended; it became difficult for the ODM’s leaders to communicate plans for mass action. The second strand of the violence was the response to the protests. Through the first two weeks of January, the police and other security forces used disproportionate force to quell demonstrations against the election result. It became apparent almost immediately that live ammunition was being used against the protestors, as police officers brutally cracked down on any demonstration of support for the ODM in major urban areas. As one twenty-seven-year-old woman from the Manyatta informal settlement in Kisumu put it: 'The police were shooting indiscriminately. I saw them but there was no time to escape. I found myself in hospital.'55 Another eyewitness, Joel Cheruiyot of Kapsoit, described how: 'I think that the government used excessive force even on innocent people who were going about their own business. . . . In fact the police used to force people to close their shops by using live bullets or by beating people. There are ladies who were raped but are silent.'56 A later investigation into the violence found that 405 people had been killed by the police. 'Among the victims were some who were ostensibly going about their lawful business when they were hit by bullets and many more whose wounds confirmed that they had been shot from behind,' the investigation concluded.57

55 Makokha and Orlale, In the Shadow of death, P. 9
56 Njogu, Healing the wound, P. 52
The actions of the police can be easily explained with reference to the long history of political control over the security forces, their habitual use of extreme violence in response to challenges such as outlawed sects, and a tradition of disregard for human rights and the law. The third strand of violence proved the most destructive. Almost immediately after the declaration of Kibaki's victory, planned attacks were mounted on homes and communities. The fact of the disputed election was used to reignite a much older conflict over land, power and wealth. 'The fire this time', Billy Kahora later called it in his editorial in the influential Kwani? Literary journal. In areas of the Rift Valley and Western Provinces affected by the clashes, of the 1990s, armed militia attempted once again to force out ethnic groups considered to be outsiders. Michael Mwangi, a retired headmaster living in North Kinangop, had lived through the ethnic clashes there in April 1992. Elsewhere, the violence following the 2007 election began almost immediately after the result was announced. However, it gathered pace and intensity in the days that followed. 'Burning of houses started on the night of 31 December 2007 and 1 January 2008,' recalled Mwangi. Through early January, farms close to his home were attacked by Kalenjin militia, and the police seemed powerless. Eventually, the army was deployed in the area, but many Kikuyu residents were told to take refuge at the local police station. As they left their homes, Kalenjin youths burned and looted their property. 'Homes were burning while the police just watched,' Mwangi claimed. Like so many others, he took in people fleeing the violence. But with up to 500 people camping out in his compound by the end of January, his home became a

58 Billy Kahora, The fire next time or a half-made place: Between Tetra Paks and Plastic bags‘, Kwani?, 5(2) (2008), pp. 8-12
target for the local Kalenjin militia. With his farm surrounded by militia members one night and his house on fire, Mwangi was saved only by the last-minute arrival of police officers.\textsuperscript{59} Eldoret and its surrounding countryside was the epicentre of the post-election violence. The targets of the violence were the non-Kalenjin population of the area - mostly Kikuyu. Within just five days of the announcement of the election result, nearly ninety people had been killed in the area. Around 50,000 people had been forced from their homes in the same short period.

However, with roads out of the area blocked with burnt-out cars and rocks, and with Kalenjin militias marshalling unofficial checkpoints, those forced from their homes sought refuge in communal buildings such as churches and schools, as well as in the compounds of police stations and administrative posts. Some 400 people sought protection at the Kenya Assemblies of God Church in the village of Kiambaa, less than fifteen Kilometres from Eldoret. The Kikuyu residents of the area had, in some cases, been living at Kiambaa for forty years. 'I was born and brought up here,' one later told reporters. 'My parents settled here after buying land and I do not understand why political issues have caused a rift between us and our brothers from other communities.' At 10 a.m. on New Year's Day, the women at the church were making lunch. 'We were preparing githeri [maize and beans] for the more than 400 people who had sought refuge in the church when a group of youths brandishing weapons charged at us', recalled Margaret Wanjiku. The attackers set light to the church and, according to Wanjiku, in a matter of minutes

\textsuperscript{59} Njogu, \textit{Healing the wound}, pp. 67-8
the church building was a burnt-out shell.\textsuperscript{60} At least thirty-five people were killed in the attack, including infants and the elderly. William Ruto later attempted to clear Kalenjin youths of involvement. In conversations with US officials, he claimed 'the cause of the incident was an accidental kitchen fire during preparations for lunch'.\textsuperscript{61}

The violence at Kiambaa and elsewhere was, in part, the result of a form of identity politics that we have encountered as a nation. Kikuyu were commonly depicted as outsiders, without legitimate claim to the land in the Rift Valley that they occupied. Milka Kiarie, a resident of Molo who had been a victim of the clashes in 1992 and 1997, was forced from her home on 26 February. She later described how Kalenjin militia members 'came and told us that we had to leave: since it was their land which they were given at independence and the Rift Valley belonged to them'.\textsuperscript{62} But such a view ignored the multiethnic, mobile history of modern Kenya. 'I have nowhere to go,' said one survivor of the Kiambaa church massacre. 'I am ready to go back to what used to be my home depending on how things shape up.'\textsuperscript{63} Such sentiments were courageous, but also rooted in fact. Kikuyu belong to the Rift Valley just as much as Kalenjin, Maasai and Samburu. In 2008, when asked about the origins of the post-election violence, the civil society leader Gladwell Otieno said: 'It's about resources, it's about land, it's about tribe, it's

\textsuperscript{60} The Nation, 6 January 2008. p6.
\textsuperscript{61} Ibid
\textsuperscript{62} Njogu, \textit{Healing the wound}, p. 147.
about so many issues that successive governments have not addressed.\textsuperscript{64} That was true, but in the heat of the moment, of all these different factors it was ethnicity that was seized upon by many Kenyans in an attempt to understand events. Politicians came under pressure from their constituents to provide support and protection for ethnic kinsmen across the country. While the police and other security forces were used to crush protests against the election result, the same officers were far but some of them were not assisting because they were favouring their side as most of them were Nandis'.\textsuperscript{65} In order to fight back, Kibaki's inner circle turned to Mungiki. Mungiki members, who had been the target of state repression just months before, now became the PNU's soldiers of fortune. Credible rumours of Mungiki members being used to crush protests in Nairobi's poorest neighbourhoods were circulated from the very first days of the crisis. However, more substantial evidence exists of the state's complicity in Mungiki's violence in the Rift Valley. According to the BBC's Karen Allen, 'meetings were hosted at the official residence of the president between the banned Mungiki militia and senior government officials'. Although the government denied these reports, Allen's sources told her that Mungiki members 'were given a duty to defend the Kikuyu in Rift Valley and we know they were there in numbers'.\textsuperscript{66} Other journalists found similar evidence of state involvement in Mungiki's actions. 'Kikuyu politicians and businessmen hired group members for reprisal killings in Nakuru and


