

**A CRITICAL ASSESSMENT OF CRISIS DECISION-MAKING: THE CASE OF
KENYA'S POST-ELECTION VIOLENCE**

By

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ABSTRACT

The research investigates crisis decision-making during the Kenyan post-election violence. The overall objective and hypotheses of the research are to examine the relationship between crisis decision making and the post election violence as well as the role that political will plays in the response to the crisis. The research looks into the historical overview of elections on Kenya and in particular the use of ethicized politics as well as illegal gangs in Kenya during election year. Chapter three looks critically into the post election violence from the 27th of December 2007 to the 28th of February 2008 when the National Accord was signed. Of importance were the events immediately after the elections to the height of the violence to the intervention by Koffi Annan. These events enable one to understand the underlying dynamics of decision making in the absence of information that would directly link these events to the violence. The findings of this research highlight the use of illegal gangs in elections; the history of ethicized politics and the lack of political will to resolve crisis situations in Kenya. The researcher's recommendations are mainly in line with legal measures and policies to govern elections particularly to ensure that politics are fair and that political parties in Kenya are strengthened. Moreover, there should be stricter penalties for political elites who engage in ethicized politics and use illegal gangs for political mileage.

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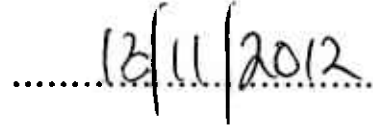
My classmates, who provided valuable insights to this project, had kind concern and advice throughout the writing of this project.

The staff at the University of Nairobi, Main Campus Library, for being accommodating to my queries on books and other sources of literature for the research.

Last but not the least, my family and the one above all of us, the omnipresent God, for answering my prayers for giving me the strength to plod on, thank you so much Dear Lord.

DECLARATION

I Njeru, Jacqueline Karimi, declare that this project is my original work and has not been submitted for a degree to any other University.



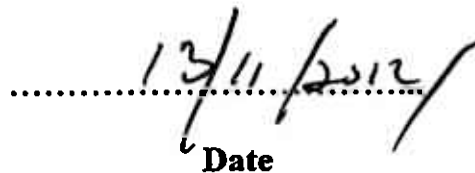
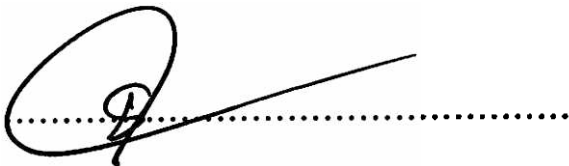
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DEDICATION

To my parents: Samuel N. Njeru and Jane C. Njeru

ABBREVIATIONS

CSO - Civil Society Organizations

DP - Democratic Party

ECK - Electoral Commission of Kenya

EU - European Union

FORD - Forum for the Restoration of Democracy

IFES - International foundation for Election Systems

IPPG - Inter – Parliamentary Parties Group

JSC - Judicial Service Commission

KADU - Kenya African Democratic Union

KANU - Kenya African National Union

KICC - Kenyatta International conference Center

KNCHR - Kenya National Commission for Human Rights

MP - Member of Parliament

NARC - National Rainbow Coalition

NCC - National Constitutional Conference

NGO - Non- Governmental Organization

ODM - Orange Democratic Movement

PEV - Post Election Violence

PNU - Party of National Unity

PSC - Public Service Commission

UK - United Kingdom

UN - United Nations

US - United States

CHAPTER ONE

INTRODUCTION TO THE STUDY

1.1 Introduction

Violence is a process, not an event. Violent acts may be spontaneous, but they are more often the product of a longer sequence of historical decisions and political actions and decisions. All violent acts, whatever their principal motivation, have consequences, provoking reactions, and altering the behaviour of perpetrators and victims alike.¹ All of these features were manifest in the chronology and sequence of the political violence that swept across Kenya around the general elections of December 2007.

Although electoral violence has become a commonplace of Kenyan politics over the past two decades; the intensity and extent of the conflicts that followed the polls of 27th and 28th December 2007 was unprecedented, the burning of the Kiambaa Pentecostal church in Eldoret on 3rd January following the announcement of Mwai Kibaki re-elected as president of Kenya exemplifies this intensity. By the end of February 2008, more than 1,000 were confirmed dead in the fighting, and over 300,000 people had fled from their homes to escape the violence.²

¹ S. Kalyvas., *The Logic of Civil War*. Cambridge: Cambridge University Press, 2006.

² International Crisis Group (ICG). *Kenya in Crisis*. Africa Report, no. 137, 21 February 2008. Available from <http://www.crisisgroup.org/home/index.cfm>; INTERNET.

Many factors contribute to violence³ and the post-election violence in Kenya is no exception. Several theories have been brought forth to explain the occurrence of the violence. However from a crisis and indeed a crisis decision making perspective there has been little contribution to the explanation of the post-election violence. This study will highlight this perspective and its main objective is to link the role of ineffective crisis decision-making in 2007/ 2008 and the consequences of this as being the escalation of the crisis to violent conflict.

This is because crisis underscores the refusal to accept all features of social life as they are. Could this refusal to accept the changing realities of the electoral laws and the lack of effective management of the situation in 2007 resulted in the devastating effects that we witnessed in 2007/2008? The word crisis enjoys a number of different meanings according to the context in which it is employed. A reading of literature on crisis highlights that crises represents an opportunity for intervention, a moment at which the outcome, for good or ill, might be influenced.⁴

Crisis management in international relations has been described as an attempt to mitigate anarchy and it has undergone significant transformation over the decades. Its expansion in terms of tasks and timelines as well as an increasing number of actors involved have made effective coordination of activities and instrument an urgent priority.⁵ In the case of Kenya, it is important

³ D.S Bennett, & A.C Stam., "The behavioural origins of war." Ann Arbor: University of Michigan Press, 2004.

⁴ T.A.H. Cooper , "Decision making in Crisis", Journal of Police Crisis Negotiations, Vol 7, No.2 2008 ,pp5

⁵ Y. Taeyoung., "Between Peace and War, South Korea's Crisis Management Strategies towards North Korea", East Asian Review, Vol 15, No.3, 2003, pp 3-22

to note that the main actors were opposing political forces and in crisis management crises of this nature are in a single country and are associated with conflicts that are variously called revolutionaries, coups, insurgencies or civil wars.

Theories in international relations as well as from other disciplines assist in the understanding of crisis and crisis management. This body of knowledge is very important to decision makers as it forms part of their decision-making process. Effective crisis decision making systems and strategies improve the likelihood that good decisions are reached. This is attributed to the fact that crisis as a discipline examines each dynamic crisis in a generic sense bringing forth lessons which are likely to influence decision makers towards sound decision-making.

In short, we can do better if we think and if we are willing to learn from the past and informing our decisions based on those past lessons. If decision makers are aware of the traps that they are most likely to fall into and are aware of the possible ways out perhaps they can do better. President Kennedy in the Cuban Missile Crisis, who, having just read Barbara Tuchman's "The Guns of August", was determined not to repeat the mistakes which led to the outbreak of World War I. Kennedy acted as if he knew what to do and what to avoid. Reading this book may have alerted him to a variety of problems which he took great pains to overcome.⁶

⁶ W. Philips and R Rimkunas., "The concept of crisis in international politics", Journal of Peace Research, Vol 15, No 3, (1978) pp 259

1.2 Statement of the Research Problem

There exist conceptual challenges in the definition of crisis, its causes, and management. The term crisis therefore means different things to different people. Kenya has had crisis situations many of which are long forgotten and there is a lack of political will to revisit those situations with the primary aim of learning from them. Having lived through the post-election violence of 2007/ 2008 and undertaken an international crisis management course at the end of the course, the researcher opined that the escalation of the situation in 2007/2008 was largely in part because of poor crisis decision-making.

This could have been due to a lack of knowledge on the subject matter of crisis decision-making or if such knowledge existed at the national level of decision-making, then a lack of adherence to crisis management protocols and learning from the past. Consequently, this research will seek to find the reason as to why the general elections of 2007 escalated to the worst post-election violence in the history of Kenya from a crisis decision making perspective.

It will interrogate the actions and responses undertaken by various actors both local and international during the height of tensions and the subsequent violence. In other words the anticipated recommendations of this research will provide answers and shed light to the usefulness of prudent and objective crisis decision-making through the lenses of 2007/2008 post-election violence.

Specifically, the researcher anticipates that the findings of the research will point towards the errors and responses of decision makers from both sides of the political divide at that point in time and that those errors and responses provided the perfect ground for the escalation of the crisis to violent conflict.

1.3 Objectives of the Study

The overall objective of the study is to examine crisis decision-making in Kenya during the post election violence. More specifically, the study will:

- (i) Provide an overview of crisis decision making in Kenya
- (ii) Analyze the relationship between crisis decision making and post-election violence in Kenya
- (iii) Examine the response(s) to post election violence from a crisis decision making perspective

1.4 Literature Review .

This section presents and discusses the literature relevant to the study. It starts by discussing the definition of crisis, crisis decision making and Kenya's post-election violence of 2007-2008. It then proceeds to discuss the linkages in crisis situations.

1.5 Definition of Crisis

Crises occur in all dimensions of human existence, between individuals, groups – large and small- and states. We also have crises between man and nature in form of tornados, tsunamis as well as forest fires such as those that occurred in Greece in 2007.⁷

The word crisis originated from Greece from the realm of medicine. In the medical context a crisis is defined by Georges Canguilhem as “change heralded by some symptoms occurring during an illness through which the patient’s life will be saved or not”. The concept of crisis is further described by Bryan Turner as “the body is the most potent metaphor in society”⁸ and it entered the international politics as a situation *jenseits von krieg und frieden* which is a German phrase that means no war, no peace.⁹

Crisis in the political definition of the term refers to a turning point, between war and peace.¹⁰ A crisis is an unstable or critical time or state of affairs whose outcomes will make a decisive difference for better or worse. To this extent there is seemingly an idea of crisis that includes danger and opportunity. This idea is particularly useful because it conveys the fact that we may create opportunities out of a situation that threatens us.

⁷R. Pfalzgraff . Jr., “Crisis management: looking back and looking ahead”, Presented at the Crisis Management Conference, Athena; The Hellenic Ministry of National Defence, July 2008

⁸ G. I.Omer., “Definition and management of International Crisis”, 2008

⁹ M.Houben , “ International Crisis Management: the approach of European States”, London, Routledge, 2005 pg 15

¹⁰ R. Pfalzgraff. Jr., “Crisis management: looking back and looking ahead”, Presented at the Crisis Management Conference, Athena; The Hellenic Ministry of National Defence, July 2008

A crisis is further defined by O'Brien P.S as a situation where a state's highest level decision makers experience a threat to basic values, a finite time for response, and a high probability of involvement in military hostilities. A state whose decision makers experience all three conditions is termed a crisis actor.¹¹ Crisis is what political scientists have called a non-routine event and one of extraordinary importance.

Charles Hermann defined a crisis to include three dimensions. These are; the element of surprise which is unanticipated and with no contingency plan; that there is a short time for decision makers to make a decision and that there is a high threat to national values.¹² Wilkenfeld J. notes that an international crisis is identified when it meets two criteria: first as a change has occurred in the type, and /or an increase in the intensity of disruptive interactions (whether they are hostile, verbal or physical) between two or more states with a heightened probability of military hostilities.

And secondly, when these changes in turn, destabilize the states relationship and challenge the structure of an international system.¹³ Additionally, in contemporary society, the meaning of crisis has been diffused, refracted, and extended so that the concept seems to have become obscure. Nonetheless, crises are generally distinguished from routine situations by a sense of

¹¹P.S. O'Brien ., 'Foreign Policy Crises and the Resort to Terrorism: A Time-Series Analysis of Conflict Linkages'; *The Journal of Conflict Resolution*, Vol. 40, No. 2 (1996), pp. 320-335

¹² C.F. Hermann and. L.P Brady., "Alternative Models of International Crisis Behavior", in *International Crisis: Insights from Behavioral Research*; The Free Press New York, (1972) p282

¹³ J.Wilkenfeld ., et al, "Mediating International Crises Cross National and Experimental Perspectives", *Journal of conflict resolution*, Department of Government and Poltics, University of Maryland, Sage Publications, June 2003 pp 279 - 301

urgency and the element of surprise and a concern that problems will become worse in the absence of action.

Vulnerability to the effects of crisis lies in the inability to manage available resources in a way that will improve the perceived problems reasonably. Crises provide one of the most intriguing and frightening subjects in all diplomatic history and international relations. They occur suddenly, demand quick decisions by leaders under intense pressure, threaten vital interests, and raise enormous uncertainties about war and peace. By their nature as threats to vital interests or core values, one must take action sooner rather than later.

In other words, it is due to the importance and great risks of such events that much attention has centered on the question of why some crises break out in armed conflict while others somehow are defused and resolved by management among the actors.¹⁴ The nature of the problems analyzed, the data used, and the constraints on rationality examined, make the task of managing crises more challenging. The elements of surprise, secrecy, and pressure associated with the highest of stakes of national security make the calculation of risk more difficult.¹⁵

In the U.S for instance, the new information task is to establish and maintain a global scanning for danger signs and trouble in every country and for indications of tension, destruction, and

¹⁴ N.A.Gilbert. and G.P Lauren ., 'Crisis Management: An Assessment and Critique'; The Journal of Conflict Resolution, Vol. 24, No. 4 (1980), pp. 641-664

¹⁵ K.S.Shrader-Frechette., 'Risk and Rationality'; Berkeley University of California Press (1991)

violence in the relations between nations, in other words, by using global indicators and warnings. However, unless skills and resources devoted to analysis are as great as those assigned to obtaining information, the latter go to waste in proportion.¹⁶

Intensive research has been undertaken on the recurrent inability of nations to respond appropriately to the challenge of an impending attack/crisis. Many states rely largely on cognitive and perceptual notions as their basic analytical tools for explaining prevalent patterns of response to warning, these studies are highly skeptical about the prospects for overcoming confusion and deception because of the element of surprise.¹⁷

Based on the foregoing, key elements emerge on what crises are. These key elements are that crises pose a threat to important values, norms, and structures of society; they are uncertain; and they are urgent. Moreover, by its nature, the concept of crisis is extremely broad. It encompasses everything from hurricanes, tsunamis, and earthquakes through environmental and technical disasters, terrorist attacks, and political conflicts to sabotage aimed at information technology and the infrastructure of postmodern societies.

¹⁶ A.C McClelland., 'The Anticipation of International Crises: Prospects for Theory and Research' ;International Studies Quarterly, Vol. 21, No. 1, Special Issue on International Crisis: Progress and Prospects for Applied Forecasting and Management (1977), pp. 15-38

¹⁷ R.Wohlstetter , 'Pearl Harbor: Warning and Decision. ' Stanford, CA: Stanford Univ. Press. (1962)

1.5.1 History of Crisis Decision-Making

The concept of international crisis has historically taken on a particular meaning on the occasion of each of the three major military and diplomatic confrontations of this century. Crisis theory is best treated in historical terms with allowances made for shifts on conceptualization from one time period to the next.

The first series of crises made an appearance after a long generation of exceptional diplomatic activity marked by much conflict and change in the period 1870 to 1904. It was after 1904 that the political-military alignments of the Great Powers were at last stabilized and that the crisis period began.¹⁸

After World War I, research on the diplomatic and military origins of the Great War brought out the 'new' concept of crisis with the observations that it was the rigidity in the alliance structures of Triple Alliance and Triple Entente that precipitated the series of crises, each of which moved the international system into the intermediate condition between peace and war; and that the outbreak of World War I was due in some measure to technical mistakes of statecraft made by several of the Great Powers in the reaction to the crisis of the summer of 1914. In other words World War I began because of a failure in crisis management. The second series of international crises appeared between 1935 and 1939.