\textsuperscript{65} Njogu, \textit{Healing the wound\textemdash}, p. 147

\textsuperscript{66} \textit{State - Sanctioned\slash Kenyan clashes\textemdash} BBC News, 5 March 2008, available at: http://news.bbc.co.uk/1/hi/world/africa/7279149.stm
Naivasha at the height of the post-election violence', Africa Report claimed in 2008. 'For Kes.300 for each person in a gang of 50, politicians were able to hire Mungiki to wreak revenge on the Kalenjin youth militias that had driven tens of thousands of Kikuyu families from their farms in the Rift Valley.'" Mungiki's targets were not the rival Kalenjin militias involved in the violence against Kikuyu communities in the western Rift Valley, but rather Kalenjin and Luo residents in the towns of Nakuru and Naivasha. Mungiki's assault in Naivasha began on 27 January. Over the preceding days, Luo and Kalenjin residents of the town had received warning messages of imminent attacks. A police officer told the BBC how he and his fellow officers had been given orders to allow a convoy of minibuses less able to protect families in areas affected by the communal violence. To Michael Mwangi, 'It looked like the government had been overthrown. Three-quarters of the policemen were on the ODM side.' Reuben Cheruiyot, a bookseller in Londiani, lost his business in the violence, even though 'My shop was just 50 metres from the police station.' When her home in Molo was attacked, Milka Kiarie went to the local police station. Some of the police officers 'tried to help through police checkpoints along the main roads connecting Nairobi to the two Rift Valley towns. 'We were ordered not to stop the vehicles to allow them to go,' the policeman said. The minibuses were 'packed with men' and 'I could see they were armed'. News of the arrival of these strangers on the evening of 26 January


68 Njogu, *Healing the wound*, p. 68.

69 Ibid, p. 56.

was widely circulated around Naivasha. The following day, Mungiki’s attacks began. 'I remember the merciless killing of innocent Kenyans by armed attackers,' recalled Jane Achieng, a forty-nine-year-old widow. 'What I saw was too inhuman.' Achieng owned sixteen properties that were rented out to tenants working in the town and the surrounding flower farms; all her houses were destroyed on 27 January. Achieng fled her burning home and eventually made her way to Busia. Other Kalenjin and Luo sought refuge in the grounds of Naivasha’s prison. In total, more than 500,000 Kenyans were forced from their homes in the first two months of 2008. Many took refuge with friends, relatives and, in some cases, complete strangers. Although not as newsworthy, astounding generosity and instinctive humanitarianism was as much a feature of the crisis as was the violence. Some people took extraordinary risks. Mama Kiplagat, a 29-year-old woman living in Burnt Forest, took in her Kikuyu neighbours - a widow and her three children. 'If Kalenjin had realized I had helped a Kikuyu, they would have even killed me,' she later remarked. 'It was very risky and I was in danger because of suspicion and even feared that my children would betray me if they knew about it.’ Hundreds of thousands of Kenyans nevertheless had no choice but to head to the camps set up for the victims of the violence. Kenneth Kamau was one of those forced to seek refuge in the camp established at the main stadium in Naivasha. A Kikuyu, he had fled from his home in Narok after being attacked by Maasai youths on 12 January. Suffering from serious wounds, Kamau was first taken to hospital and then to Naivasha camp. 'At the camp we have a lot of problems', he commented. 'When it

71 Makokha and Orlale, *In the Shadow of Death*, p. 15.

rains the camp gets flooded. Some of us have the abilities and are unable to take shelter and it gets really cold. Since the Red Cross left, it takes time before we get food. At times we have to wait or a month or two to get food. Kamau and the other tens of thousands of people displaced by the violence were quickly forgotten by the government. Eighteen months after the violence erupted, nearly half of the displaced people were still awaiting resettlement. Even now, several years after the violence, camps dot the landscape of the Rift Valley and homes remain abandoned. The government's treatment of the displaced has been scandalous. Camps have been forced to close and the payments promised to help relocate or rebuild old homes have been delayed - and have sometimes never materialized at all. By late January 2008, the situation seemed bleak. 'We are operating in crisis mode,' one police insider told US diplomats. The police force was stretched thinly and its officers were not, as we have seen above, necessarily determined to do much to end the violence. Soldiers were deployed in a few areas, but their loyalty to the government was untested.

3.4 Intervention

However, a combination of domestic and international pressure brought an end to the conflict more quickly than many had dared hope. International efforts to broker a solution had begun in the very first days of the crisis. Travel bans were imposed on individuals suspected of instigating

\[\text{\textsuperscript{73} Ibid, p. 143.}\]

\[\text{\textsuperscript{74} Ranneberger To state department, 29 January 2008; 08NAIROBI131; Wikileaks cable viewer website, 2011.}\]
the violence, for example. In early February, the businessman Joshua Kulei, the MPs Henry Kosgey, William Ole Ntimama and Zakayo Cheruiyot, and the former MP Musa Cherutich Sirma were banned from travelling to the US because of their alleged incitement, organisation or funding of militia violence against Kikuyu in the Rift Valley. At the same time, the MPs John Mututho and Kabando wa Kabando, the former MPs Njenga Karume and James Kimathi, and a businessman Richard Ngatia were banned because of allegations of various forms of involvement in Kikuyu militia attacks. ECK commissioners Kihara Muttu and Jack Tumwa were both, furthermore, banned from travel to the US for allegedly 'accepting bribes to fix the election results tally at ECK headquarters'.

Alongside these bureaucratic efforts, a series of foreign dignitaries attempted to broker peace. Hapless efforts by Jendayi Frazer, then the US assistant secretary of state for African affairs, and even Cyril Ramaphosa a S. African all came to naught. John Kufuor, the president of Ghana, visited the country to no great effect, but did persuade his compatriot Kofi Annan to lead an African diplomatic mission. Together with Graca Machel, the wife of Nelson Mandela, and the former president of Tanzania, Benjamin Mkapa, Annan arrived in Nairobi on 22 January over the next five weeks, he chaired regular meetings of delegations from both sides in the dispute. From early on, the proposed solution from the mediators was a power-sharing government. But with both delegations of negotiators made up of hardliners - most notably Ruto from the ODM and Martha Kama from the PNU - reaching agreement proved difficult, The PNU’s negotiators

75 Rannebeger to state Department, 5 February 2008; 08NAIROBI378; WikiLeaks cable viewer website, 2011.
blamed the ODM for the violence, accusing the opposition of trying to 'blackmail' its way into government.\textsuperscript{76} Finally, Annan decided to meet face to face with Odinga and Kibaki. I couldn't let them hide behind the mediators any longer,' Annan told one journalist.\textsuperscript{77} Supported by Mkapa and the current Tanzanian president Jakaya Kikwete, Annan met the two main leaders on 28 February After five hours, a deal was struck. A coalition government would be formed and Odinga would be appointed to the new post of prime minister. Ministerial posts were to be divided up equally between the two parties. 'Better half the loaf than no bread,' remarked Odinga.\textsuperscript{78} The violence ceased quickly. The power-sharing government was finally sworn in six weeks later. Besides Odinga's promotion and the expansion of the cabinet to accommodate its new ODM members, the power-sharing agreement included a package of reforms intended to prevent any future recurrence of violence. Two independent inquiries were also commissioned the first, chaired by the retired South African judge Johann Kriegler, was to examine the conduct of the election itself. The second, headed by the Kenyan Judge Philip Waki, was given the remit of investigating the causes of the violence. A committee of international and local experts was appointed to draft the new constitution, and a truth commission was set up to address long-standing historical grievances, such as the violence of the 1990s. Finally, agreement was reached to investigate, try and prosecute the perpetrators of the violence that followed the 2007 election. Politics after the violence ceased were dominated by this ambitious reform programme, but there

\textsuperscript{76}Ibid


\textsuperscript{78}Ibid
was little in the performance of the coalition government to inspire Kenyans. 'Half-hearted and vague', according to Parselelo Kantai, the power-sharing deal meant only the re-orientation of power at the centre among rival political elites, but elites nonetheless'.\textsuperscript{79} The agreement was blighted by two debilitating contradictions. First, those responsible for the violence were entrusted with resolving it. There was little reason to believe that they had the capacity to build peace or enact the reforms necessary to prevent any future recurrence. Secondly, the merits of designing and implementing measures intended to reduce the chances of a future recurrence of violence in the long-term had to be weighed against the short-term political expedient of keeping the coalition together, thus preventing an immediate return to conflict. These short-term considerations trumped the reform agenda at every stage. Key institutions showed no sign of having learned any lessons from the violence either. The security forces and their political masters immediately demonstrated a willingness to use disproportionate violence without due regard for human rights in order to crush any security threat. Once the post-election violence was over, the police, GSU and army turned their attention to Mount Elgon. There a distinct low-intensity conflict had been rumbling on for the previous two years. Historic land grievances drove local politics, and politicians sought to exploit these for personal political gain. In 2006, disgruntled Sabaot, who felt short-changed after successive attempts to resettle the population of the area, formed the Sabaot Land Defence Force (SLDF). This militia soon allegedly became linked to the aspiring politician Fred Kapondi. Kapondi contested the 2007 election and, Human

Rights Watch claims, used the SLDF during his campaign. In two years of bloodshed, until April 2008, up to 200,000 people had been, displaced from their homes by the SLDF, more than 600 people had been killed and many more beaten, abducted and sexually assaulted. Once the election and the violence elsewhere were over, the security forces, including the army, were charged with eradicating the SLDF. This they did with gusto between April and June 2008. Up to 4,000 suspected militia members were detained during the operation, and many of those were allegedly tortured. Others were even less lucky: around 220 people were allegedly killed by the armed forces. There was little willingness on the part of the government to consider its conduct of the election either. The PNU, the US ambassador remarked, consistently refused to truly own up to the fact that the flawed election results were the impetus to the crisis. They seem almost oblivious to the vote tallying problems, treating it as a minor detail that can be brushed aside and dealt with through legal means. Even the final report of the Independent Review of Election Commission led by Kriegler was, according to one human rights consortium, 'a half-baked job that attempts to cover up offences committed by people who deserve no such protection'. Rather than interrogating the political culture of elections, Kriegler's commission focused entirely on bureaucratic procedures. The final report refused to attribute blame to any party, with

81 Ibid
82 Rannerberger to State Department. 29 January 2008; 08NAIROBI312; Wikileaks cable viewer website, 2011
the exception of the ECK, and so the review sustained the Government of National Unity through its most contentious dispute. Few members of the government had much to gain from a close analysis of how the election had been managed. While Kibaki and his supporters had the most to fear from a forensic analysis of events at the tallying centre, a glance at the large turnouts in many constituencies won by ODM leaders suggested that irregularities could be found there, too. The only faction that pushed for greater discussion of the conduct of the election was that made up of those alleged to have been the orchestrators of the ethnic violence in the Rift Valley. Presenting the violence there as a spontaneous response to the theft of the election was a way of rebutting the accusations of their involvement in the planning of the bloodshed.

In contrast to the inquiry into the management of the election, the independent committee chaired by Philip Waki that investigated the violence produced a robust report that apportioned blame without fear or favour. Ruto complained that the report was 'rubbish' and 'unfairly incriminating'. 84 Impartial observers disagreed. 'This is a report whose authors intend it to have real meaning - to end the impunity that it so clearly highlights with respect to the politically instigated clashes of the 1990s and political violence in general,' wrote Muthoni Wanyeki of the KHRC after the report was published. 85 However, its extensive efforts to contextualise the violence within a longer history of police brutality, the use of militias by politicians and profound inequalities within Kenyan society were quickly lost in a furore over the names of

84 Ranneberger to State department, 3 June 2009; 09NAIROBI1083; Wikileaks cable viewer website, 2011

85 Muthoni Wanyeki, Hats off to Waki and His team, The East African, 19 October 2008.
those whom Waki’s report suspected of masterminding the violence. Those names, written on a list, placed in a sealed envelope and handed to Kofi Annan for safekeeping, were the subject of much subsequent speculation.