¹⁸ P.J McGowan. and R.M Rood, "Alliance behavior in balance of power systems: applying a Poisson model to nineteenth-century Europe." *Amer. Pol. Sci. Rev.* 69 pp. 859-870. (1975)

Crisis interpretation of World War I typically proved to be of no use in understanding and controlling the confrontations of the Great Powers in the 1930s. The behavioral phenomena were about the same brink-of-war episodes met by efforts to find an outcome through accommodation but the historical context was different. In the place of the crystallized alliance structure and the no-compromise commitments of the pre-World War I period that led to the military showdown, it was the policy of flexibility, negotiation, and conciliation on the part of France and Britain that brought on disaster.

Beginning with remilitarization, each aggressive or expansionist move by Hitler was cast in terms of the alternatives of accept and preserve peace or resist and face war. The policy of pacification, much praised at the time and much maligned later, was for the most part an attempt at crisis management in terms of rational problem solving and accommodation. The lesson learnt about international crises from the experience with Hitler was that predatory policies pursued by Great Powers have to be confronted and turned back early if war is to be avoided.

Subsequently it came to be accepted as fact that a firm policy of opposition by the Western powers in 1935, backed if need be by military force, would have stopped the Nazi march into World War II. By 1938, it was too late for any war-prevention measure through crisis manipulation. The third instance of an acute international crisis series, extending across time in the period 1948-1964, had a successful result.

No general war between the main contenders in the crisis situation occurred, and the consequence is that the claim is supportable that the mistakes of the first two series were avoided. It is certain that the memory of the policy of pacification contributed to the determination to check aggressive international behavior at the earliest possible moment. A reasonable interpretation of the other lesson relating to alliance inflexibility is that the crisis series of the Cold War was maintained so long that multiple natural forces eroded the rigid bipolarity of the early post-World War II era. In this period, there was time provided for the relaxation of the international system structure into a somewhat less risky, but more complex, form.

1.5.2 Crisis Decision-Making

Decision makers have the responsibility of coping with a particular problem as and when it arises and crisis fall within the responsibility of decision makers. Hermann C. suggests crisis decision making examines the task of reaching and implementing choice within a single government or other policy making unit. The members of a government perceive, not always correctly the emergence of an acute situation they can cause them or their policy harm.¹⁹

During a crisis decision units appear to be formed on the basis of a great number of factors including the amount of time available, the seriousness of the problems and the physical

¹⁹ C.F Hermann., (1989) "On International Crises and National Security" in T. Kolodziej, and P. Morgan eds. Security and Arms Control, pp. 357-385. New York: Greenwood Press.

availability of officials.²⁰ The substantive nature of the problem determines to a large extent the use of experts from specific organizations and institutions.²¹ Political sensitivity as well as preoccupation to other pressing issues determine the level of interest and participation among political leaders.²²

The presence of suitable conditions (discussed herein below) for the decision making process to take place are of equal importance. In the Kenyan context it is important to note that just like in most states, constitutional provisions as well as other government regulations and policies should be taken into account when constituting a decision making unit in times of crisis especially where the nature of the crisis has national security interests.²³ These institutional requirements do affect the shaping of the decision unit.

However these formal and mandatory rules do not necessarily translate to an effective decision making unit. Also some decisions taken under time pressure may preclude participation from a wider circle or unit of potentially interested parties. Crucial decisions may in fact be made by a single strategically placed individual with or without the benefit of private or group

²⁰ I.L. Janis, "Groupthink: Psychological Studies of Policy Decisions and Fiascoes, 2nd ed. Boston: Houghton Mifflin. (1982)

²¹ P. 't Hart, "From Analysis to Reform of Policy-making Groups" in 't Hart, Stern, and Sundelius, (eds). Beyond Groupthink pp.311-336. (1997)

²² P. Hoyt, (1997) "The Political Manipulation of Group Composition: Engineering the Decision Context". Political Psychology 18:771-790.

²³ C.W. Kegley, "Decision Regimes and Comparative Study of Foreign Policy" in C.F. Herman, C.W. Kegley and J.N. Rosenau eds., New Directions in the Study of Foreign Policy, pp. 247-268. Boston: Allen and Unwin. (1987)

consultations. This as described by Hermann is the contraction of authority a common phenomenon in crisis situations.²⁴

Once a decision making unit has been set up to cope with a particular problem, the next important analytical step is to attempt to map out the range of options to be considered. Here the use of some procedural criteria of rationality is of importance in the map out exercise to ensure that the decision making unit does not veer off in an attempt to construct a universe set of logical plausible options. The use of a criteria is used to evaluate the quality of the decision making process.²⁵ Once all the facets of a crisis and the options have been mapped out it is of great importance to consider the implementation phase as highlighted by Allison G.T.²⁶

1.5.3 Conditions that facilitate crisis management without violence

Based on the foregoing literature on the definition of a crisis as a situation of limited duration between two or more actors having as one of the potent consequences the occurrence of a military conflict or a sharp increase in the level and scope of violence already existing between the parties and that many elements contribute to effective crisis decision-making. It is important to highlight the conditions necessary for an effective decision making unit.

²⁴ M.G Hermann. and C.F Hermann., "Who Makes Foreign Policy Decisions and How: An Empirical Inquiry" *International Studies Quarterly* 33: (3) 361-387. (1989)

²⁵ A.L. George., "Presidential Decision making in Foreign Policy: The Effective Use of Information and Advice.", Boulder: Westview Press. (1980)

²⁶ G.T Allison and P. Zelikow ., "Essence of Decision: Explaining the Cuban Missile Crisis" 2nd Ed New York , Long man (1999)

These eight conditions facilitate and largely contribute to de-escalation of imminently violent crisis situations to peaceful situations. These eight conditions as propounded by Hermann are designed to avert escalation of a crisis to a violent conflict. First and foremost, communication channels between the adversaries. The parties in a crisis situation must be able to communicate accurately. The communications channels must be reliable, trustworthy, confidential and rapid so as to enhance greater understanding between the parties.

Secondly, there should be access to experience and experience with conflict resolution mechanisms. Observers have noted that there is a tendency by policy makers and decision makers in crisis to feel that they have lost control of the events and escape routes to such feelings of helplessness become visible with most engaging in violence. It is at this point that past experiences of conflict resolution become important.

Third, there should be mutual recognition of non-zero sum outcomes. This factor builds on the orientations and disposition of the actors in the crisis. By zero-sum we mean that all parties to the crisis recognize that there are some outcomes that are mutually undesirable for all actors and that there are other outcomes which are not entirely for the gain of one party at the expense of the other party. The absence of such recognition makes crisis situations more difficult and increases the risk of escalation to violent conflicts.

Fourth, a mutual belief in the rationality of adversaries should be there. This was highlighted by the Soviet and American strategic deterrence systems which assume the rationality of the adversary. They assume that should their strategic opponent entertain the thought of inflicting harm on them, the opponent will be deterred from doing so by a rational calculation that such behavior would result in devastating retaliatory destruction.

If an adversary in a crisis is assumed to be rational, then communications are designed to influence this cost-benefit calculation, to convey commitment or to propose alternatives becomes thinkable. In the absence of the belief that the opponent is rational, then the incentive for strategies other than pre-emptive destruction becomes much harder to introduce. Valued interdependence of parties on other issues; the significance of this characteristic is that it reduces the tendency of parties to interpret the present situation as zero-sum. If parties are linked together on other issues from which they derive benefits, then the concern about disrupting these welcomed and beneficial interdependences will serve as a constraint.

Non – military instruments of statecraft; the existence of diplomatic skills, economic modes of influence and other alternatives to force and violence becomes important in managing crises. Where parties have competency in bargaining and some resources to support their negotiators they are more likely to explore non-violent solutions to the crisis situation.

Party in useable military resources; if one of the parties to the crisis is decidedly inferior to the other party in terms of available military resources for war fighting and escalatory violence, then it will probably have incentives to seek a non-violent resolution of the crisis. This asymmetry in military strength does not however inspire confidence from the weaker party that the stronger party will not use force.

Crisis managers should therefore to effectively manage the crisis, highlight to the stronger party the presence of allies or other favorably inclined actors to provide the weaker party with military assistance in the immediate crisis.

No access to nuclear weapons; the assertion is that a non-violent crisis is more likely if none of the parties has access to nuclear weapons either through its own military capability or through the assistance of an ally that has access to nuclear capabilities.²⁷

Crises have phases that characterize them. The first phase involves the triggers to the crisis and these necessitate the formation of a decision-making unit. The second phase if there is the greatest danger of escalation of the crisis situation to a violent confrontation between actors. At this point, the decision making unit must strive to bring the crisis to the third phase which is the de-escalation of the crisis.

²⁷D. Frei., (ed), "International crises and crisis management An East –West Symposium," Hermann F. C., "Types of actors and their implications for crisis management".

1.6 Kenya's Post-election Violence

Violence has been a feature of every election campaign in Kenya since 1992, and in each of the past four national elections. In 1992 and 1997, supporters of KANU and Moi deployed state resources to stir up violence in the Rift Valley against their opponents predominantly immigrant populations who had come to the province as settlers since the 1960s. The violence of the early 1990s saw more than 1,000 deaths in Kenya, and the displacement of over a quarter of a million people.²⁸

By 2007, a complex architecture of 'informal' or extra-state violence had emerged exhibiting four categories: criminal squads hired by politicians as bodyguards; 'tribal militias' which was and still is characterized by young thugs who were widely used by the state, notably during the 1992 and 1997 and, to a lesser extent, the 2002 multiparty elections; the Mafioso-style gangs operating as shadow states in the slums of Nairobi and other towns and cities and even in the countryside, often connected with the various segments of the political elite; and the endemic and generalized level of crime and violence that came to characterize the breakdown of public order from the late 1980s onwards.²⁹

Moreover, the 2007 election was the country's most competitive contest by far. In contrast to the 1992 and 1997 elections, for example, there were only two main candidates, representing the

²⁸ Akiwami Report

²⁹ P. Kagwanja (2009): Courting genocide: Populism, ethno-nationalism and the informalisation of violence in Kenya's 2008 post-election crisis, *Journal of Contemporary African Studies*, 27:3, 365-387

most deeply rooted divide in Kenyan public life: that between the Kikuyu and the Luo.³⁰ In his briefing to domestic and international election observers on 21 December, the Electoral Commission of Kenya (ECK) chair Samuel Kivuitu, was confident that the election would be peaceful and any ensuing transition smooth.³¹

The polling day was calm. On 28 December 2007 the Orange Democratic Movement leader Odinga appeared to command a strong lead as results began to come in, from his strongholds in Nyanza, the Rift Valley and western Kenya as well as other votes from the rest of the country.

However, on 29 December the margin shrunk quickly to a mere 38,000 votes, with nearly 90% of the votes counted (180 out of 210 constituencies) and the bulk of the remaining uncounted votes largely from President Kibaki's central and eastern Kenya strongholds.

On 29 December, when the public expected the final results of the presidential tally, the ECK chair publicly expressed his suspicion that districts near the capital had delayed reporting results because 'they were being cooked'. This came as the first 'official' evidence of ballot rigging.³² The foregoing presented a suitable ground for violence to easily occur. And this proved true when the announcement of the election results were made on 30th December 2007 sparking off

³⁰ P.W. Thomas (2009): 'Poll poison'?: Politicians and polling in the 2007 Kenya election, *Journal of Contemporary African Studies*, 27:3, 279-304

³¹ Standard Group press briefing clip from you tube

³² P. Kagwanja (2009): Courting genocide: Populism, ethno-nationalism and the informalisation of violence in Kenya's 2008 post-election crisis, *Journal of Contemporary African Studies*, 27:3, 365-387

violence in Nairobi, Kisumu, Mombasa, Eldoret, Kericho, Taveta, Wundanyi, Kilifi, Narok, Busia, Bungoma, Kakamega, Kuresoi and Molo.

In the first three days 164 people had been killed and in three weeks over 600 people had been killed.³³ By the end of February 2008, more than 1,000 were confirmed dead in the fighting, and over 300,000 people had fled from their homes to escape the violence.

A synthesis of the foregoing literature highlights a literature gap which this research attempts to fill by providing in the end a better understanding of the post-election violence from a crisis perspective and what lessons if any can be learnt for application in future crisis situations.

1.7 Justification of the Study

Academically, the study will add to the body of knowledge on the subject of crisis decision making and in particular within an African context, as the study will be on Kenya's post-election violence. The findings of the study will contribute towards a better understanding of the crisis decision making and its implications in especially imminent conflict situations.

It will also highlight the existence or lack of protocols and adherence to the same within the Kenyan context of crisis decision-making due to the absence of political will. This information

³³ M. Mwangi, "The water's edge mediation of violent electoral conflict in Kenya", (Nairobi: Institute of Diplomacy and International Studies, 2008)

will be particularly useful to personnel in especially decision-making points on crisis avoidance and management to ensure that the crisis situation does not escalate to a violent conflict.

Secondly, the study will form a basis for future research. The researcher relied on the scholarly works of other scholars and identifies literature gaps on crisis management. This work will also be used by future scholars in their research work in the field of crisis decision-making especially on past crisis situations and how they were handled. This will bring a better understanding to the mistakes of the past and bring forth the lessons learnt with the anticipation that the lessons will form an integral part in policy formulation on crisis situations and their management.

From a policy perspective, the study findings and discussions will be useful for policymakers/ decision makers on the issue of crisis decision making and its importance. National agencies that deal with crisis situations may find the findings of this study useful in drafting policy papers on how to integrate successful crisis decision-making protocols in their agencies/ ministries/ departments. This integration may prove to be vital in the long run to these agencies as Kenya moves forward to realize various major developments towards Vision 2030 and the state cannot afford another 2007/2008 electoral violence.

Overall, the recommendations from the study will be useful in managing imminent conflicts arising from crisis situations within the Kenyan context at a national level and at local levels as it

is anticipated that the recommendations will be applicable to any crisis situation in any context, local, national or international.

1.8 Hypotheses

The study will test the following hypotheses:

- i. Poor crisis decision-making contributed to the occurrence of post-election violence;
- ii. There is a direct relationship between crisis decision-making and post-election violence;
- iii. Political will plays a major role in crisis response.

1.9 Conceptual Framework

Crisis decision-making in international relations is about strategy. Strategic studies are concerned with the way governments or states use military power in pursuit of their interests and the use of that military power to achieve certain political objectives. Strategic studies work together with economic, diplomatic and psychological instruments of power to achieve national interests of the state. There are several assumptions of strategic doctrines which are relevant and useful in understanding crises and crisis decision-making. These are realism, rationality and game theory.

Strategy is the crisis management arm of realism. Realist see the world as made up of independent sovereign states and these state are the only actors in the international system and that there is a permanent and clear picture of international development. Realists perceive people as being destructive, competitive and aggressive by their very nature. Realism believes that the

international system is full of disorder and uncertainty and it emphasizes that there is an endemic power struggle and therefore crisis as well as conflicts are a clear feature of the international life.

Moreover, realists hold that self interest is the primary pre-occupation of all groups and states and it operates on the basis of moral neutrality.³⁴In crisis situations therefore the realist will seek to only cope with problems arising out of association with another state(s) because realist belief that states are the only actors in the international system in the pursuit of national interests. Rationality underpins the assumption of rational decision makers. At the center of this concept are the notions of rational choice, rational opponents, rational decision-making and rational behavior of actors.

Rational behavior is where the actors in a crisis situation try to maximize their value positions and actually maximize on their value positions.³⁵Rationality is pursued at two levels, that is, the strategic analysis level and the strategic policy making/ decision making level. At the strategic analysis level, it is assumed that there is a strategic person who will evaluate every action on a cost- benefit analysis level; that there is rationality in the value system of all actors in a crisis and that there is perfect knowledge of the actors. In other words the strategic analysis level reduces the crisis situation into an intellectually manageable situation.

³⁴ M. Mwangi, "Conflict in Africa: Theory, Processes and Institutions of Management", (Nairobi: Centre for Conflict Research, 2006)

³⁵ N.L Richard, "Between Peace and War", (Baltimore: Johns Hopkins University Press, 1981), pp. 11-12

The second level is the strategic decision-making level where the actors in the crisis are given an opportunity for a more human perspective. This is because at a policy or decision-making level, policies and decisions must be designed and implemented taking into account the unreasonableness of people. At this level all the complexities of actors in a crisis are examined including their psychological positions and logical calculations.³⁶

Game theory on the other hand offers a model of rational behavior of people in crisis situations. There are a number of alternatives and people are able to estimate the consequences of their choices and where the outcomes are determined by not only your choice but also the choice of other who you have no control of.³⁷ In game theory, one must take into account the intelligence of the other party in the crisis situation and their psychological measure of satisfaction which explains the behavior of actors in crisis situations.

The idea is that there is a quality which people seek to maximize in crisis situations. Moreover, various outcomes have different measures of utility/ satisfaction and game theory assumes that the objectives of rational individuals are to maximize their utility while taking into account all other rational actors.³⁸

³⁶ A.H. Simon, "Rationality in political behavior", *Political Psychology* Vol 16 no. 1 special Issue: political economy and political Psychology (March 1995) pp 45-61

³⁷ J. Bendor and T.H. Hammond (1992). "Rethinking Allison's Model." *American political Science Review*, 86: 301-322.

³⁸ P. Allan and C. Dupont, "International Relations theory and game theory: Baroque modeling choices and empirical robustness", *International Political Review*, Sage Publications Vol. 20 No. 1 (Jan 1999) pp 23- 47

1.10 Research Methodology

To achieve the objectives of the study, the study undertook an investigative approach on crisis decision-making while paying special attention to post- election violence of 2007/2008. The study used both primary and secondary sources. The primary data was obtained through studying documentaries, media reporting, reports from commissions of inquiry into the post-election violence, the International Criminal Court public evidence against the four accused persons from Kenya and any other documented literature in the form of written and/or audio interviews of the key actors during the crisis.

These primary sources contained relevant material concerning crisis decision-making process during the post-election violence. Secondary data was obtained from a desk study, comprehensive analysis and review of books, journals, papers and other available literature on crisis decision making and post-election violence in Kenya 2007-2008.

The data was analysed using content analysis. Content analysis is a technique for making inferences by objectively and systematically identifying specified characteristics of responses and objectively identifying and using the same approach to relate linkages. The results were presented under identified themes.

The scope of the study was specific to events that occurred between 27th December 2007 and 28th February 2008. The main limitation of the study is the inaccessibility to key decision makers and

experts on the subject matters who were involved in the decision-making processes and discussions at the height of the tensions, subsequent violence and de-escalation of the violence. This however was resolved by the use of the fore mentioned primary sources of data highlighted.

1.11 Chapter Outline

The research constitutes five chapters; the introduction (current chapter one), which covers the literature review, justification of the study as well as the conceptual framework among other subheadings. Chapter two highlights other findings conceptual and historical with the subheadings: electoral landscape of Kenya, a historical overview, factors to PEV crisis and reflections of past crisis situations in Kenya.

Chapter three outlines the methodology which, given that this was a largely a desk-based research for the primary and secondary data. Primary data included information from documentaries; commissions of inquiry, human rights and humanitarian agencies reports as well as other public documents which documented on the elections, the post election violence as well as the Annan led talks. Secondary data was sourced from media reporting, reports, articles, journals, books, making the research methodology comprehensive.

Chapter four combines the findings and the critical discussions under various subheadings. The conclusion will be the last chapter, a summary to the entire study.

CHAPTER TWO

CRISIS DECISION-MAKING IN KENYA'S POST-ELECTION VIOLENCE: AN OVERVIEW

2.1 Introduction

Chapter one examines the definitions, theories and discussions on crisis and indeed crisis decision making in the international arena and its importance at the national level of a country in ensuring that crisis situations are handled appropriately and expediently to avoid civil strife and violence.

Chapter two looks at crisis within the Kenyan context. It examines the key issues that have contributed to the post elections violence crisis in Kenya, specifically a historical background of events that have shaped the way crisis decision making is carried out in Kenya.

2.2 Electoral landscape of Kenya: Historical Overview

Since independence in 1963, Kenya has had three heads of state: Mzee Jomo Kenyatta (1963-1978), Daniel arap Moi (1978-2002), and Mwai Kibaki (2002—present). President Moi left power in January 2002 and his party KANU was massively voted out in a path-breaking general election. This paved the way for the first popularly elected government in Kenya's post-independence history.

Yet, the questions of how successful the first two regimes were in nation making, in constituting a political community with its first loyalty and allegiance to Kenya, still remain. Though nation making involves the creation of a citizenry whose prime loyalty is to the Kenyan nation-state, it does not necessarily entail obliterating other loyalties.³⁹ Kenya became independent in December 1963 after a prolonged and bloody uprising against Britain that entailed more than thirteen thousand (13,000) casualties.

Kenya resisted the Marxist-Leninist ideological tide that swept much of Africa in the 1960s and 1970s and maintained a fairly stable political system in a region marred by civil strife and political violence. Although it was under one-party rule until 1992, Kenya had a relatively open political system.⁴⁰ Politically, Kenya has a checkered history. Under its first president, Jomo Kenyatta, the country prospered. Although Kenya became a de facto one-party state as early as 1964, Kenyatta's brand of authoritarian rule was relatively benign.

The civil service maintained high professional standards, and competitive elections for the National Assembly were held every five years. Kenya's fortunes declined sharply, however, once Daniel arap Moi took power in 1978. If Kenyatta's Kenya had a basic flaw, it was that most of its prosperity was concentrated among the members of Kenyatta's ethnic group, the Kikuyu.⁴¹

³⁹ G.R Muranga „The State, Its Reform and the Question of Legitimacy in Kenya “ ; Identity ,Culture and Politics, VOI 5, No1 and 2, 92004) pp 179- 206

⁴⁰ S.N. Ndungu. “ Kenya: 2007 Election Crisis”

⁴¹ D.J Barkan „Kenya after Moi”, Foreign Affairs , Vol 83, No1; Council on Foreign Relations; Jan – Feb 2004 pp 87 - 100

Moi sought to redress this imbalance, pursuing a set of redistributive policies that favored his own ethnic group -the Kalenjin- and other disadvantaged tribes in the Rift valley.

Although these policies were initially popular, they triggered a failed coup attempt in 1982, after which Moi became increasingly repressive. He demanded absolute loyalty to his rule, rewarding acquiescent members of the legislature with ministerial positions or dollops of cash and expelling from the ruling party, the Kenya African National Union (KANU), anyone who dared criticize his policies.

Elections were often rigged, the press and civil society were suppressed, and opponents were jailed. Human rights violations, including torture, became increasingly common. By the end of the 1980s, Kenya had become a classic example of "big man" rule. Like Mobutu Sese Seko in the former Zaire and Robert Mugabe in present-day Zimbabwe, Moi turned Kenya into his personal fief, a kleptocracy under which KANU leaders looted with impunity.

Kibaki's victory in the 2002 elections was the culmination of a long and difficult process. Then 71 years old, Kibaki beat Moi's designated successor, Uhuru Kenyatta, with 62 percent of the vote. Kibaki's party, the National Rainbow Coalition (NARC), also defeated KANU in parliamentary elections, winning 132 seats to KANU'S 67 .A reinvigorated election commission and 28,000 observers, supported by the United States, among others, certainly helped: the elections were largely free of violence and judged to be free and fair.

Moreover, the key to understanding Kenyan politics is that political leadership is grounded in ethnic communities. Aspiring politicians must gain the support of their ethnic community whether at the level of their sub-clan, their clan or the community as a whole. This means that those who have been elevated as leaders must fight for their community at the centre and bring valued resources back home. If politicians fail to deliver the goods, they will be rejected at the next election.

Leaders are those who are successful in advancing the interests and addressing the needs of the group. Individuals vote along the lines of ethnic ties. Political representation within the Kenyan context, therefore, means group representation. Thus, leadership must secure ethnic support from their community which comes from electoral success and the endorsement of councils of elders or cultural leaders.⁴²

At the centre of politics, the national stage, politicians seek the coveted prize of a ministerial appointment. Younger aspirants compete for appointment as assistant ministers. As a minister, one becomes a “*bwana mkubwa*,” - a big person - who can use power and control over a government department to engage in accumulation and distribution. People expect leaders to be ostentatious for it reflects well on their community as long as the leader rewards his/ her supporters.

⁴² J. Steeves (2006)., “Presidential succession in Kenya: The transition from Moi to Kibaki”., *Commonwealth & Comparative Politics*, 44:2, 211-233

In the one-party era, one did not rise to the commanding heights without loyally supporting the President, singing his praises and delivering the political support of one's people to his re-election. Otherwise, ministers and assistant ministers would be displaced quickly. With the introduction of multi-party politics in Kenya, political leaders continued to draw heavily on their ethnic communities as the core basis of their political support.

In the struggle for power at the centre, the critical resources are the electoral weight of an ethnic community and the strategic ability of the leader to craft alliances among other members of the political elite. Political parties reflect the ethnic reality of Kenyan politics. For example, before he became president, Mwai Kibaki, a cabinet minister, former Vice-President and former Minister of Finance, from Nyeri District in Central Province, abandoned the ruling party KANU to form the Democratic Party (DP).

The DP was anchored in the northern Kikuyu people with support from two associated people, the Meru and Embu. The original Forum for the Restoration of Democracy (FORD), co-chaired by Oginga Odinga and Kenneth Matiba, a Kikuyu political heavyweight, split apart during the 1992 campaign period into two different alignments. Odinga formed FORD-Kenya, a predominantly Luo party, while Matiba formed FORD-Asili, a party which allied the central and southern Kikuyu with the Abaluhya of Western Province.

What has also featured in Kenyan politics is the rise of 'unbounded politics' whereby in the struggle for power, political parties and alignments can be formed and then abandoned very quickly if such behavior advances the interests of the politician and his/her community.⁴³ We have then three pillars of Kenyan politics, political leadership based on ethnic representation and reward, an emphasis on accumulation and distribution of valued resources, and unbounded politics whereby leaders and their associates view political parties and alignments as passing instrument in the struggle for power and influence.

To capture the most coveted prize – the presidency – requires crafting a coalition of ethnic leaders who use their community's support to lever positions of power and influence within the ruling group. These ethnic leaders must be able to achieve consensus on who among them deserves the top position. Such a consensus may be based on a promising future rather than on immediate reward. Not surprisingly, these coalitions are fraught with instability and require constant attention to remain united and strong.⁴⁴

2.3 Factors to Post Election Violence Crisis

2.3.1 Presidential Power in Kenya

A brief history of Kenya's 'democratic' evolution is relevant to understand the role of ethnicity in the post election violence. Kenya became a British protectorate in 1890 and a Crown colony in

⁴³ J. Steeves, (1996) "Unbounded politics in the Solomon Islands: leadership and party alignments", *Pacific Studies*, 19(1), 115–138.

⁴⁴ J. Steeves (2006), "Presidential succession in Kenya: The transition from Moi to Kibaki", *Commonwealth & Comparative Politics*, 44:2, 211-233

1920. Movement for independence began in the 1940s, and in the protest against colonial rule climaxed at the time of the Mau Mau rebellion of 1952.⁴⁵ Finally Kenya became an independent state on December 12, 1963. Jomo Kenyatta, a Kikuyu from the Kenya African National Union (KANU) became the first president in 1964.

Kenyatta was a natural choice for the highest post for his active role in anti-colonial movement. To quote writers Bennett and Rosberg,⁴⁶

*Kenyatta was the logical choice; no one else was identified so fundamentally with the struggle for freedom. To the majority of Kenya Africans, Kenyatta was not the leader into 'darkness and death,' the phrase the Governor used in May, but rather the father and symbol of their nationalism, being referred to, with African respect for age, as Mzee ('elder'). For over seven years he had been suffering for his people, first in prison and later in restriction at Lodwar, a remote government centre in the Northern Province.*⁴⁷

To comprehend the apparent fixation with political power in Kenya and, indeed in most post-colonial states, an initial understanding of the meaning of this power to political actors is necessary. Even in the era of a one-party state in Kenya, elections were hotly contested, evident

⁴⁵ H. P Ambu, "Struggle for Release of Jomo and His Colleagues"; Nairobi: New Kenya Publishers, 1963, p. 16.

⁴⁶ C. Bennett and C. Rosberg, *The Kenyatta Election: Kenya 1960-61*, Oxford: Oxford University Press, 1961, p. 41.

⁴⁷ R. Modi and S. Shekhawat, "The Kenyan Crisis: Post December 2007 Elections- Working paper 1", center for African Studies, Mumbai, India

from 64 petitions objecting election results between 1969 and 1988, the last elections under a single-party state system.

Wanyande, explains these petitions and spirited contestations as resulting from the fact that state power confers many advantages. Articles from Kenya's former constitution illustrate the scope and implication of being Kenya's president.⁴⁸ Section four (4) postulates that the president will be Head of State and Commander-in Chief of the armed forces of the Republic. Section 14 (1) makes the president immune from criminal proceedings of any kind as long as he (or she) holds the office of president.

The president appoints the vice-president (Section 15:1) and ministers (Section 16:2), fires any minister (16:3), assigns responsibilities for ministries and other government departments (section 18), and appoints permanent secretaries to ministries (Section 22:1). Section 24 vests in the president the power to constitute and abolish offices for the Republic of Kenya, of making appointments to any such office and terminating any such appointment.

Further, Section 41:1 allows the president to appoint all members of the Electoral Commission of Kenya (ECK). This obviously casts doubts on the impartiality of the ECK in supervising elections in a multi-party democracy. Previous debates in political circles have introduced measures like ECK appointees being acceptable to other political parties in existence, but with

⁴⁸ P. Wanyande, (2006), "Electoral Politics and Election Outcomes in Kenya", , *Africa Development*, Vol. 31(3):62-80

ultimate power vested in the presidency, it is too small a measure. Section 106:2 bestows in the president the power to appoint members of the Public Service Commission (PSC) consisting of a chairman, deputy chairman and fifteen other members.

In the judiciary, Section 109:1 stipulates that the Attorney-General shall be appointed by the President. An interesting loophole exists here. The president appoints the chief Justice. He also appoints the high court judges, but with —advice□ from the Judicial Service Commission (JSC). However, the JSC comprises of the chief justice (president-appointed), Attorney General (president-appointed), the Chairman of the PSC (president-appointed) and two other members also directly appointed by the president.

The advisors to the president in judicial appointments are therefore themselves appointees of the president, which contradicts their role in providing informed and impartial advice in appointing other officers of the Judiciary. Their advice is therefore void since it would be fallacy to assume that they could raise objections to the president's preferred appointees. The president may also choose both the Controller and Auditor-General (Section 110:1).

This is a vital note to consider being that a constitutional amendment act (Number 14) in 1986 under Moi removed the security of tenure for both the Controller and the Auditor General as well as high court judges making their terms of service indefinite and only deriving from the president's wish. To bulwark their positions therefore would involve continuous efforts to win

the president's favor but at the detriment of the fair service that Kenyans expect from these offices.⁴⁹

The president also appoints high ranking members of the diplomatic corps: —Ambassador, High Commissioner or other principal representative of Kenya in another country, and [...] [can] remove from office a person holding or acting in any such office□ (Section 111:2). Consequently, the three arms of the government of Kenya; the Executive, the Judiciary and the Legislature, are at the mercy of the president.

This, coupled with the alluring power to control the legitimate use of force through state security organs, ultimately results in sometimes desperate attempts to capture power. A yearn for such power in Kenya presents varied political intrigues which will be examined further in the chapter four.

2.4 IPPG (Inter- Parliamentary Parties Group) of 1997

This was an agreement arrived at between the government and the then opposition. In September of 1997, the 36 opposition and 38 KANU legislators agreed to amend or repeal within a month 12 colonial era laws that the opposition held gave the former President, Moi a competitive edge in seeking his fifth five year term. They also agreed that Moi should appoint 10 more

⁴⁹ Kenya's former Constitution

commissioners, nominated by the opposition to the Electoral Commission of Kenya to make it “impartial and independent”.