The process of constitutional reform was another example of the way in which the presumed political need to keep the flawed coalition intact undermined the long-term objectives of peace and stability. All agreed that constitutional reform was unfinished business: the retention of the existing constitution was intolerable to almost every Kenyan. But there was little agreement on what the new constitution should look like. Two key issues continued to divide both the government and the wider population. Devolution of power to local authorities was seen by many in the ODM as essential to solving the problem of an over-centralization of power. To the PNU's leaders and supporters, devolution was a constitutional cover for ethnic cleansing and provided succor only to the ethnic warlords. The role of the president was similarly divisive. Many in the PNU supported retention of the powerful presidency. The ODM's leaders wanted to see the powers of the presidency restrained either by the continuation of Odinga's temporary post of prime minister or by bolstering other institutions in government, thus enabling them to act as checks and balances on the executive. A committee made up of constitutional experts from Kenya and over-seas was charged with producing a draft document that worked through these seemingly intractable disputes. The committee handed over its suggested draft to the politicians in November 2009. In the months until a final version of the draft was tabled ahead of an August 2010 referendum, political leaders negotiated with one another about the contents of the document. A final version was published three months before the referendum. The draft constitution promised a greater separation of powers between the executive, the legislature and
the judiciary. A second chamber was to be added to parliament and legislators were to be given greater powers of oversight over presidential appointments. However, a strong presidency was retained, and there was to be only limited devolution of power to new county councils. The much-anticipated decentralization of power would not happen.

Despite the fact that the draft constitution failed to measure up to the expectations of constitutional reform that had been expressed so fervently over the previous two decades, many of those who had been in the vanguard of the push for reform supported it at the referendum. To civil society leaders, MPs who had long been linked to the reformist position and other observers, it seemed likely that 2010 represented the last opportunity for meaningful reform. Pro-reform campaigners set their reservations to one side and campaigned enthusiastically for the 'Yes' vote. 'This constitution will help us fight poverty, ignorance and disease and dictatorship,' Odinga told crowds at a rally in Nairobi in May 2010. Such promises could never be kept by any constitution, never mind the wordy and complex document presented to Kenyans. Rather than tackling the obvious limitations within the draft constitution, the 'No' campaign was built around narrow political self-interest. Ruto believed that campaigning against Odinga represented his best opportunity for a tilt at the presidency in 2012. The two former allies had fallen out, and Ruto had entered an informal alliance with the government with the vice president, Musyoka, and the deputy prime minister, Kenyatta. However, with popular support firmly behind the yes' campaign, neither Musyoka nor Kenyatta was willing to oppose the draft

86 The Nation, 15 May 2010, p16.
constitution. They too, joined Odinga and President Kibaki in half-hearted campaigning for acceptance of the draft document. Ruto and his fellow Kalenjin MPs were left isolated in the 'No' campaign. They predictably picked on land as an issue to galvanise support, arguing - without any basis in fact - that the proposed constitution Jeopardised Kalenjin claims to the Rift Valley.

'We will not accept to suffer while people sit on our land,' Ruto's ally and Mount Elgon MP Fred Kapondi told the crowd at the launch of the 'No' campaign.\(^{87}\) Although politically exposed, Ruto was nevertheless able to find partners for his 'No' campaign. Jettisoning the churches' longstanding support for constitutional reform, various Christian leaders opposed the draft. Their grievances hinged on the continued provision for Islamic family courts which, the church leaders claimed, unfairly privileged Islam over Christianity and on the new constitution's tolerance of abortion in very rare cases. The proposed constitution 'violates the rights of some religious groups' and was 'offensive to the Christian community', claimed the NCCK general secretary, Canon Peter Karanja.\(^ {88}\)

Voters offered a stern rebuke to Ruto and the clergy. Over two-thirds voted to accept the draft constitution. Odinga had seized the initiative and now sought to make hay. Having already been demoted to the post of higher education minister, in October Ruto was suspended from the cabinet. But worse was to follow.

By late 2010, no individual had yet stood trial for their part in the bloodshed three years before. Both the perpetrators and the organizers had escaped justice. Efforts to establish a tribunal to try

\(^ {87}\) Ibid

\(^ {88}\) The Nation, 15 April 2010,p12.
the main organizers of the violence failed to get through parliament, not least because many MPs feared prosecution. The existing court structure had, on several occasions in the past, proved itself incapable of coping with such incidents. For once, however, Kenyan politicians were not in complete control of their own affairs. From the very beginning of the violence, human rights groups appealed to the International Criminal Court (ICC) to investigate alleged crimes against humanity committed by the state security forces and some of the ODM's leaders. The ICC's prosecutor, Luis Moreno-Ocampo, was moreover keen to take up the Kenyan case. In urgent need of a successful prosecution to prove the ICC's worth, Moreno-Ocampo opened an investigation.

Building on the findings of the Waki commission and reports into the violence compiled by human rights groups, Moreno-Ocampo delivered his conclusions in December 2010. He announced that he would request the ICC to issue summonses to six individuals in two distinct cases. In the first, Moreno-Ocampo accused William Ruto; Henry Kosgey, the minister for industrialization and the ODM chairman; and Joshua Sang, a broadcaster and executive at the Kalenjin-language radio station Kass FM, of crimes against humanity. In the second case, Francis Muthaura, the powerful head of the civil service; Uhuru Kenyatta, the deputy prime minister and minister of finance; and Mohammed Hussein Ali, the former police chief, were accused of the same charges. The prosecutor also made it clear that there were many more than six organizers of the violence, and that he expected the Kenyan authorities to prosecute perpetrators within the local court system. According to Moreno-Ocampo: these were not just crimes against innocent Kenyans. They were crimes against humanity as a whole. By breaking the cycle of impunity for massive crimes, victims and their families can have justice. And
Kenyans can pave the way to peaceful elections in 2012. It is, however, worth keeping in mind that most significant political activities and changes in leadership throughout Kenya’s history as an independent state have been followed, and to some extent formed, by violence, usually framed along ethnic lines. Yet, the most recent post-election violence, because of its relationship to the contested election results and because of its speed and scale, seemingly came as a surprise and shock for many Kenyans and the outside world. The violence had erupted even before Kibaki was declared winner of the elections, but increased in scale after the announcement. It was in the Rift Valley – in particular around Eldoret – that violence first erupted, seemingly taking the form of ethnic-based clashes between Odinga’s supporters, especially from the Kalenjin ethnic group, and supporters of Kibaki, mostly from the Kikuyu ethnic group. The level of the state agencies’ responsibility for the occurrence of the election violence remains a disputed subject. Human Rights Watch interviews with police officers suggest that an unofficial shoot-to-kill policy was applied, apparently resulting in unarmed civilians being shot dead if assumed to be rioters. In order to establish a framework for understanding how electoral violence in Kenya was resolved it useful first to link it up with the role played by the AU in mediating the conflict. The following chapter aims at retracing the role played by the AU in intervention in the Kenyan Electoral conflict, its success and failure.