These proposed changes included an additional clause to Section 1 of the then Constitution to make a declaration that Kenya is a multi party democracy; Section 41 of the then constitution to be amended to provide for minimum number of four and maximum 21 in the membership of the Electoral Commission (EC) so that the opposition nominees get appointed before the 1997 elections; Section 33 to be amended so that 12 nominated members of parliament are proposed on a prorate basis ; insert the word “sex” in Section 82 to eliminate discrimination against women.⁵⁰

2.5 Early Warning Signs in Electoral Management

With the benefit of retrospection, it is possible to infer that a well-orchestrated plan was implemented to ensure a predetermined election result. This inference stems from the following,

First, President Kibaki’s decision to abrogate the IPPG agreement of 1997 on the formula for appointments to the Electoral Commission ensured that all of the Commissioners were appointed by him alone. The IPPG agreement had capped the maximum number of Commissioners to 22 and reserved 10 seats to be filled by persons appointed by the President after recommendations by opposition parliamentary parties.

⁵⁰ Daily Nation of 26th September, 1997

Secondly, the allegations of questionable procedure in the appointment of returning officers by commissioners. Thirdly, an offer from the International Foundation for Election Systems (IFES) to install a computer program that would have enabled election officials in the constituencies to submit results electronically to Nairobi and then on to a giant screen available to the public, making it virtually impossible to change results, was rejected.

Fourth, the use of ECK staff in the Verification and Tallying Center was abandoned in favor of casual staff recruited directly by the Commissioners. Fifth, the Commission refused to ensure that election officials in areas with large predictable majorities for any of the candidates came from different areas so as to reduce the likelihood of ballot stuffing.

Since opinion polls from the 2007 elections consistently indicated a very tight contest, the neutrality of the ECK was always paramount, particularly in the event of a thin margin and a too-close-to-call election. The new appointments made by President Kibaki to the ECK early in 2007 elicited protests from the opposition that he was fortifying the ECK with his supporters despite the need for the electoral body to be perceived as fair and independent, a perception crucial to political stability in a region where many political systems are unstable.

Several actors appealed to President Kibaki to consult the opposition prior to making appointments to the Electoral Commission, with no perceptible effect. These developments exacerbated problems within the ECK. Although the ECK had improved substantially since 2002

in its ability to manage elections, the commission still clung to many questionable practices. For example, votes were counted at the polling station without transportation to a central tallying center, a process prone to abuse and manipulation by the former regime. The unilateral appointments by the President meant that the ECK was now perceived as subject to control, direction, and manipulation by the government.⁵¹

2.6 Referendum of 2005

The political divide in the referendum was highlighted in April 2004, the National Constitutional Conference (NCC) opened with a divided and querulous ruling NARC party. There was the group that gravitated around Raila Odinga – mostly politicians who were unhappy with President Kibaki. Odinga’s group was mainly drawn from Nairobi, the expansive Rift Valley, Luo- Nyanza, Coast, Eastern and Western Provinces- a large group at this time comprising of the ethnic communities in Kenya.

Kibaki’s support was drawn mainly from his ethnic community of Central Province and their close cousins from the Mt. Kenya area. They were later (after the referendum) joined by the Leader of the official opposition and Chairman of KANU, Uhuru Kenyatta and his political party supporters. Other supporters who joined Kibaki especially after the referendum were drawn from parts of Kisii- Nyanza, the North Eastern Province, Central and the upper Eastern province.

⁵¹ IFES KENYA OSIEA FINAL

The NCC discussions and support on constitutional issues played out along those ethnic and political lines. In their campaigns, Odinga's supporters reiterated the issues in the proposed constitution that the religious and civil society organizations were unhappy with. The ECK assigned the Orange Symbol to the no vote and the banana symbol to the yes vote for the referendum. The campaigns for and against the proposed constitution and the referendum greatly heightened ethnic tensions, with the group for the "Yes vote" led by president Kibaki drawing a lot of support from the populous

Mt. Kenya area while the rest were from the no – vote led by Odinga drawing support from the rest of Kenya, because of the politicians who were then aligned to the "No" campaign. The No side went on and won the referendum. Buoyed by the win against President Kibaki, Odinga's No vote team went ahead and converted the orange symbol to the ODM. Kibaki fired Odinga and his colleagues from the Cabinet and sealed the ethnic divide that became the fault- lines along which the 2007 General Elections were conducted.

Many see this as a result of Kibaki's failure to reconcile Kenyan communities after the referendum defeat and embrace dissent from his then coalition partners. A large group of disgruntled and scorned politicians and their supporters then began to prepare⁵²

⁵² K.Njogu ., "Defining Moments: Reflections on Citizenship, Violence and the 2007 General"

2.7 Ethicized Political Campaigns for 2007 Elections

It is frequently assumed that during elections in African countries and other multi-ethnic settings candidates rally voters around shared ethnic identities.¹ Snyder, for example, argues that “political entrepreneurs who want to seize or strengthen state power find that traditional cultural networks based on a common religion or language provide convenient channels to mobilize backers”⁵³.

Similarly, Chandra argues that in multi-ethnic countries where elected leaders have discretion over state-controlled resources, “we should see a self-enforcing equilibrium of ethnic favoritism, in which voters mainly target co-ethnic politicians for favors, and *politicians mainly target co-ethnic voters for votes*”⁵⁴. These claims resonate with a long-standing tradition in the ethnic politics literature that views politicians as representatives for their own ethnic communities in competition with other groups for control of valuable state-controlled resources.⁵⁵

By these accounts, the electoral game is about “mobilizing your own,” not reaching across ethnic lines to attract support from other communities.⁵⁶ In the comparative literature on ethnic politics, it is frequently argued that in multi-ethnic settings parties will focus on mobilizing co-ethnic support bases, rallying voters around ethnic identities. In a number of seminal works, parties are

⁵³ J. Snyder., (2000), *From Voting to Violence: Democratization and Nationalist Conflict*. New York: Norton

⁵⁴ K. Chandra., 2004. “Why Ethnic Parties Succeed: Patronage and Ethnic Headcounts in India.” Cambridge: Cambridge University Press

⁵⁵ D. Horowitz, 1985. “Ethnic Groups in Conflict”. , Berkeley: University of California Press.

⁵⁶ Ibid

seen as akin to interest groups that advance the cause of particular segments of society in competition for scarce resources with other groups.⁵⁷

By this logic, parties, whose very reason for existing is to represent some communities and not others, have no incentive to seek support from outside their core ethnic bases or to share resources across ethnic boundaries. Similarly, Rabushka and Shepsle argue that in plural societies “outbidding” leads all politicians to favor their own communities. Any politician who fails to offer her own group a maximal share of state resources will quickly be replaced by a more extreme competitor.

In this way electoral competition compels all candidates to favor their own groups, making cross-ethnic coalitions and resource sharing impossible.⁵⁸ In Kenya it is primarily tribal categorizations that have political salience in national politics (indeed the terms “tribe” and “ethnic group” are used interchangeable in Kenya). A candidate seeking a more advantageous ethnic categorization scheme might look to linguistic grouping instead of tribal identities. Kenya’s tribes can be grouped into three broad language families – Nilotic, Bantu, and Cushite – based on their ancestral origins. Consider a candidate who simultaneously holds a tribal identity as a Kikuyu and a language group identity as a Bantu.

⁵⁷ A. Lijphart, 1977. *Democracy in Plural Societies*. New Haven: Yale University Press.

⁵⁸ A. Rabushka and S. Kenneth, 1972. “Politics in Plural Societies: A Theory of Democratic Instability”. Columbus, OH: Charles E. Merrill Publishing.

While Kikuyus make up only 21% of the population, Bantus comprise approximately 65%. In principle, the Kikuyu candidate could improve her electoral chances by organizing political competition around the Bantu-Nilotic-Cushite divide, presenting herself as the representative of all Bantus, not just Kikuyus. However, divisions between the tribal groups that comprise the larger Bantu language community stand in the way of a Bantu alliance.

Historically, relations between some Bantu tribal groups have been antagonistic. For example, in the run-up to independence in the 1960s, leaders from the Mijikenda and Kamba (both Bantu groups) broke off from the Kikuyu-led party, KANU, to form Kenya's first major opposition party, KADU (Kyle 1997). Central to KADU's electoral appeal was the notion that Kikuyu leaders favored their own *tribe* at the expense of other *tribes*, including other Bantu tribes.⁵⁹

In the post independence era, the organizing principle for ethnic favoritism remained the tribal cleavage, not the linguistic cleavage. Moreover, in the 2007 race, the potential for building a Bantu alliance that brought together the disparate Bantu tribes would have been limited by the widespread belief among members of several Bantu groups that the incumbent president, Mwai Kibaki, favored his own Kikuyu tribal community at their group's expense.

Given this history, it would have been difficult for a Kikuyu candidate to convince other Bantus that he would act as the representative of the broader Bantu community. Promises to look after

⁵⁹ G. Bennett and R. Carl., 1961. "The Kenyatta Election: Kenya 1960-61", London: Oxford University Press.

the interests of other Bantu tribes are likely to lack credibility with many non-Kikuyu Bantu voters who have come to expect that a Kikuyu candidate will favor his own tribal group, not the larger language group.⁶⁰

2.8 The Political Environment Prior to the 2007 Elections

2007 had witnessed dramatic shifts in Kenya's political transition. Raila Odinga, the flag bearer for the Orange Democratic Movement Party of Kenya (ODM), turned the emblem of the orange fruit used during the 2005 Constitutional Referendum into a potent political symbol. Incumbent President Mwai Kibaki sported a new consortium, the Party of National Unity (PNU), which consisted of an alliance of six major political parties and a number of smaller fringe parties.

The campaign period was dominated by the unfinished business of constitution-making, and the election campaign was colored by the referendum contest between the two political sides.

Ethnicity was heightened due to perceptions of ethnic bias in public appointments, while the political class on all sides continued to demonstrate their inability to build consensus whenever serious political issues arose, even as they were extremely quick to unite for selfish personal gains such as increased salaries, personal emolument, and gratuities.

As the elections approached, the debate on whether to maintain a centralized government or adopt a federal government structure (*Majimbo*) divided Kenyans down the middle. ODM

⁶⁰ J.Horowitz ,(2009) ., "Ethnic groups and Campaign Strategy in Kenya's 2007 election", University of California

argued that *Majimbo* stood for devolution while PNU was emphatic that *Majimbo* referred to ethnic enclaves or tribal Balkans, and this issue was linked with the violence after the elections.⁶¹

2.9 Reflections of Past Crisis Situations In Kenya

Death of Kenyatta

Kenya, like most other African countries, has had to contend with the problem of ethnicity referred to in Kenya simply as tribalism. Since independence in 1963, the Kikuyu, who constitute the largest ethnic grouping, have dominated the country both politically and economically. At the time of Kenyatta's death, it was widely believed that, despite internal regional schisms, they were determined to keep political power (read: the presidency) to themselves.

As a matter of fact, the change the constitution debate of late 1976 was seen by some observers as an attempt to prevent Mr. Moi, a non-Kikuyu, from succeeding Kenyatta even temporarily. For some time now, the coalition between the Kalenjin people - Moi's ethnic group - and the Kikuyu people has been a political marriage of convenience. The Kalenjin felt strong resentment toward the wealthier Kikuyu, many of whom have acquired large tracts of Kalenjin land in the former White Highlands.

A physical showdown between the two groups had most probably been averted because of Moi's high position in the Kenyatta government. The only other ethnic group which would have been

⁶¹ Open Society Institute, East Africa initiative (OSIEA), IFES Final Report 2008

expected to provide leadership of the country, the Luo, has been too fragmented. With Odinga Odinga first in detention and later relegated to a sort of political limbo, the other Luo politicians such as Odongo Omamo, Matthew Ogutu and Omolo Okero who benefited directly from, and are believed to perhaps have contributed to, Odinga's political difficulties have never really succeeded in rallying Luo people around them or in filling the vacuum they believed was created by Odinga's ouster from the ruling party and from the political scene altogether Daniel T. arap Moi was really the front runner to succeed Kenyatta from the very beginning.

With unswerving loyalty, he had served as Kenyatta's Vice-President longer than anyone else. He was the most peripatetic of all Kenyan politicians, logging thousands of miles a year dedicating projects, making speeches, raising funds in all parts of the country. He was the most important link between Kenyatta and the people. His political and legislative experience went back to pre-independence days. And when he was sworn in as the constitution required as the country's interim President, his edge over other presidential aspirants widened considerably.

Theoretically at least, he had the opportunity to mend fences with those who might have opposed him. After Moi was sworn in, events moved swiftly - to the surprise of many observers. The cabinet issued a statement, read by a man many considered a possible presidential rival, Mr. Mwai Kibaki, the Finance Minister, declaring full support for Moi to succeed Mzee Kenyatta. Soon, word went out to the press to stop referring to Mr. Moi as the acting president.

The stampede to the Moi bandwagon had begun. The trade unions, welfare organizations, various quasi-political interest groups began issuing statements calling for the election of Moi as President and pledging their loyalty to him. When executive power passed to Moi following Kenyatta's death in August 1978, few people thought he would last long. To some observers, Moi appeared to be a compromise candidate who would keep the presidency in a caretaker capacity for a few months only.

The fact that he was a member of the minority Kalenjin tribe seemed to support these doubts about his future.⁶² This period in history is considered a crisis situation because of the underlying interests in the presidency from powerful Kikuyu elites who wanted to keep presidential power within their ethnic community.

1982 Coup

No doubt an attempted coup is a crisis to any State. In Kenya this attempted coup was fatally flawed. A group of lower ranking air force officers led a coup attempt in August of 1982 that scored some initial successes. The officers took control of a major air base, captured the national radio studio and induced a large number of university students to join in the revolt.

⁶² M.S Makinda., "Kenya: Out of the Straitjacket, Slowly", The World Today VOI 48, No. 10 (Oct 1992) pp 188-192

But they had failed to gain the army's support before initiating the coup and without the support of that branch of the military most essential for coup attempts because of its weapons types, its transportation systems and the location of its basis the conspirators were soon in trouble.

Without tanks, armor or heavy arms to take and hold key installations, the air force officers' forces were quite easily crushed by the superior power of the loyal army. The inadequacy of the air officers planning was also shown in their failure to attack the transmitting facilities of the radio station in addition to the studios where someone loyal to the government soon pulled the plug and stopped all transmitting.

Attempts to justify the coup and rally citizens to support overthrowing the government, at least in the capital city quickly ended, despite the many signs of growing unrest in Kenyan society that suggested that possibility of broad based popular support for a coup.⁶³

Multi-partyism

Kenya's transition to democracy-which lasted from the late 1980s through the 2002 elections-was marked by a protracted struggle between Moi and those seeking to pry open the political system. Consistent with the patterns seen elsewhere in sub-Saharan Africa, demands for change came first from disaffected elites and ordinary citizens. But these calls fell on deaf ears. It was the changed international climate at the end of the Cold War that proved decisive.

⁶³ K. Harvey

Although the United States had been silent on Moi's stewardship throughout the 1980s, it became increasingly critical of Kenya's record of economic management, corruption, and human rights. Sharing these concerns, international donors suspended \$250million in aid to Kenya in November 1991. Moi's response was swift: within a month, Kenya's constitution was amended to permit the return of multiparty politics. Moi prevailed in Kenya's first two multiparty elections, held in 1992 and 1997, but with only a plurality of the vote. KANU won a narrow

Only after 1992 did Kenya move from a one-party state to multi-partyism with the first multiparty election in over two and a half decades. Although Moi won both the 1992 and 1997 presidential elections, his winning margin in each election was less than a half of the total votes. In 1992, Moi garnered only 1.962 million votes out of the 5.4 million cast. His three main challengers had a combined total of 3.399 million votes⁶⁴.

In the second multi-party elections in 1997, President Moi was re-elected with 40% of the total votes cast. Kibaki, the closest opponent, had 31% of total votes. In the 2002 presidential and parliamentary elections, the opposition coalition, NARC, defeated the ruling KANU, a win that marked the first transfer of power from one president to an incumbent through an election process in Kenya.