Chapter Four

A Critical Analysis of the AU’S Intervention in Kenya’s Electoral Violence

4.1 Introduction

This chapter basically ties the knot by linking the three chapters discussed earlier on and provides an analytical perception to the thesis. The theoretical framework of the ripe moment is the analytical tool that forms the basis for determining the relevance of the hypothesis with a view to meeting the objectives of this thesis while presenting the findings. Through narratives in the previous chapters, the study has been able to include detailed analysis of various events as well as to simplify the reality by determining the elements of the historical accounts that are salient and worthy of attention, and those that are insignificant and require omitting.

Kenya has been riddled with violence throughout its brief history as a nation. The 2007 post-election violence in Kenya, however, was of a different magnitude. The magnitude of the trauma and structural violence that took place in Kenya after the fourth multi-party general election took

both Kenyans and the international community, alike, by surprise.\textsuperscript{91} The severity of this conflict unfolded in a span of 59 days between Election Day, December 27th, 2007 to February 28th, 2008, when a political compromise was reached.

In retrospect, the violence that occurred could not only have been predicted, it could most likely have been prevented. One of the foundations of this conflict analysis is that what took place during the Kenyan 2007 elections had its roots in a weak national constitution that progressively lacked healthy checks and balances system within the branches of government. Over the span of three decades, amendments to the constitution were made to systematically erode these balances in favor of strengthening presidential powers.\textsuperscript{92} This chapter therefore seeks to establish how the principle of responsibility to protect having been adopted in 2005 and embraced by both international and regional organizations such as the AU has changed this state of affairs in respect to conflict intervention and management. The chapter will further discuss on how the adoption of good offices by the AU played a significant role in managing Kenya’s electoral conflict. This is in the respect of the objectives derived and hypotheses postulated in the earlier chapter of this study.


\textsuperscript{92} Ibid
4.2 AU’s Intervention in Kenya and it’s Responsibility to Protect (R2P)

Post-election violence in Kenya in December 2007 led to bloodshed and displacement on a massive scale. Beyond the despair and anger over poverty, corruption, and the need for political change in the face of a fraudulent election, the riots also revealed the underlying tensions between ethnic groups that had been fueled by the presidential campaign. These tensions culminated in a clash between supporters of Raila Odinga, Kenya’s main opposition leader, and those of Mwai Kibaki, the incumbent president. With the onset of violence, Kenya, once viewed as a relative haven of stability in the Horn of Africa, faced ethnic violence, a growing humanitarian crisis, economic disruption, and unresolved questions about its future political direction. The violence resulted in more than 1,000 deaths, at the hands of security forces and in violent ethnic clashes, as well as approximately 600,000 internally displaced persons (IDPs).93 United Nations Secretary-General (UNSG) Ban Ki-moon characterized the post-election ethnic clashes in Kenya as an issue concerning of the Responsibility to Protect (R2P), a relatively new principle that imposes the duty to halt mass violence. Mr. Ban took diplomatic steps to address the violence by encouraging mediation efforts by former UNSG Kofi Annan.

The principle of R2P has made four main contributions to the conflict intervention debate: (1) turning the focus of the debate from humanitarian intervention to a responsibility to protect people trapped in conflict situations; (2) developing a new understanding of sovereignty where the state does not control but primarily protects its citizens; (3) setting up clear criteria of what the R2P, in practice, should mean, clarifying that it consists of much more than just military intervention; and (4) mandating that if coercive action is seen as necessary, it must be legal and legitimate.  

Indeed, there was hope that the dichotomy between sovereignty and intervention has been overcome by acknowledging human security and the non-exclusivity of state sovereignty.  

For a long time, the international community claimed to give priority to early action and the development of the diplomatic capacity for an effective response to a conflict-prone situation. When the ICISS published its report on the Responsibility to Protect in December 2001, three pillars were developed: prevent, react, and rebuild. These three pillars of R2P have to be


considered as an aggregate set of strategies forming a toolkit to tackle gross humanitarian emergencies, particularly genocide, war crimes, ethnic cleansing, and crimes against humanity. The responsibility to prevent, the first R2P pillar, is based on the idea that states have a responsibility to ensure that domestic tensions are addressed before they escalate. States also have to provide certain dimensions of good governance (like transparency and the rule of law), health, broad participation, and economic development. It is on this ground that the AU found its moral ground to intervene in the Kenyan electoral conflict which was bound to engulf many of its innocent citizens. It did so under the auspices of its panel of the wise and the then AU chairperson John Kufuor.

Failure by states to take action when mass violence occurs results in a transfer of responsibility to the international community. UNSG Ban characterized the post-election ethnic clashes in Kenya as an R2P situation and took diplomatic and political steps to address the violence in early 2008. Contrary to the polite diplomatic language used by UN officials, Mr. Ban was blunt during a visit in Nairobi in February 2008: “The people and leaders of Kenya, particularly political leaders, have the duty, and the responsibility, to wake up and reverse this tragic path before it escalates into the horrors of mass killings and devastation we have witnessed in recent history. I

97 Ibid.p19
have come to emphatically reiterate my fullest support to Kofi Annan.”

The international community was fortunate that Kenyan authorities accepted regional (AU) and international involvement; consequently the intervention in sovereign affairs was not challenged—an issue usually contested with R2P skeptics. Additionally, R2P’s application to the Kenyan crisis did not involve any kind of sanctions or military interventions, which meant that the UNSG could avoid politicizing the debate by invoking R2P as a solution even without the authorization of the UNSC, which would have easily politicized the debate. In Kenya, Mr. Annan proved the value of outside engagement when he succeeded in preventing an escalation of post-election violence, an outcome that he saw as a successful example of R2P in action. The success achieved by Mr. Annan shows that a joint undertaking by the UN and other multilateral and regional organizations can be successful. Without the joint effort, the parties would not have felt the pressure to come to the table and hammer out an agreement. Invoking R2P was important to demonstrate to the Kenyan political elite that the international community cares about the crisis


in Kenya and stop the cycle of violence. Instead of brutal clashes and forced displacement, R2P mattered because it provided a diplomatic solution. Mr. Annan himself said “when you have ethnic violence, if you don’t mediate quickly, you get a hopeless situation.”\textsuperscript{101} It took Mr. Annan some 40 days to convince both sides that there was no way either side could run the country without the other and that without an agreement the country would be in a political gridlock. Finally, Mr. Annan concluded proudly “when we talk of intervention, people think of the military. But under R2P, force is a last resort. Political and diplomatic intervention is the first mechanism. And I think we’ve seen a successful example of its application [in Kenya].”\textsuperscript{102} Indeed, with the birth of the principle of responsibility to protect and consequently its observation by the AU in the Kenyan electoral conflict saw the watering down of the non-interference principle hence enhancing the capacity of the regional body in conflict intervention.