⁶⁴ D. Throup and C.Hornsby, (1998) " Multi-Party Politics In Kenya: The Kenyatta And Moi States And The Triumph Of The System In The 1992 Election"., London: James Currey, Nairobi: East African Educational Publishers

Whether multi-party elections signaled the arrival of democracy in Kenya or simply provided further reason for the gerontocracy to consolidate and personalize both the administration and legal environments in which elections in the country occurred is debatable, but the latter assumption carries more evidence than the former as this study will show.

The constitutional weaknesses and near-absolute presidential power notwithstanding, the dawn of multi-party democracy in Kenya saw the first change of power since 1978 in the 2002 general elections in which Kibaki acquired 62 percent of the total votes as compared to the Uhuru's 31 percent.⁶⁵ This win also saw one of the highest voter turnouts in Kenya's election history, a phenomenon resulting from the fact that for the first time there was an —achievement of opposition unity⁶⁶.

The hitherto divided opposition had trapped Kenyan politics in what Ake phrases as —between a discredited authoritarian past and a democratic future that refuses to arrive□. However, the chance to usher in the arrival' of democracy came with NARC's coalition. Presented by NARC as a change' candidate, Kibaki promised numerous vital political, social and economic reforms including a new constitution that would facilitate decentralization of power, diminution of Kenya's bloated central government, and creating the post of prime minister to devolve power vested in a near-monarchic presidency.

⁶⁵ S.W Nasong'o (2007) „ Negotiating New Rules of the Game: Social Movements, Civil Society and the Kenyan Transition', in Kenya, the Struggle for Democracy, G. R. Murunga and S. W. Nasong'o (eds) London: Zed Books, pp. 19-57

⁶⁶ ibid

One of the most hard-hitting lines in his speech was:

“Fellow Kenyans, I am inheriting a country which has been badly ravaged by years of misrule and ineptitude.”

Kibaki followed this with another reiteration:

“There will be no sacred cows under my government.”⁶⁷

Nonetheless, Moi’s peaceful transfer of power over to Kibaki gave a lot of promise to the Kenyan people and carried an overall impact on Africa’s image to the rest of the world until 2005 when NARC officially disintegrated. The cheers that had echoed on 31st December 2002 turned into a furor of discontent as Kibaki fired or demoted most of his key allies and resurrected his Moi-era gerontocracy in a cabinet reshuffle.⁶⁸

Compounding the uneasiness caused by lack of the promised new constitution or devolution of power, a lack of confidence in Kibaki’s government was sealed with a referendum loss for Kibaki. His camp managed only 43 percent of the referendum votes while the opposition camp, led by Raila Odinga, had 57 percent.⁶⁹

⁶⁷ <http://www.statehousekenya.go.ke/speeches/kibaki/2002301201.htm>

⁶⁸ G.R Murunga and S.W Nasong’o., (eds) (2007) *Kenya, the Struggle for Democracy*, London: Zed Books

⁶⁹ B. Andreassen and A. Tostensen (2006) ., “Of Oranges and Bananas: The 2005 Kenya Referendum on the Constitution”., Chr. Michelsen Institute – CMI Working Paper Number 2006:13 at www.cmi.no/publications

2.10 Conclusion

It is evident for the foregoing that the post electoral conflict in Kenya during 2007/2008 has underlying historical factors. Moreover, these factors played a crucial role in creating an environment suitable for a crisis situation. From the history of electoral conflict in Kenya to the disregard of IPPG and the subsequent actions of ECK clearly illustrate this.

CHAPTER THREE

A CRITICAL ASSESSMENT OF CRISIS DECISION-MAKING: THE CASE OF KENYA'S POST-ELECTION VIOLENCE

3.1 Introduction

Chapter two reflected on the electoral and political historical background of Kenya and examined various features that made the post election violence crisis a reality in the country. It highlights presidential power as well as reflections of past crisis situations which the country is yet to deal with. Chapter three is a discussion on the post election crisis of 2007/ 2008 especially on the days between 27th December 2007 and 28th February 2008. It reflects on key events that took place during this time period. These events were as a result of decision making at the national level at the height of the 2007 elections and subsequently the post election violence that took place.

3.2 Background

The electoral competition between the two favorites, Odinga and Kibaki, symbolized the political battle between the Luo and Kikuyu, which has fired up political imagination in Kenya since independence. The potential victory of Raila Odinga would have been a return to history, and his accession to the presidency would have represented a victory against the Kikuyu, accused of having hoarded power. Besides, having renounced his candidature to support Mwai Kibaki in 2002, the Luo leader held onto 2007 as his best chance of accessing the presidency.

He sought to give himself a national image, describing himself as “The People’s Candidate” against the Kenyatta and Moi dynasties. He promised a “third liberation” after independence and the 2002 political transition, to cure the country of corruption and tribalism. Thanks to his campaign themes, R. Odinga was very popular among the youth of all ethnic groups, who were strongly affected by unemployment in a system tainted by inequalities.

In comparison, Kibaki appeared as the candidate for the business class, basing on his economic record to promise that “*the work would continue*”. More than the ethnic factor, the opposition between the two forms of power that structured the campaign explains why the failure of “The People’s Candidate” resulted in such an outpouring of violence in poor areas of the towns, where the youth and the poor, having barely benefited from economic growth and the effects of government policies, had placed high hopes on the possibility of a change in power.⁷⁰

3.3 The Election Trigger

It is clear that the flagrant effort to steal the presidential election was the immediate trigger for the violence. All independent observers have said that the tallying process was so flawed that it is impossible to tell who won the presidential election. Since 1992, Kenya’s elections have been progressively better and fairer, culminating in the 2002 elections which were the best ever, and the 2005 constitutional referendum.

⁷⁰ International Crisis Group (ICG), Kenya in Crisis, Africa Report No 137, 21 February 2008, p. 14.

The effect of this progression is that Kenyans finally believed in the power of the vote as a way of peacefully resolving differences, a fact confirmed by voting trends in the recent parliamentary elections that saw almost 70 percent of incumbents lose their seats. When this sense of empowerment was subverted, and peaceful legal spaces for protests were disallowed, it is not surprising that frustrations boiled over and violence ensued.

We have documented some of the facts and analysis that make clear that the flaws in the tallying of presidential votes rendered untenable the conclusion that Mwai Kibaki was validly elected. With the benefit of hindsight, there were steps taken that paint a picture of a well orchestrated plan to ensure a pre-determined result. These include: President Kibaki's decision to abrogate the agreement of 1997 on the formula for appointments to the Electoral Commission ensuring that all the Commissioners were appointed by him alone;

Secondly, an administrative decision within the ECK to give responsibility to Commissioners for their home regions, something that had never been done before, meaning that they appointed all the election officials in the constituencies in their home regions, in a manner that created conflicts of interest. The rejection of an offer from IFES to install a computer program that would enable election officials in the constituencies to submit results electronically to Nairobi and then on to a giant screen available to the public making it virtually impossible to change results was the third step.

Fourth, a decision to abandon the use of ECK staff in the Verification and Tallying Centre in favor of casual staff provided by the Commissioners directly and fifth a refusal to ensure that election officials in areas with large predictable majorities for any of the candidates came from different areas so as to reduce the likelihood of ballot stuffing.⁷¹

The face-off over the presidency between a Kikuyu, outgoing President Mwai Kibaki, and a Luo, Raila Odinga, who hails from one of the country's two main ethnic communities, led to fears of excesses. The election campaigns were verbally very virulent and shortly after the nominations for parliamentary elections, human rights organizations in Kenya denounced the instances of intimidation and murder. The agitation served as some sort of pre-electoral "ritual", which leads to its fair share of deaths during every election period.

All the same, the voters kept their votes, localizing democratic deadline better than their political elite, who yielded to their old habits.⁷² From the unofficial figures regularly communicated by the media, many expected a win by Odinga, who was leading by several hundred thousand votes after the second round of counting. However, votes from Central Province and North Eastern Province, which were favorable to Kibaki, were yet to be counted. Last-minute manipulations toppled over all this.

⁷¹K. Maina., (2008): *The Political Crisis in Kenya: A Call for Justice & Peaceful Resolution*, *Review of African Political Economy*, 35:115, 140-144

⁷² Institut Francais Recherche en Afrique (IFRA)., "The General Elections in Kenya, 2007"., Special Issue, May – August 2008, Nairobi

Soon after the announcement of the results, Nairobi was engulfed in violence, especially the slums that heavily supported Odinga, along with several big towns in the Rift Valley (Eldoret), Nyanza (Kisumu) and Coast Province (Mombasa).⁷³

After several tempestuous days, during which the violence reached its peak on January 2008, hundreds of deaths and tens of thousands of displaced persons were reported. The violence paralyzed the country's economy and revived ethnic tensions that had been largely dormant. There seemed to be evidence of election rigging by the government using various mechanisms. To a lesser extent ODM also seemed to have participated in rigging.⁷⁴

Popular vindication built up as more and more signs of manipulation were denounced by ODM as well as European Union and Commonwealth observers, followed by local NGOs and some ECK commissioners. News and rumors about the rigging sparked off events.⁷⁵ More, than the ethnic affiliation of the suspected frauds in the elections; it is the disgust over their political strategy that fuelled the riots. Although the chaos started off as a political conflict (which could be described as a "civil coup d'état"), it took the form of a social revolt in its initial days.⁷⁶

⁷³ IRIN, 'Kenya: armed and dangerous', 22 February 2008.

⁷⁴ Kenya Human Rights Institute., (2008). 'Civil Society Responses to the Kenyan Crisis', Nairobi: KHRI

⁷⁵ ibid

⁷⁶ J. Lonsdale, 'Kenya: ethnicity, tribe and state', 17 January 2008, available on www.opendemocracy.net.

3.4 Handling of the election results

In Kenya at the time of 2007 elections, neither the electoral regulations nor the various checklists and training materials are as clear and unambiguous as one would have hoped. The regulations were not precise about the order in which the three counts (presidential, parliamentary and civic) should be carried out, and they did not indicate how to deal with situations where 100% or more of the registered voters have voted (in itself a rather fluid concept, given the acceptance late in the day by the ECK of voting by double-registered voters and the use of “the black book”).

In 2007, counting and tallying was a straightforward process, at least in principle. At the constituency tallying centre, the returning officer received the material from the polling stations, checked that all the material was there, and then assumed control – almost took ownership – of it. The returning officer then announced the results from each of the polling stations, as the presiding officers submitted them, and these results were then entered in the relevant cells in the huge form.

Once this was done for all polling stations in the constituency (typically between 100 and 200), the results were added up (column-wise), and the resulting figures for presidential candidates entered on Form 16, for parliamentary candidates on the last page of form 17A and for civic candidates on the last page of form 9. When this had been done, the results were announced orally, and Certificates of Results were issued for parliamentary winners (form 17) and civic election winners (form 18C).

The complexity of the process is evident, and it can be no surprise that many errors were detected. The process of delivering results, to KICC by returning officers on phone immediately after constituency tallying and then following results thereafter when the provisional tallies had been announced was the main source of confusion at the national tallying centre. Numerous complaints in relation to counting and tallying were made by political parties, individual voters, civil society organizations (CSOs), domestic and international observers, the media and even ECK commissioners and staff.

3.5 Announcement of the results

On 30 December 2007, after three days of uncertainty, the Electoral Commission of Kenya (ECK) Chairman, Samuel Kivuitu, announced Kibaki's re-election amidst chaos. This announcement was made at KICC in the presence of heavy security personnel a sign of the high levels of tension in the country. Concurrently, members of the ODM interrupted electoral Commission Chairman Samuel Kivuitu, and claimed that the results favoring Kibaki were bogus and therefore not acceptable.

The protests led to the ejection of party agents, politicians and journalists including the numerous television crews that were filming the results live from the counting hall. Electoral Commissioner Kivuitu later declared Kibaki the winner in front of the state controlled Kenya Broadcasting Corporation and some other election observers.

The announcement of the presidential poll results caused a massive outpouring of violence. It led to the loss of several hundred human lives and forced a tens of thousands others to flee their homes. These events cast light on the multiple problems (social controversy, political sclerosis, land inequalities and escalating crime in the society) that Kenya faces as a State.

Praised just a short while ago for its political stability and economic growth, everything in Kenya was disrupted in the last few days of 2007: election rigging, police repression, hard-line positions by cliques, information blackout, bloody settling of scores, reactivation of ethnic tensions, political assassinations, destruction of property, deaths by the hundreds; the daily life of Kenyans was disrupted. Political conflict, social revolt and the crystallization of ethnic rivalries combined with growing opportunistic crime in a worrying trend.⁷⁷

3.6 The Swearing-in Ceremony

Interestingly, within half an hour of declaration of results, the Chief Justice of Kenya swore in Kibaki as the president for the next five years in a small ceremony. This was in stark contrast to the 2002 scenario when the oath ceremony was a big affair and people had participated enthusiastically in the swearing ceremony of the person who they had chosen to bring a positive change in their lives. Nevertheless, with the euphoria replaced by frustration the hastily organized swearing in ceremony was only a bureaucratic show with no popular participation.

⁷⁷ Institut Francais Recherche en Afrique (IFRA)., “ The General Elections in Kenya, 2007”., Special Issue, May – August 2008, Nairobi

To quote an editorial:

What a difference five years makes. In 2002 President Kibaki was inaugurated in broad daylight before an ecstatic crowd of a million people in Jamhuri Park in Nairobi; this time he was hurriedly inaugurated in the evening less than an hour after being declared winner before a small and dour crowd of officials. The intoxicating euphoria of 2002 has given way to widespread anger and anxiety. In 2002 the masses brutalized by decades of one-party rule rediscovered their voices and will; the nation was united in its hopes for the future, believed fervently in the possibilities of productive change.

Now, many feel betrayed and disempowered, robbed of their votes and voices. ... Odinga rejected the results and declared himself the 'people's president.' He claimed he was actually leading the vote tally before Kibaki's supporters doctored the results. He argued that elections were rigged to re-elect the incumbent president. Later Election Commission

Chairman also acknowledged the irregularities. In an astonishing admission, he expressed his inability to ascertain who had won the elections.⁷⁸

The Commissioner also admitted of being under intense pressure to declare the results as quickly as possible, despite having grave misgivings himself. Reports by international observers about

⁷⁸ *ibid*

manipulations and admissions by members of the electoral commission about the irregularities further fuelled the anger of the opposition party. The allegations of rigged elections were not baseless. There are reasons to believe that the democratic process of free and fair elections was not followed in the 2007 elections.

The Election Commission declared Kibaki had garnered 4,584,721 votes and Odinga had garnered 4,352,993 votes. This tight margin (little more than 230,000 votes, about 2.5 per cent of total votes cast) is very fragile.⁷⁹

3.7 The Role of International Actors

Most international observer teams, including those from the European Union, the East African Community and the International Republican Institute (an organization funded by the U.S. Congress), did not endorse Kibaki's re-election.⁸⁰ The U.S. State Department sent its congratulations to Kibaki at a press conference in Washington, DC, the only Western country to endorse his victory, which it soon disavowed.

Donors as a whole agreed that urgent measures needed to be taken to end the violence, which escalated as soon as Kibaki was announced the winner. And as the crisis in Kenya unfolded the international community initially adopted a wait and see attitude. It has then called for members

⁷⁹ R. Modi and S. Shekhawat ., "The Kenyan Crisis : Post December 2007 Elections- Working paper 1", center for African Studies, Mumbai, India

⁸⁰ Kenya in Crisis," *International Crisis Group*, Africa Report N°137, 21 February 2008.
http://www.crisisgroup.org/library/documents/africa/horn_of_africa/137_kenya_in_crisis_web.doc

of ODM to enter into dialogue with the Kibaki government and for the two sides to enter some sort of power sharing government. Western governments are not necessarily averse to a Kibaki Government.

They already know him well having conducted business with his government in the past. Most commentators would agree that dialogue and a political solution are the best way out of the current crisis. However, there is a danger that these calls for dialogue fail to take account of the asymmetric bargaining positions of the parties and the fundamental change in the political landscape. Since the election a⁸¹

In the face of spreading violence, Western officials called for all sides to show restraint and for the political leaders to come to a compromise that would involve some form of power sharing. They thus rejected any scenario involving a recount, a forensic analysis of the results or any other form of action that would help determine the legitimate winner according to the democratic rules in place.