4.2 AU’s Intervention and the use of Good offices

The violent electoral conflict in Kenya raised issues regarding the intervention in the conflict by international, regional and sub-regional organizations. Both the use of good offices by the chairman of the African Union, and the later visit of the secretary general of the United Nations


\textsuperscript{102} Ibid
underline the salience of intervention by such organizations. Intervention in this context means various actions by external third parties aimed at influencing the direction of events in a sovereign state. There are various degrees of intervention by third parties, in which military intervention is the sharp end. In the Kenyan case, the degrees of intervention did not reach the high coercion level of military invasion, although some Kenyan parties had called for it, and the US assistant secretary of state speaking in Addis Ababa had come very close to suggesting that limited military action could be an option to the west’s response to the electoral conflict in Kenya. By and large, western intervention in this conflict was restricted to the diplomatic (for example speeches, and support for one of the parties), economic (for example threatening to cut aid off), and social (for example using immigration laws to target individuals).

The intervention by the African Union consisted of the use of chairman Kufuor’s good offices, and the support of the mediation that was conducted by Kofi Annan. Good offices are a way in which a third party parry intervenes in order to try and avoid a conflict escalating, facilitating the parties’ movement towards negotiations, or the use of any other peaceful means to manage the conflict. Good offices can be undertaken by the parties’ invitation, or the third party can undertake the task without such an invitation. Whatever the case, the person using good offices should be accepted by the parties in conflict, otherwise it would be impossible for the good offices to yield positive results.

________________________


The Constitutive Act of the African Union regulates matters of intervention by the AU. The preamble of the Act rehearses the AU’s determination to promote peace, security and stability; to consolidate democratic institutions and ensure good governance and the rule of law. Two of the objectives of the AU which are directly related to its intervention in the Kenyan electoral conflict are promoting peace, security and stability on the continent,\textsuperscript{105} and promoting democratic principles and institutions, popular participation and good governance.\textsuperscript{106} Some of the principles of the AU directly related to its intervention are the right of member states to request intervention from the Union in order to restore peace and security the respect for democratic principles, human rights, the rule of law and good governance, and condemnation and rejection of unconstitutional changes of governments.\textsuperscript{107}

The conflict in Kenya after the 2007 elections gave rise to violence and a humanitarian crisis including, the problem of internally displaced persons (IDPs). These issues fall under the philosophy, objectives and principles of the AU. Besides this, the assembly of the AU’s role is to authorize and to deliberate on, and act on situations such as those that obtained in Kenya. Although the principle of non-interference in the internal affairs of a member state is enshrined in article 4 (g) of the Constitutive Act, its interpretation in contemporary international law and diplomacy does not support its strict interpretation in cases of violations of human rights. In

\textsuperscript{105} Article 3(f) of the Constitutive Act of the African Union.

\textsuperscript{106} Article 3(g) of the Constitutive Act of the African Union.

\textsuperscript{107} Article 4(j), (m) and (p) of the Constitutive Act of the African Union.
contemporary international law, grave violations of human rights cannot be overlooked as internal affairs of a state. Clearly, the good offices role of the AU in this conflict was in order. It was justified on the grounds of international of law and of current African diplomacy.

The African Union’s good offices

President Kufuor spent three days in Kenya, and his good offices exercise ended on 10 January 2008. President Kufuor’s good offices were intended facilitate negotiations between the two parties. Its success would have been most publicly gauged by a meeting between Kibaki and Raila at the end of Kufuor’s facilitation. At the end of Kufuor’s facilitation, the parties had not agreed on a framework for negotiation. They both blamed each other for this: the Kibaki team accused the Raila group of being unresponsive; while the ODM accused president Kibaki of failing to honour the mediation\textsuperscript{108} The issues that led to the deadlock were the ones that each party had provided as conditions, and although they had both publicly professed a wish to see Kufor’s mission succeed, they were still divided by the issues. The issues for Kibaki were that he wanted the ODM to recognize him as being legitimately elected, to accept that there was a government in place, bring an end to the violence, and consider the possible creation of the position of non-executive prime minister\textsuperscript{109} On the other hand, the ODM demands were that president Kibaki should accept that he was illegitimately in office, that ODM had won the elections, that there should be a re-tallying of the presidential votes, and a re-run of the


\textsuperscript{109} Daily Nation, 11 January 2008, p.2.
presidential election featuring only Kibaki and Raila, and a coalition government with ODM getting an executive prime minister’s position.\textsuperscript{110}

The idea of power sharing is one that Raila Odinga hinted at during the whole process. In an interview with a Germany’s ARD television he hinted that president Kibaki could remain in power, while the opposition could put up a prime minister; and that all pentagon members were ready and willing to take up positions within the cabinet if the deal was sealed.\textsuperscript{111} However, he insisted that Kibaki first implement constitutional reforms to enhance the independence of the judiciary and give stronger roles parliament, and the executive.\textsuperscript{112} Both president Kibaki and Raila Odinga were later to deny that the prime minister’s post had either been offered, or accepted as an issue for negotiations, resident Kibaki refined any claims that he had offered Raila such a post, which did not exist in Kenya’s constitution. Kibaki stated in a press release that he had not offered the prime minister’s position to Raila Odinga, that the issue of prime minister was a constitutional matter, and that in the Kenya constitution, there was no provision for the post of prime minister.\textsuperscript{113} Raila Odinga on the other hand stated that he had never said he was considering taking up the position of prime minister, under Kibaki. He argued that he was not ready to join president Kibaki’s administration as prime minister, and the only option to

\footnotesize{\textsuperscript{110}ibid, p.2.}

\footnotesize{\textsuperscript{111} \textit{Kenya Times}, 24 January, 2008, p.1.}

\footnotesize{\textsuperscript{112} \textit{The People Daily} (Nairobi), 24 January, 2008, p.2.}

\footnotesize{\textsuperscript{113} \textit{The People on Sunday} (Nairobi), 27 January, 2008, p.24.}
resolving the dispute was for president Kibaki to resign from office.\textsuperscript{114} These demands by the ODM were said by a commentator to be attractive, but not constitutionally viable. The reasons for this were that for there to be a re-run, it must have been pursuant to the constitution or a court order; and under the Kenya constitution, a re-run can only occur if the winner of the presidential election in terms of the highest vote could not garner 25\% of votes cast in five of eight provinces, or if a court so orders. It was also argued that there was no legal basis for limiting the re-run to a contest between Kibaki and Raila since the conflict was about the disputed presidential tally, there are no constitutional provisions for a re-run. Even if there were to be a re-run, president Kibaki could in all probability not participate as he would have served his second term, and would have agreed to a re-rim in a manner not provided for by the constitution.\textsuperscript{115}

The issue of Kibaki naming a part cabinet before Kufuor’s good offices began, raised protests, especially by the US, whose assistant secretary of state for African affairs, Jendayi Frazer called on Kibakj at state house on January 2008, the day Kufuor was beginning his role.\textsuperscript{116} Kibaki’s response to this was contained in a statement. It stated that the government must continue to function; that the Partial cabinet would ensure that the government runs the country as required by the constitution and that when the government became fully constituted following the

\textsuperscript{114}The People on Sunday, 27 January, 2008, p.24.
\textsuperscript{115} The Sunday Standard (Nairobi), 13 January 2008, p.13.
\textsuperscript{116} Daily Nation. 10 January 2008, p.1,2.
conflict, it would be broad based, and the appointment of the partial cabinet did not rule out that process.\textsuperscript{117}

The reason the US and western communities complained about the naming of the cabinet is ‘that right from the outset, they had decided that the only Solution would be one that included ODM in government.’\textsuperscript{118} President Kibaki’s naming of a partial cabinet at this stage was either an inspired move in the political chess game that had begun to evolve, or poor strategic thinking. While reasons of law and the need for continued government functioning were reasonable explanations for the move, the chicken later came home to roost after the idea of a grand coalition was agreed. At that later point; the ODM insisted that he had already named half of his share in the cabinet. They argued that the size of the cabinet should be thirty four ministries, half of whom he had already appointed.

President Kufuor announced that the mediation would be carried out by former UN secretary general Kofi Annan, as head of a team of eminent persons. Kufuor summed up his achievement as being that the parties had agreed that there should be an end to the violence, that there should be dialogue, which should be about peace, the parties had agreed to work together with a panel of eminent African personalities headed by Kofi Annan, and that all outstanding issues including constitutional and electoral reforms would be addressed.\textsuperscript{119}

\textsuperscript{117}Ibid, p.2.

\textsuperscript{118} Ibid

In his statement, President Kufuor gave an interesting inkling about what his tasks had been in Nairobi. He stated that in the hectic two days, “we have launched the talks.”\textsuperscript{120} This suggests, that he saw his task as being to engage the parties in the pre-negotiations stages of the process, while other third parties would continue the process through the negotiation stage. In this engagement therefore, Kufuor dearly intended to play the diplomatic role of using his good offices as the chairman of the AU Good offices as a method is not intended to conclude negotiations between parties, but to create the environment and agreement that negotiation would take place subsequently In this reading of Kufuor’s role, dearly he can be said to have succeeded in using his good offices This interpretation is strengthened because in an issue as sensitive as this, it was unlikely that two days would have been sufficient to complete a full-blown negotiation process that addressed all the issues on the agenda.

From reports received, president Kufuor had in any case not seen his mission in Nairobi as being to conduct a full-scale negotiation between the parties. It was a more modest one of getting Kibaki and Raila Odinga to meet publicly; after which the proper mediation would be left to the group of eminent African persons.\textsuperscript{121} Thus, together with his team they exhausted their capacity and played a facilitative role through the good offices which saw the belligerent partis come to the table.

\begin{flushright}
\textsuperscript{120} Ibid
\end{flushright}

\begin{flushright}
\textsuperscript{121} \textit{The East African}, January 14-20, 2008, p.1.
\end{flushright}
4.4 Successes and Failures of the AU in Conflict Intervention

There have indeed been successes and failures. This is very understandable, since ‘unity’ can never be just a simple, straightforward ideal. It is always challenged and complicated by the realities of diversity and disunity. However it should be noted that unity, and particularly African unity, has been the main ideal not only of the AU over one decade, but also of its predecessor, the Organisation of African Unity (OAU), over almost four decades. In fact, the name of the original Organisation proclaimed the conviction that the unity already existed. The Organisation was not established as one aspiring for or towards African Unity, but as one entrusted with guardianship of African Unity. In spite of such optimistic idealism, however, the Founding Fathers were very realistic about phenomena and forebodings of disunity. They headed their list of purposes with promoting unity and solidarity, and coordinating cooperation122, but they also established a Commission of Mediation, Conciliation and Arbitration123. Mainly due to


observance of the principle of non-interference in internal affairs\textsuperscript{124}, however, it had to be admitted thirty years later that ‘the Commission has been virtually dormant since its establishment’\textsuperscript{125}. Then, in 1993, the Mechanism for Conflict Prevention, Management and Resolution was established. This signalled ‘Africa’s determination to solve its own problems’ and its commitment ‘to work together towards the peaceful and speedy resolution of all conflicts on the continent’\textsuperscript{126}.

From its establishment in 2002, the AU seemed to have more clout to intervene when conflict threatened or happened. In its Constitutive Act the principle of non-interference in internal affairs was applied to member states among themselves, but the immediately following principle was ‘The right of the Union to intervene in a Member State ... in respect of grave circumstances, namely war crimes, genocide and crimes against humanity’\textsuperscript{127}. A further principle was ‘The right of Member States to request intervention from the Union in order to restore peace and

\textsuperscript{126}Ibid. p2.  
security. The same principles were endorsed in the Protocol for the establishment of the Peace and Security Council of the AU.

The shift of focus from prevention to intervention inevitably brought about a change in the reactions from member states. In a prevention-oriented organisation sufficient consensus may usually be attained; but in an intervention-empowered union, differences of opinion and/or commitment can often be expected.

The AU’s mediation and peace-making efforts demonstrate that an area where the AU has a major comparative advantage over external actors is its ability to garner the trust of parties to a violent conflict, particularly of governments which generally object to outside interference. The AU has been able to use this trust to convince the parties, as in the Darfur situation, to agree on negotiations and to secure compromise.

An interesting but quite biased - analysis of the success for Kufuor’s good office’s and to a greater extent the AU’s role was offered by a commentator. The commentator argued that the mediation did succeed because the Mediator in the capacity of AU chairman; ‘stands out as a mediator with a partial position and genuine interest in peace and stability in Kenya, the pressure


of the international community (western world essentially), which will direct ‘the process, the changing regional geopolitical and economic situations (for example, the delay of goods arriving into the landlocked countries of the region) in east, central and Horn of Africa may influence the outcome of the process\textsuperscript{130}.