No Western government called on Kibaki to step down from the presidency, or at least step aside until results were verified, thus legitimizing his position. Instead, the international community abandoned the principles of the will of the people and justice in favor of a politically expedient *ad hoc* compromise that eventually ended the political crisis and violent conflict. Various

⁸¹ R. Traill., "Is power-sharing the answer in Kenya?", *Fortnight* No 457 (Feb 2008); Fortnight Publications Ltd, pp 5-6

Western ambassadors and officials on mission from African and Western countries endeavored to bring the two sides to the negotiating table, but Kibaki and Odinga both felt that he was the legitimate winner and initially refused to consider relinquishing his claim to the presidency.

The African Union appointed a Panel of Eminent African Personalities, headed by former UN Secretary General Kofi Annan, to take the lead in mediation, a move strongly supported by Western countries. The negotiations were difficult and protracted, and required multiple interventions by donors to move them forward, including the threat of reduced levels of foreign aid, visa bans on top officials and targeted sanctions.

Finally, at the end of February 2008, two months after the contested elections, Annan got Kibaki and Odinga to sign a National Accord based on power-sharing principles and the formation of a Government of National Unity, including the creation of the post of Prime Minister for Odinga. The violence ceased almost instantaneously, even if it took another six weeks and more donor cajoling for the politicians to agree on the composition of the cabinet.⁸²

Virtually no one among the international actors had foreseen the possibility of the elections turning into a major violent crisis. But all of them realized the severity of the situation within a few days and began to address it. The regional impact was obvious enough: Within days, the de

⁸² S. Brown, "Lessons Learned and Forgotten: the international community and electoral conflict management in Kenya", McGill-Queen's University Press, (2011) pp 127- 143

facto closure of the transport corridor from Mombasa via Nairobi and Western Kenya led to supply shortages in the East African hinterland, especially in Uganda, Rwanda and South Sudan.

Furthermore, the role of Nairobi as a major regional hub for diplomacy, communications, as well as development and relief operations was at stake as was the role of Kenya as the only supposedly stable country in the conflict-ridden Horn of Africa region. It was not the manipulation of election results that motivated the inter-national community to take a common stand towards the Kenyan political leaders.

Instead, the very real danger of the country sliding into a civil war and the possible destabilizing and economically disastrous effects on the en-tire region triggered the international diplomatic engagement. While neither the East African Community nor the African Union, as institutions, took a clear position on the conflict, the chairman of the African Union, individual (former) heads of state and other prominent Africans came to Nairobi to offer their help in bringing the opponents together.

Diplomats of the US and the EU consistently and publicly refused to give full recognition to the election outcome as it stood, thereby provoking formal protests by Kenya's foreign minister. They argued that the doubts about the validity of the results in a very close election and the severity of the violent conflict necessitated a negotiated political solution where power would

have to be shared by the opponents. All relevant international actors pushed in the same direction or at least they did nothing that would have obstructed the negotiation option.⁸³

3.8 The Annan-led Talks

When, on January 22nd, former UN General-Secretary Kofi Annan entered the scene, expectations were running high. He arrived at the point in time when the violence was about to reach the stage of outright inter-ethnic militia warfare. While having no direct means to force anything upon the opponents, Annan used his enormous reputation among all sides in Kenya and beyond with considerable skill and impact, bringing Kibaki and Odinga together for direct talks for the first time since the elections.

He was also well aware that there would be no quick solution, making it publicly clear from the beginning that he would not leave Kenya until an agreement which would secure peace was reached. It turned out to take more than five weeks. Both sides selected small negotiation teams with whom Annan and his advisors did most of the work. Annan held extensive consultations with stakeholders from all sectors of Kenyan society, but restricted the negotiation process proper to the two party teams.

The negotiation teams included hard-liners from both sides, namely William Ruto (who was by then widely believed to carry some - unspecified - responsibility for the violence in the Rift

⁸³ A. Harneit-Sievers and P. Ralph-Michael, "Kenya's 2007 General Elections and its Aftershocks, Africa Spectrum vol. 43 No 1 Horn of Africa (2008), pp 133- 144

Valley) for the ODM, and the Minister for Justice Martha Karua for the PNU. In several instances, the process stalled, and direct talks between the two principals - Kibaki and Odinga - became necessary.

After the beginning of the Annan mediation process, the ODM remained consistently committed to it, unsurprisingly so, given the fact that the ODM had most to gain from whatever kind of power-sharing arrangement would be agreed upon in the end. The government side proved a much harder nut to crack. Much pressure had to be put on the government side to concede some of the power it held. Consistent pressure especially by the US and the EU (with the UK playing a particularly visible role) supported Annan's mediation decisively.

Finally, Annan succeeded in brokering a compromise that Kibaki and Odinga signed on February 28th. The deal involved the creation of the post of a prime minister and the sharing of ministries on an equal basis, all this in the context of a grand coalition government between the PNU/ the ODM-K and the ODM. Thus, Kibaki and Odinga were back at square one of the initial MoU that both had signed before the 2002 elections. A number of special commissions would be created in order to investigate the elections and the violence and to make recommendations for constitutional amendments.

The mood swung immediately: virtually everybody was relieved that the nightmare of the preceding two months had come to an end, even though many were aware that the

implementation of the power-sharing agreement would not be easy. Only a few critical observers asked whether a mere power-sharing deal among the political class had been worth all the killing, destruction and displacement. The power-sharing deal at the end of February was followed by a period of enthusiasm that celebrated the re-discovered unity of Kenyans.⁸⁴

However, the difficulties of agreeing on the details of the ministers' list, positions in the administration, state corporations and the embassies have also shown that no real spirit of cooperation among the political elite has developed yet. Especially the PNU have continued to find it difficult to compromise on some of the positions of power that it held exclusively before. After a temporary collapse of the cabinet negotiations in the first week of April, Kibaki finally announced the new cabinet on April 13.

With 40 ministers and 52 assistant ministers it is the largest cabinet in Kenyan history. Power is shared in line with the Annan agreement, with the ODM getting 20 ministries, the PNU 17 and the ODM-Kenya 3. The extremely long and difficult negotiations as well as their temporary collapse indicate the fragility of the agreement. Kenya's political culture and the corporate interest of its political class, for all their deficits, provide an opportunity for the coalition's survival: few MPs would want to face the risk (and expenditure) of the new elections that would follow a break-up.

⁸⁴ T. Dagne, (2008) ., "Kenya: The December 2007 Elections and the Challenges Ahead," Report For Congress. Congressional Research Service CRS, 17th September, 2008.

Still, the crisis since December 2007 has shown that relevant segments of Kenya's political class are prepared to pursue power politics, including the use of violence, in a manner that brought the country to the brink of civil war and it is still not clear which kind of lessons they have drawn from this experience.⁸⁵In principle, the new partnership held the potential of every grand coalition: to address Kenya's long-standing structural problems, that is, severe social disparities, ethno-regional imbalances, unsolved land issues, and a political culture that puts a premium on ethnic mobilization and in which the winner takes all.

With the benefit of living through the existence of the coalition government, it has been able to move forward on some of these issues, and as to whether it will be consumed by old-style ethnic power politics, the dangers of which have become all too obvious after December 27th, 2007 remains to be seen.

3.9 Why the National Accord?

Minimally, power-sharing involves the construction of a more or less inclusive government that represents a broad range of concerned parties, but may also include provisions regarding the distribution of bureaucratic posts and new rules for the make-up of the security forces and their subsequent management. Supporters of power-sharing identify three main advantages over alternative strategies of conflict resolution.

⁸⁵ M. Mwangi, (2008) "The water's edge mediation of violent electoral conflict in Kenya", (Nairobi: Institute of Diplomacy and International Studies

First, by providing all parties with access to power, it offers the shortest route to ending conflict. Second, by allowing for broad participation, power-sharing formulae promise to confer legitimacy on the government and its actions, facilitating a process of reconciliation. Finally, by providing political leaders with incentives to maintain their proximity to power, and hence moderate their stances, it is hoped that power-sharing will pave the way for the effective institutional reform necessary to diffuse the underlying roots of instability.

The Foreign Secretary of the United Kingdom, David Miliband, summarized the broad international support for power-sharing in Kenya when he urged the country's leaders 'to agree a power-sharing Cabinet that will serve Kenyans effectively in order that the country can move forward and start to deal with the underlying issues that fuelled so much of the violence in the post-election period'⁸⁶.

Kenya's political elite has a history of relatively cohesive co-existence. The one-party state presided over by Jomo Kenyatta was one of Africa's more inclusive regimes, notwithstanding the assassination of Pio Pinto and J. M. Kariuki⁸⁷. Since the late colonial period Kenyan politics has taken the form of 'boss' politics, with a series of ethnic patrons presiding over highly

⁸⁶ N. Cheeseman and B. M Tendi., (2010). "Power -sharing in comparative perspective: the dynamics of 'unity government' in Kenya and Zimbabwe"., *The Journal of Modern African Studies*, 48, pp 203 -229

⁸⁷ J. Widner 1992. "The Rise of a Party-State in Kenya: from 'Harambee' to 'Nyayo'", Berkeley, CA: University of California Press

personalized political machines.⁸⁸ Patron client networks, running from the executive, through regional “Big Men” and MPs, to local communities, served to connect the periphery to the political centre.

The personal provision of patronage, controlled by Kenyatta and later Moi, served as the glue of national integration. However, in order to fully understand the role of partisan veto players in the Kenyan case, it is important to recognize the importance of factional politics within each broad political alliance. Under multi-partyism, Kenyan politics has been characterized by periods of concentration, as leaders sought to broker viable electoral pacts, and of fragmentation, as these alliances quickly fell apart after the polls⁸⁹. The consequence of this process of elite musical chairs is that few political leaders have not, at one point or another, worked as colleagues.

In turn, this continual reshuffling of the elite pack has meant that corrupt figures from previous regimes are not contained within any one political organization, but rather tend to be distributed throughout the party system⁹⁰. As a result, senior figures within both the PNU and the ODM have something to fear from launching investigations into past corrupt activities. The presence of Musalia Mudavadi in the ODM ‘pentagon’ of leaders is a perfect example of this phenomenon: as a member of the NARC government, Mudavadi personally signed some of the most important documents in the Anglo Leasing scandal.

⁸⁸ C. Gertzel, . 1970. “The Politics of Independent Kenya”, Nairobi: East African Publishing House.

⁸⁹ N. Cheeseman,. 2008. ‘The Kenyan election of 2007: an introduction’, *Journal of Eastern African Studies* 2, 2: 166–84

⁹⁰ G. Murunga, G. and S. Nasong’o. 2006. ‘Bent on self-destruction: the Kibaki regime in Kenya’, *Journal of Contemporary African Studies* 24, 1 : 1–28

The 'Kenya crisis' in part resulted from mounting distrust between Kibaki's allies and the opposition leaders grouped around Raila Odinga,⁹¹ but did not change this underlying reality. Although the violence committed in the aftermath of the elections shocked the nation and served to harden battle-lines and entrench communal identities, the extent to which this actually created cleavages within the elite was undermined by divisions within the ODM leadership, the history of alliance formation, and the involvement of a wide range of actors in the violence.

Within the ODM, various leaders and the communities they claimed to represent had little in common to bar their common demand that '*it is our turn to eat*'. Although they sided with Odinga in 2007, many senior ODM figures had actually spent longer working alongside PNU leaders. William Ruto, for example, was a protégé of Daniel arap Moi, who formed an electoral pact with Kibaki in 2007. Musalia Mudavadi was another former Moi loyalist who found himself within the ODM during the Kenya crisis. Similarly, Charity Ngilu, recruited to the ODM to attract Kamba voters, had previously been Chairperson of NARC.

Given the deep connections that cross-cut the government/opposition divide in 2007/8, it is misleading to see the Kenya crisis as occurring between two coherent and unified political blocks. Consequently, the violence did not serve to straightforwardly harden the position of 'government' and 'opposition' partisan veto players in the way that it did in Zimbabwe. The

⁹¹ D. Branch, and N. Cheeseman 2009., 'Democratization, state failure, and sequencing in Africa: lessons from Kenya', *African Affairs* 108, 430: 1-26

relationship between factionalism, elite relations and repression was compounded by the complex nature of the violence in the Kenyan case, where both sides were implicated in atrocities.

On the ODM side, William Ruto is closely connected with many of the individuals thought to have been prominent in the organization of the worst of the civil strife in the Rift Valley. During Moi's time, Ruto personally oversaw the use of militias to carry out ethnic cleansing and create a 'KANU zone' in the 1992 and 1997 elections, and there is considerable evidence that similar networks were activated in 2007.⁹²

On the PNU side, Kibaki and the Minister for Internal Security, George Saitoti, were ultimately responsible for the activities of the police force, which has come in for the most strident criticism from the Waki Commission into post-election violence⁹³. More significantly, prominent Kibaki allies, such as Uhuru Kenyatta, are believed to have connections to the violent Mungiki gang, which engaged in revenge attacks on communities assumed to have supported the opposition following the first wave of violence.

As a result of the diffusion of violence, neither side was in a position to claim a monopoly over victimhood, nor did both sides have reason to fear postelection prosecutions. This common

⁹² G. Lynch, 2008. 'Courting the Kalenjin: the failure of dynasticism and the strength of the ODM wave in Kenya's Rift Valley province', *African Affairs* 107, 429: 541-68

⁹³ N. Cheeseman, 2009. 'Kenya', in A. Mehler, H. Melber, and K. V. Walraven, eds. *Politics, Economy and Society South of the Sahara 2008*. Leiden: Brill, 321-33

interest, combined with the history of elite inclusion, grounded the willingness of key veto players to allow a more functional power-sharing agreement, and underpinned the emergence of the politics of collusion within the unity government.⁹⁴

3.10 Conclusion

From the foregoing, it is clear that the National Accord was the only plausible solution to the Kenyan crisis in 2007/2008 principally because of the shared history of the opponents during the crisis. In addition and with the benefit of hindsight, the opponents engaged in ethicized campaigns and they used of tribal militia to advance their politics which made the country highly polarized along ethnic lines such that had Raila Odinga won, there still would have been violence, the scale and magnitude of which we will never find out. Also, the ECK was ineffective and vulnerable to these ethicized politics to the extent that they failed to manage the elections particularly rigging and other electoral violations yet they had managed fairly successful elections in 2002.

⁹⁴ N Cheeseman and B.M Tendi ., *The Journal of Modern African Studies* / Volume 48 / Issue 02 / June 2010, pp 203 Published online: 19 May 2010

CHAPTER FOUR

CRISIS DECISION-MAKING IN KENYA'S POST-ELECTION VIOLENCE: A CRITICAL ANALYSIS

4.1 Introduction

Chapter three examined the crisis itself in Kenya during the post-election violence and it looks into the key events that shaped the crisis between the 27th of December 2007 and 28th February 2008 leading to the signing of the National Accord. It is important to note that Chapter three is deficient of content that clearly illustrates the decision making processes and protocols. It attests to the outcomes of those decisions.

Chapter four examines the key emerging issues that are brought out in chapter three. These are the key findings and discussions of the research.

4.2 Emerging Issues

4.2.1 History of ethicized politics

The Akiwumi Commission of Inquiry into the ethnic clashes in Kenya between 1991 and 1998 was set up in July 1998 by the then president, Daniel Arap Moi. Its report highlighted the colonial roots of ethnic loyalty in politics and the tendency by politicians to whip tribal

sentiments calling for the deterrence or arrest of such persons.⁹⁵ Numerous fomenting utterances were also recorded and will be outlined below.