The commentator also argued that there were factors that could lead to the failure of Kufuor’s good office: no sincerity by Kibaki to seek a negotiated resolution because of his belief that the conflict was an internal Kenyan matter and that ‘all was well,’ his naming of a cabinet before the mediation could begin; and Kibaki’s exhibiting of ‘authority’ by calling the ODM and religious leaders to a peace seeking meeting. The commentator argued that ODM’s willingness to have an external third party was genuine since they had always insisted on an international mediator, and that Kibaki had named a cabinet that excluded MPs from some communities (which would hence delay the reconciliation).

This commentary, though interesting, was founded on the wrong premises. Its reading of Kufuor’s role as a mediator was misinformed, and did not take into account important aspects of third party roles in the diplomacy of conflict management. President Kufour was not a mediator and had not considered himself to be one. He indeed played the classic role of good offices in conflict management diplomacy: It was however true that the government’s insistence that the Kenyan conflict was a domestic matter was ill-informed, given that the conflict had already

\textsuperscript{130} Ibid.
become internationalized. Indeed, the entry, and role of Kufuor was ample illustration of the already internationalized basis of the electoral conflict in Kenya.
Chapter Five

Conclusion and Recommendation

The field of conflict intervention and by extension conflict management has become more diverse and crowded. Regional, sub-regional and other international organizations as well as non-governmental organizations and private individuals are increasingly involved in mediation activities. At their best, mediating actors have coalesced behind a lead mediator, served a common strategy, and employed their comparative advantages to maximum effect working at different levels of the process. At worst, competition and disagreement over strategy and funding have permitted parties to forum shop, therefore hampering peace efforts.131

In too many instances, conflicts have been further aggravated by well-meaning third-party actors who lack a good understanding of mediation and adequate preparation. A solid grasp of intervention through mediation is needed to better synchronize diplomatic efforts and manage expectations. To this end, the guidance for effective mediation is a useful resource.

The presence of multiple third-party actors can support effective intervention where their efforts are complementary and coordinated. However, conflicting approaches and parallel processes can also work to undermine the effectiveness of mediation efforts. Indeed, in some cases, the external processes may themselves become a major part of the problem. It is therefore important

that third-party mediators seek to cooperate and work together. If this is not possible, strategies and processes must address this as a priority, to ensure at the very least that mediation decisions and processes are based on assessed risks. Depending on the circumstances there is an almost infinite range of considerations in determining how best to cooperate and coordinate among third-party actors. There is growing recognition that mediation is not the exclusive purview of external mediation actors. Local mediators who come from the conflict country can usefully lead local mediation efforts or complement regional or international initiatives. These mediators command local legitimacy; have in-depth knowledge of the society, its history, and local conflict resolution approaches; and often have established contacts with the conflict parties. However, this proximity to the conflict and its actors has its shortcomings. It often exposes local mediators to considerable personal risks; in some cases they may also be perceived as biased due to their relationship with one or the other party. Moreover, they often have less financial resources at their disposal and lack access to technical expertise. Nevertheless, local mediators have played a variety of mediating roles, for example in Zimbabwe and Kenya. Empowering local mediators, where appropriate, can be an effective means for building national ownership of a peace process.

A practical idea in this regard could be the establishment of AU regional intervention centres in countries close to multiple conflict situations which all relevant stakeholders can feel comfortable travelling to or engaging with. These centres can also help improve the coordination capabilities of the AU, while at the same time serving to build the capacity of local actors, be it the sub-regional organizations, NGOs or Member States. In any case, when there are multiple

\[132\] Ibid
actors involved in the same mediation process, a synergy of efforts is needed, either through coordination by the AU or via the primacy of at least one of these actors, in order to avoid the undesirable consequences of competition, duplication and confliction which might lead to unintentional harm to the process and to each others’ efforts.

For conflict intervention exercises to be deemed successful any agreement reached has to be realistic, implementable and accepted by the parties. Each peace agreement is sui generis, based on the context and the interests of the parties to a conflict. Therefore, we cannot name topics which have to be included in an agreement, except security: a country emerging from a violent conflict is bound to face an immediate, challenging situation in terms of security. In a first phase, a peace agreement has to specify how security is to be provided in the short term in order to protect civilians and re-establish normal living. Furthermore, an agreement should also entail some preliminary decisions on the process of restructuring and reforming the security sector.

Conflicts are dynamic, and root causes are often hidden behind new conflictual issues. Given the dynamic nature of conflicts, the grievances and bitterness of the parties and their contradictory positions, comprehensive accords may in general not be the ultimate solution to existing divisions in societies. Moreover, experience has shown that even the most comprehensive agreements cannot solve all the conflicting issues between the parties involved. Therefore, accords addressing the most pressing issues are crucial, and they are to be understood as starting points in a longer process rather than end results. The success of a peace agreement depends on the commitment of the parties; therefore, agreements should always address the issues expressed by the parties (and the society) and not those of the mediators. In addition, a successful
agreement should confine itself to the main issues of the present conflict and leave space for a
democratic process to address all the less pressing issues. If necessary, processes and procedures
should be designed to address the unsolved issues in the phase after the signing of the peace
agreement. Implementation has to be negotiated within the negotiation process. Therefore, all
accords have to include institutions and processes capable of monitoring the implementation and
resolving conflicts that emerge during the implementation phase.

Finally, it this study recommends the need for mediators to have expertise and professional
support and recognizes the need for careful assessment, proper planning and regular monitoring
and evaluation in order to enhance the chances for success and minimize conflict management and
in particular mediation error. The importance of a supportive external environment for the
intervention process is underscored, with emphasis placed on the need for cooperation among
entities involved in mediation. While all these factors are important, the success or failure of a
conflict intervention process ultimately depends on whether the conflict parties accept mediation
and are committed to reaching an agreement. If the parties are genuinely willing to explore a
negotiated solution, mediators can play an invaluable role.\textsuperscript{133}

\textsuperscript{133} Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention
and resolution, \textit{Report of the Secretary-General}. Sixty-sixth session Agenda item 34 (a)
Prevention of armed conflict
Bibliography


Bii, B and Ngetich, P. Raid on displaced families that shocked the world’, The Nation, 6 January 2008


Francis Mureithi, ‘*ODM settle for Ghana President Kufuor for talks’*, Nairobi Star. 04 January, 2008.


Mitchel, C. “The Right Moment Notes on Four Models of Ripeness” Paradigms vol 9 No. 2.


Ranneberger to state department, 29 January 2008; 08NAIROBI1312; Wikileaks cable viewer website, 2011.


The East African, 19 October 2008.
The People (Nairobi), 21 January, 2008.