The Baringo North KANU Member of Parliament at a rally in September 1991 said:

*Let them [government critics] keep quiet, or else we are ready for introduction of Majimboism where every person will be required to go back to his motherland [...] all outsiders who acquired our [Kalenjin] land will have to move.*⁹⁶

At a separate KANU rally the same month, he said:

*If any FORD [opposition party] member dared to visit any part of Rift Valley, they will regret it for the rest of their lives ... The Kalenjin, Maasai, Samburu and West Pokot [...] [are] ready to protect the government using all weapons at their disposal.*⁹⁷

Timothy Mibei, a cabinet minister, told the throng at the KANU rally to crush any government critic and make reports to the police that they had finished them. They were also told by another politician to arm themselves with clubs, bows and arrows and destroy any FORD [opposition party] member on sight.⁹⁸

⁹⁵ Akiwumi Commission (1999) ., Commission of Inquiry into Tribal Clashes' Report, Government of Kenya. At <http://www.marsgroupkenya.org>

⁹⁶ J. Klopp, (2001) ., "Ethnic Clashes" and Winning Elections: The Case of Kenya's Electoral Despotism,' Canadian Journal of African Studies, Vol. 35(3):473-517

⁹⁷ Human Rights Watch - HRW (1993) _Divide and Rule: State-Sponsored Ethnic Violence in Kenya.' African Watch, USA at <http://www.hrw.org/en/reports/1993/11/01/divide-and-rule-state-sponsored-ethnic-violence-kenya>

⁹⁸ ibid

At a KANU rally in Narok, William Ole Ntimama, a long-time Member of Parliament told the crowd:

[A]ll the ministers and KANU leaders you see here have resolved to fight together... we will use rungas (traditional clubs used as weapons) if this will be the effective way of ending talk about multi-party.⁹⁹

Interestingly, the ministers and leaders he was referring to included then vice president, George Saitoti, six other cabinet ministers, assistant ministers and several councilors. Local councilors made up a vast majority of the politicians in the other two rallies too, with up to 50 of them attending the first one. This showed the government as complicit in using incitement for political expediency.

Despite the Human Rights Watch noting Ntimama was renowned for his inflammatory comments¹⁰⁰, his chokehold on the politics of one of the most troubled areas in the Rift Valley since 1988 still stands. As MP and Narok KANU chairman, he was also a Minister in Moi's Government, but is most famously remembered for telling "outsiders" to lie low like antelopes or face the consequences¹⁰¹. This theme of outsiders will be explored further in this chapter. When the "outsiders" did not lie low but voted for the then opposition leader Kibaki, Ntimama

⁹⁹ Akiwumi Commission (1999) _Commission of Inquiry into Tribal Clashes' Report, Government of Kenya. At <http://www.marsgroupkenya.org>

¹⁰⁰ Human Rights Watch - HRW (1993) ., Divide and Rule: State-Sponsored Ethnic Violence in Kenya.' African Watch, USA at <http://www.hrw.org/en/reports/1993/11/01/divide-and-rule-state-sponsored-ethnic-violence-kenya>

¹⁰¹ S. Siringi, (2009) ., "Ocampo Set to Start Sifting Evidence against Architects", ' Daily Nation, July 9, 2009.<http://www.nation.co.ke/News/politics/-/1064/621814/-/item/1/-/10dlm8z/-/index.html>

admitted in parliament that he led the attacks on them in October 1993. However, calls for his dismissal were ignored by Moi. Though all public rallies have considerable police presence of the police, there was no arrest or caution even as speaker after speaker called for war.

The politicians were sure no action would be taken against them. With impunity identified as a central feature of Moi's regime¹⁰², it should therefore be unsurprising that after the 1992 elections, violence broke out pitting the Kalenjin against five other tribes in the Rift Valley alone, not to mention other provinces. The same impunity was mirrored in the many coordinated attacks occurring in broad daylight and some even giving advance warnings before attacking, yet nothing was done to thwart them¹⁰³.

The new NARC government that replaced Moi in 2002 outdid him in political impunity and ethicized violence. Following below are provocative political utterances during the campaigns for the Referendum in November 2005. Unless otherwise stated, all quotes are from the referendum report from the Kenya National Commission for Human Rights (KNCHR) 2006.

At a rally in Maua Simeon Nyachae, an MP and Energy Minister said – "Raila is an outsider, he is from the lakeside. I cannot work with him as he has not passed through rites of adulthood."

¹⁰² The International Federation For Human Rights - FIDH (2007) 'Massive Internal Displacements In Kenya Due To Politically Instigated Ethnic Clashes: Absence Of Political And Humanitarian Responses,' Paper Number 471/2. With the Kenya Human Rights Commission, April 2007 at <http://www.fidh.org> AND

Human Rights Watch - HRW (1993) 'Divide and Rule: State-Sponsored Ethnic Violence in Kenya.' African Watch, USA at <http://www.hrw.org/en/reports/1993/11/01/divide-and-rule-state-sponsored-ethnic-violence-kenya>

¹⁰³ Akiwumi Commission (1999) 'Commission of Inquiry into Tribal Clashes' Report, Government of Kenya. At <http://www.marsgroupkenya.org>

These remarks were an ethnic attack on the Luo who culturally do not practice circumcision. Nyachae belittled Raila as unworthy of leadership as he hadn't been circumcised therefore unfit to lead. Interestingly, Nyachae replaced Raila as Minister of Roads and Public Works. This was after the referendum in which Raila's Orange camp beat Kibaki's Banana camp, garnering 57% of the total vote. Kibaki subsequently reshuffled the cabinet, sacking all politicians who had backed the Orange camp including Raila.

At another rally, Mwangi Kiunjuri, an MP and Assistant Energy Minister warned that people were to prepare for war if the NO camp won. From his remarks, a defeat in any vote can, should and would be addressed by violence. It can also be deduced that, though the referendum was a democratic process, there was a favoured outcome with violence as its enforcer.

Signifying as much impunity as Moi's regime, Kiunjuri kept his docket, and in the new coalition government after the violence he precipitated, he became Assistant Minister for water and irrigation services. Chris Murungaru, (an MP and former minister for Internal security) speaking in Nyeri, President Kibaki's political backyard said:

"Nyeri should be at the forefront in the YES campaign and any rebel will be dealt with accordingly. Anybody who wants to behave like a rebel should be folded. We have no time to flatter demons whose work is to ruin the scheme of things."

Similarly, Alfred Nderitu, an MP, told his Kerugoya constituents that “the Luos hated Kikuyus because Kikuyus are hard working. Luos just go fishing and fish is free”. Analogous assertions were echoed by another MP who in a separate rally said “—*in places like Nyanza province, people do not work [...] they wait for the people of Central province to work*”.

He connotes that the Luo are lazy and responsible for their problems and are dependent on the Kikuyu. This clearly sharpened Kikuyu hatred towards the Luo, which was evident following the Post-Election violence where 257 of the post-election violence deaths came from Kikuyu-dominated areas, 186 of them killed in just two waves of violence in the town of Nakuru alone.¹⁰⁴

Meanwhile, in Nyanza, Joe Khamisi (MP) was expressing a mirrored version of Murungaru’s hatred for opposition. He said “There is this young man [...] mudslinging Raila and the Orange Campaign. If he comes to Kisumu, what will you do to him?” The crowd shouted “lynch him!” to which he responded saying, “You have answered.” Not only was he justifying political violence, he was similarly expressing the widely malignant habit of Kenyan politicians loathing opposing views.

With Murungaru (Banana) calling for those trying to alter the scheme of things to be crushed, and Khamisi (Orange) advocating lynching of Raila’s opponents, it becomes doubtful whether

¹⁰⁴ CIPEV (2008)., Government of Kenya, Report of the Commission of Inquiry into Post-Election Violence, (CIPEV), aka The Waki Report, Nairobi, Kenya at <http://www.eastandard.net/>

these were actually two different political stands with different ideals and leaders between which Kenyans were to choose, or whether it is in reality just two sides of the same coin, characterized by the persistence of norms even with the change of leaders, that negates any need for change. More importantly, it amplifies the lethal public embrace of violence as a means of addressing grievances and disputes.¹⁰⁵

4.2.2 Legitimized Organized Violence

To understand how a few politicians manage to cause countrywide violence demands an understanding of gang-use for political ends. Calls to uproot foreigners would blanket the fact that a small group would initially start the violence, which then escalated through a cycle of counter attacks, participants and victims increasing with each spiral of escalation. This is where most observers and writers generalize violence as ethnic', whereas it is obvious that they focus only on the tip of an iceberg.

To shed some light on the hidden dynamics on which this tip rests, a brief examination of gangs and extra legal violence would suffice. With the highly competitive political landscape there arises a propensity on the part of political actors to employ any means, including violence to obtain or retain political power. Over the years, from Moi's dreaded Youth for KANU '92, down to Kibaki and his variety of terror squads from Mungiki to the Police, state-sponsored and state-ignored violence has been *modus operandi* in the Kenyan political arena, giving rise to a general

¹⁰⁵ R. Barno., (2008) ., "Kenya: After the Crisis, Lessons Abandoned, Commentary", ' African Security Review Vol. 17(4):172-177

tendency of politicians recruiting ad hoc private armies of jobless youth [...] to harass their opponents and disrupt political rallies¹⁰⁶.

The illegal gangs used in Kenyan politics especially during elections include:

Mungiki which is predominately a Kikuyu gang. It is a highly notorious and politically involved gang and with a “willing buyer, willing seller” attitude empowered by Kikuyu politicians. During the 1997 clashes Kikuyu MP’s threatened to arm the Mungiki for defense and that calmed the tensions in the Nakuru area¹⁰⁷

Taliban which is a Luo gang based in the Mathare informal settlement. It was created to counter the Mungiki attacks in Nairobi’s informal settlements and are vocal supporter of Orange oppositions but were also paid by politicians to “decimate opponents”.¹⁰⁸

Jeshi la Embakasi is a gang based in Embakasi which was owned and financed by a former Embakasi MP to harass and intimidate any opposition to his political position as MP. They are known to support Mungiki¹⁰⁹

¹⁰⁶ G.M .Gecaga, (2007), ‘Religious Movements and Democratisation in Kenya: Between the Sacred and the Profane’, in “Kenya, the Struggle for Democracy,” G. R. Murunga and S. W. Nasong’o (eds) London: Zed Books, pp.58-89

¹⁰⁷ News clip on gang operations in Kibera and Mathare including a “Gaza strip separating Mungiki and Taliban” http://mfoa.africanews.com/site/Kenya_Militias_turn_slums_into_nogo_zones/list_messages/15897 Also the article “Beholden to Proscribed Societies”, East African Standard, 25th May, 2007.

¹⁰⁸ CIPEV (2008)., Government of Kenya, Report of the Commission of Inquiry into Post-Election Violence, (CIPEV), aka The Waki Report, Nairobi, Kenya at <http://www.eastandard.net/>

¹⁰⁹ Mwenje’s admission to supporting the gang, see <http://news.bbc.co.uk/1/hi/world/africa/3108171.stm>

Jeshi la Mzee was formed in April 1997 by senior KANU members and is controlled by Fred Guma, MP Westlands. It violently supported the elections of Fred Gumo in 1997 and was infamously involved in a beat of an arch-bishop in 1999

Bagdad Boys is a Luo gang based in Nyanza. It supports the Taliban gang. It was prominent in 1992 as a militia for a specific political clientele. It once broke into a chief's camp police station to free detained colleagues

Sungu, sungu is a Kisii based gang with varied political affiliations. It was initially a volunteer youth group participating in community policing. It shifted to specialize in witch hunting which is common in Kisii, then into settlement of debts and disputes even divorce cases in their own courts in the area and finally into a political gang for hire

Chinkororo is a Kisii based gang that is affiliated to Simon Nyachae a former MP. It was traditionally a group answering to distress calls in the village. However under Nyachae's supervision they infamously attacked and injured key ODM members in 2007.

Other groups worth mentioning are Amachuma, Runyenjes Football Club, Jeshi la Kingole, Kaya bombo youth, Kalenjin warriors, Youth for KANU 92', Sakina Youth, Kuzacha Boys and Kosovo Boys. Most of these groups, except the Kalenjin warriors who only form when needed

and the Youth for KANU '92 that outlived its usefulness a year later, were supposedly banned by the Kenya police in March 2002.¹¹⁰

However their continued activity funded by politicians is evident in every general election since 1992. As for Youth for KANU '92, their links to the Moi Government were obvious. Kalenjin MP Nicholas Biwott, warned that opposition members would be "crushed" by KANU youth wingers ready to fight to protect the Moi government¹¹¹ Biwott was also adversely mentioned in an Inquiry report on the 1992 clashes, but characteristically was never prosecuted.

The sheer number of gangs and their political patrons and evidence of these links symbolizes past and present governments and political system that employs gangs, perpetuating them for political expediency. It is these gangs that catalyze violence, and counter attacks soon take an ethnic dimension simply because ethnicity is the first and easiest group identification category and the easiest was to organize political loyalty¹¹².

The Chinkororo gang, which barely three months before the general elections assaulted leading opposition personalities, was introduced to the crowd by Nyachae as "the youths who will

¹¹⁰ Integrated Regional Information Networks (IRIN), <http://www.irinnews.org/Report.aspx?ReportId=30729>

¹¹¹ Human Rights Watch - HRW (1993) _Divide and Rule: State-Sponsored Ethnic Violence in Kenya.' African Watch, USA at <http://www.hrw.org/en/reports/1993/11/01/divide-and-rule-state-sponsored-ethnic-violence-kenya>

AND
Human Rights Watch - HRW (2008) _Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance,' Volume 20, No. 1 (A), March 2008, at <http://www.hrw.org/node/62314>

¹¹²S. Snow, (2009) ., "Unhindered by the rule of law: ethnic terrorism and the 2007 Kenyan presidential election", South African Journal of International Affairs, 16(1):115 — 127

protect us during the political campaigns”¹¹³. However, since they attacked other Kisii members who were in the opposition, it is revealing that they meant to protect a politically defined, not social community as is easily misinterpreted.

As well as giving credence to the gang’s existence, the minister naively raises doubts over the ability of the police to protect civilians. A government minister claiming a gang was to offer protection is gross undermining of the government in place, but with fellow cabinet ministers and pro-government MPs attending ¹¹⁴the government had all but sealed the legitimacy of gangs. Not surprisingly, in typical cyclic counter-attacks, the Waki Commission noted a revenge attack soon after the Chinkororo attacked Ruto.

The Kipsigis, who also fall in Ruto’s Kalenjin group, launched an offensive against their Kisii neighbors in Sondu, killing three and injuring and displacing others.¹¹⁵The Sondu incident would easily appear to be ethnic violence, and without addressing its political source in the completely removed location in Kisii, it would be futile to try to solve the Sondu hostility. This has likewise been the failure of successive government initiatives to address violence. The rush to set up Truth and Reconciliation Commissions to foster peace circumvents dealing with the initial political instigators, completely missing the source of the problem.

¹¹³ D. Otieno, (2007) ., "Ruto, Magara Caught in Kisii Violence"., Nation Newspaper, September 2007.
<http://politics.nationmedia.com/inner.asp?sid=581&page=1>

¹¹⁴ CIPEV (2008) _Government of Kenya, Report of the Commission of Inquiry into Post-Election Violence, (CIPEV), aka The Waki Report, Nairobi, Kenya at <http://www.eastandard.net/>

¹¹⁵ ibid

It therefore turns out to be another futile exercise of treating symptoms rather than the disease. The mungiki became central to launching counter attacks on opposition supporters who were blamed for encouraging previous attacks on the Kikuyu in 2007. Whereas it has been argued that such gangs grew out of the lack of security from the government exemplified by the killing of twenty people in a Nairobi slum by a gang in March 2002, others have contested that gangs —grew and multiplied within the context of a political culture that both used and tolerated extra-state violence¹¹⁶.

From the gang list above, both sides earn some validity, in that some gangs, e.g. the Taliban, grew as a bulwark against the attacks from a rival gang, the Mungiki. However, both of them like many others across the country —became amenable to manipulation by politicians [as] private armies for clandestine political ends¹¹⁷. The politicians were also instrumental in weapon acquisition and, in one case, a Minister had his official car used to transport crude weapons during the campaign period.

The politicians therefore not only stoke ethnic hostility, they also form, train and equip gangs with weapons, and when gang members are arrested, they get unconditional release after a call from the boss. Presenting her testimony to the Waki commission, Grace Kaindi, the former Provincial Police Officer (PPO) for the Nyanza region, said:

¹¹⁶ *ibid*

¹¹⁷ G.M. Gecaga,(2007)., 'Religious Movements and Democratisation in Kenya: Between the Sacred and the Profane', in Kenya, the Struggle for Democracy, G. R. Murunga and S. W. Nasong'o (eds) London: Zed Books, pp.58-89

I get calls from Nairobi, my boss says, did you arrest these people?

I say, Yes, for this and that.

Then he says, well, warn them and let them go home. I comply.¹¹⁸

Some of the suspects were those belonging to the Chinkororo outfit under Nyachae's patronage, who had been arrested for assaulting Ruto and fellow ODM members. Kaindi claimed that the Commissioner of Police asked her to release them. Such instances also reveal the apparent pervasive impunity having gone beyond political elites to the ordinary civilians with connections to the powerful. With assured protection from prosecution, there was neither hindrance nor deterrence to those involved in pre and post-election violence.

Their victims, discouraged by either the lack of government intervention or the government aggravating the situation by random shootings, revert to gang. They create new or revive old gangs as the Mungiki did after the government apparently reacted slowly during the 2007 violence. However, the line is not clear-cut. The Mungiki has been known to oppose the government at particular points in time, and a Human Rights report in 2007 was largely pointing to an attempt by the government to get rid of the Mungiki through extra-judicial killings by the police.

¹¹⁸ CIPEV (2008) _Government of Kenya, Report of the Commission of Inquiry into Post-Election Violence, (CIPEV), aka The Waki Report, Nairobi, Kenya at <http://www.eastandard.net/>

In other circumstances however, the group has worked with the government, albeit covertly, as alleged by a RUETERS report which claimed the government may have activated the dreaded gang and offered the Mungiki protection “[...] if they protected Kikuyus against supporters of opposition leader Raila Odinga”¹¹⁹, and in the case of Moi, to discredit the opposition as noted earlier in this chapter.

The Mungiki had started as a religious sect and transformed into a murderous gang because they, like any other group, are acquiescent to manipulation by politicians who turn them into terror outfits for clandestine political services. Under Moi, Mungiki were let to wreck havoc in Nairobi to prove that the opposition (the Democratic Party) which dominated the Nairobi County Council were administratively inefficient.

4.2.3 Role of Political Will during the crisis vs. Intelligence reports

As mentioned in Chapter three intelligence reports from NSIS pointed to the occurrence of PEV and as such key decision makers at the national level were aware of the threat ethicized political campaigns posed to the country. We may not know who and how decisions were made but we do know the outcomes of those decisions which were discussed in chapter three. In light of this, and the discussions of chapter three, another emerging issues presents itself; the role that political will plays in decision making in Kenya.

¹¹⁹B. Moody. (2008) ., “Kenya Govt Activates Murder Gang: Activist” ,Reuters, January 9 2008, at <http://www.reuters.com/article/worldNews/idUSL0969798620080109>

There is incontrovertible knowledge about the role politics plays in ethnic clashes. As summarized in the 1999 Akiwumi report, "What caused the problem was not multi-party politics itself, but the successful exploitation and incitement [...] of the tribal allegiance [...] politics was to become one of the causes of [...] clashes that occurred from 1991 to 1998¹²⁰. Chanoff similarly contends that an apt description of so-called tribal violence should instead be "politically engineered violence," or "politically instigated violence", and that the difference is indeed critical.¹²¹

The commission further proposed that those who have participated in such incitement have in the past been spared and that a shift in this trend was the way forward to show that the government takes [political incitement] seriously¹²². Conversely the Akiwumi Commission was one of many that have been established but their function hampered, or the findings and their reports shelved and ignored or even rejected.

Similarly, the Kiliku Commission established by Moi to investigate the causes of the clashes in 1992 determined that politicians organized the violence for political ends. Despite the fact that the Committee's 12-member team was made up of only KANU MPs, the report gave some

¹²⁰ Human Rights Watch - HRW (1993) „Divide and Rule: State-Sponsored Ethnic Violence in Kenya.’ African Watch, USA at <http://www.hrw.org/en/reports/1993/11/01/divide-and-rule-state-sponsored-ethnic-violence-kenya>

¹²¹ S. Chanoff, S(2008) „,“Tribal hatred didn't cause violence in Kenya”, ‘ Boston Globe, January 19 2008 at http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2008/01/19/tribal_hatred_didnt_ca Akiwumi Commission (1999) _Commission of Inquiry into Tribal Clashes’ Report, Government of Kenya. At http://www.marsgroupkenya.org/use_violence_in_kenya/

¹²² Akiwumi Commission (1999) _Commission of Inquiry into Tribal Clashes’ Report, Government of Kenya. At <http://www.marsgroupkenya.org>

legitimacy to the government through its findings, but the report was subsequently rejected by parliament.¹²³

As aforementioned, The Akiwumi commission, the last of the Moi regime had its report classified by the government until 2002. The Kibaki regime has similarly ignored the report probably because key members of the Kibaki administration, including Kibaki himself, George Saitoti, former vice president and current minister for Internal security, several sitting Members of Parliament (MPs) and cabinet ministers appear in the report's list of adversely mentioned people.¹²⁴

A different report specifies the number of politicians and other actors: —five cabinet members, 13 Members of Parliament, some members of the security force, and a number of individuals suspected of financing and fuelling election violence.¹²⁵ The Waki Commission, from whose report this chapter has largely based its findings, also had its work hampered by a two-month mandate, making it difficult for all pertinent testimony to be heard. The Kriegler Commission

¹²³ D. Throup. and C. Hornsby. (1998) ., "Multi-Party Politics In Kenya: The Kenyatta And Moi States And The Triumph Of The System In The 1992 Election". London: James Currey, Nairobi: East African Educational Publishers

¹²⁴ C. C.Gibson & J.D Long, J. D. (2009) _The Presidential and Parliamentary Elections in Kenya, December 2007', Electoral Studies, Vol. 3, pp. 1-6 and C. M.A Kwaja, (2009) ., "Do the People Have Faith in Electoral Democracy? Lessons From Kenyan 2007 Presidential Elections', African Journal of Political Science and International Relations, Vol. 3, no. 2, pp. 38-45 AND

Human Rights Watch - HRW (2008) _Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance,' Volume 20, No. 1 (A), March 2008, at <http://www.hrw.org/node/62314>

¹²⁵ T.Dagne,. (2008) ., "Kenya: The December 2007 Elections and the Challenges Ahead", Report For Congress. Congressional Research Service CRS, 17th September, 2008.
<http://fpc.state.gov/documents/organization/104721.pdf>

that investigated the 2007 elections themselves also suffered the same fate as the Waki Commission in terms of length of its mandate. No persons have therefore been held accountable for anything as an outcome of this extensive and expensive report.

The political system and the players are therefore a group whose interests are determined by current goals, where neither the country's better future nor the presence of astute political ideals is of any significance to them. Their main preoccupation is instead with maintaining their political position by whatever means they deem necessary. This manifested itself during the crisis in Kenya and explains why events unfolded in the way they did.

4.3 The Mandate of NSIS

The role of NSIS in Kenya is without a doubt very important and its mandate includes the following:

5. (1) The powers and functions of the Service shall, subject to subsection (2), be to:

(a) investigate, gather, evaluate, correlate, interpret, disseminate and store information, whether inside or outside Kenya, for the purposes of -

(i) detecting and identifying any threat or potential threat to the security of Kenya;

(ii) advising the President and the Government of any threat or potential threat to the security of Kenya;

(iii) taking steps to protect the security interests of Kenya whether political, military or economic;

(b) gather ministerial intelligence at the request of any Government Ministry, Department or agency and without delay, to evaluate and transmit as appropriate to that Ministry, Department or agency such intelligence and any other intelligence at the disposal of the Service and which constitutes ministerial intelligence;

(c) regulate, in co-operation with any Government Ministry, Department or agency entrusted with any aspect of the maintenance of the security of Kenya, the flow of security intelligence and the coordination between the Service and that Ministry, Department or agency of functions relating to such intelligence;

(d) assist with the carrying out of security vetting investigations for the security clearance of persons who hold or may hold vettable posts or who have or may have access to any sensitive or classified information;

(e) make recommendations to the President in connection with -

(i) policies concerning security intelligence;

(ii) security intelligence priorities;

(iii) security measures in Government Ministries, Departments or agencies; and

(f) subject to the provisions of any other written law, perform such other duties and functions as may, from time to time, be determined by the President to be in the national

interest.¹²⁶ In light of the foregoing, it is not so much that Kenya does not know how to handle crisis situations, it is that the political will lacks because of elite interest that are deeply rooted in the fabric of Kenya

4.4 Conclusion

Without a doubt Kenya was in a crisis situation. This was made possible from the history of the history that we have of ethicized politics; the use of tribal gangs or illegal gangs during elections and the lack of political will by those in power to handle the crisis for public interest. These are the key emerging issues from the crisis of 2007/2008. In the opinion of the researcher, it is not so much that Kenya lacks crisis polices it is so much that the political elite lack the political will to implement policies.

¹²⁶ NSIS Act of 1998

CHAPTER FIVE

CONCLUSION

5.1. Summary

The research has, looked into crisis decision making during the post-election violence in Kenya while highlighting the role of political incitement in fanning embers of ethnic animosity. It commenced by providing a definitive description and evolution of crisis decision making in the international area. Various scholars contributed to this research literature review revealing a literature gap that illustrates the absence of crisis decision making literature in the context of Africa.

It is evident for the foregoing that the post-electoral conflict in Kenya during 2007/2008 has underlying historical factors. Moreover, these factors played a crucial role in creating an environment suitable for a crisis situation. From the history of electoral conflict in Kenya to the disregard of IPPG and the subsequent actions of ECK clearly illustrate this.

The National Accord was the only plausible solution to the Kenyan crisis in 2007/2008 principally because of the shared history of the opponents during the crisis. In addition and with the benefit of hindsight, the opponents engaged in ethicized campaigns and they used of tribal militia to advance their politics which made the country highly polarized along ethnic lines such that had Raila Odinga won, there still would have been violence, the scale and magnitude of which we will never find out.

Also, the ECK was ineffective and vulnerable to these ethicized politics to the extent that they failed to manage the elections particularly rigging and other electoral violations yet they had managed fairly successful elections in 2002.

Without a doubt Kenya was in a crisis situation. This was made possible from the history of the history that we have of ethicized politics; the use of tribal gangs or illegal gangs during elections and the lack of political will by those in power to handle the crisis for public interest. These are the key emerging issues from the crisis of 2007/2008. In the opinion of the researcher, it is not so much that Kenya lacks crisis polices it is so much that the political elite lack the political will to implement policies.

5.2. Key findings

One of the key findings of the study was the fact the PEV experience in Kenya was as a result of various factors as illustrated by chapters two and three which show that Kenya has a negative history of election based violence particularly with the advent multi-partyism. This is compounded by the history of ethicized politics which date back to the 1960. Moreover, Kenya has had various crisis situations which for the benefit of the country were resolved through political methods and autocratic style of leadership mainly in the Moi Era.

This 'ethnicization' of politics since independence becomes the only explanation for observers outside the immediate violence locale, since the political elite suppress the emergence of

contending explanations given that such explanations would directly implicate them. However, the results underscore the impunity that plagues most post-colonial states, a phenomenon scholars have widely decried. The electorate should therefore consider shifting from their present fixation with trying to replace individuals and rather push for new institutions first.

Since most violence outbreaks are clandestinely linked to election years, this study found that violence has been embraced as a tool for recruiting support and suppressing opposition in Kenyan politics. More critical though are the recurrent appointments of known inciters into government administration and the preservation of political actors despite allegedly different political views. Further, this reveals a facade that politicians provide different political ideals for Kenyans to choose from. Regardless of electoral outcomes, political elites immediately coalesce into a united front and former opponents are incorporated into the administration.

There is therefore no division between political styles per se; rather the only difference is class with the elite consolidating their wealth through politics, and offering no pragmatic alternative to the electorate, since fierce government critics turn overnight into government supporters. The mentality and output visible in government and its administration projects the eminence of the gerontocracy in decision-making to maintain the aging establishment. The charisma and euphoria that characterized the 2002 elections promising a younger, newer administration has therefore not endured through the realities of political power.

During the PEV, it became quite clear that Kenyans were more divided along ethnic lines especially during elections. At the height of the crisis, this research shows that the National Accord was the only way out for Kenyans and particularly the political elites due to their interconnect pat in previous regimes. This made it possible for them to have a level of trust in each other during the negotiations.

5.3. Recommendations

From the findings of this research which are, the history of ethicized politics; the use of illegitimate gangs during elections and the lack of political will during crisis situations it is clear that a lot more need to be done in terms of legal measure and penalties especially toward politics. The researcher recommends that stricter penalties should be establishes to prevent ethicized politics from taking place. In the long term policies should be in place to ensure that the public is sensitized on the negative impact of ethicized politics

Secondly, the government as well as other partners should work together toward solutions for the illegal gangs that are in use during elections. These gangs leave a scar in society through violence and this creates a memory in society for violence. Also, polices and laws should be enforced to ensure that these gangs once banned remain so. The government should find ways of involving them in dialogue to come up with facts as to why they exist and why they are established and also solutions to these findings.

Last but not least, the country through all the stakeholders should make it possible for fair and amicable politics. This can be achieved by creating an environment for more democratic, inclusive, fewer and strong political parties in Kenya. This will cultivate a culture of issues based and policy based politics as opposed to ethnic politics.

BIBLIOGRAPHY

- 't Hart, P. (1997)., "From Analysis to Reform of Policy-making Groups" in 't Hart, Stern, and Sundelius, (eds). *Beyond Groupthink* pp.311-336
- Akiwumi Commission (1999)., *Commission of Inquiry into Tribal Clashes' Report*, Government of Kenya. At <http://www.marsgroupkenya.org>
- Allan P and Dupont C., (Jan 1999); "International Relations theory and game theory: Baroque modeling choices and empirical robustness", *International Political Review*, Sage Publications Vol. 20 No. 1, pp 23- 47
- Ambu H. P., *Struggle for Release of Jomo and His Colleagues*, Nairobi: New Kenya
- Andreassen, B. and Tostensen A. (2006)., *Of Oranges and Bananas: The 2005 Kenya Referendum on the Constitution.* Chr. Michelsen Institute – CMI Working Paper Number 2006:13 at www.cmi.no/publications
- Barkan D. J., "Kenya after Moi", *Foreign Affairs*, Vol 83, No1; Council on Foreign Relations; Jan – Feb 2004 pp 87 - 100
- Barno, R. (2008) *Kenya: After the Crisis, Lessons Abandoned*, Commentary, *African Security Review* Vol. 17(4):172-177
- Bendor, J. and T.H. Hammond (1992)., "Rethinking Allison's Model." *American political Science Review*, 86: 301-322
- Bennett C. and Rosberg C., *The Kenyatta Election: Kenya 1960-61*, Oxford: Oxford University
- Bennett, D.S. and Stam, A.C., (2004)., "The behavioral origins of war." Ann Arbor: University of Michigan Press
- Bennett, G and Carl R., 1961. *The Kenyatta Election: Kenya 1960-61*. London: Oxford University Press
- Branch, D. and N. Cheeseman 2009. 'Democratization, state failure, and sequencing in Africa: lessons from Kenya', *African Affairs* 108, 430: 1–26
- Brown S., "Lessons Learned and Forgotten: the international community and electoral conflict management in Kenya", McGill- Queen's University Press, (2011) pp 127- 143

- Chandra, Kanchan. 2004. *Why Ethnic Parties Succeed: Patronage and Ethnic Headcounts in India*. Cambridge: Cambridge University Press
- Chanoff, S (2008) 'Tribal hatred didn't cause violence in Kenya,' Boston Globe, January 19 2008 at http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2008/01/19/tribal_hated_didnt_ca
- Akiwumi Commission (1999) 'Commission of Inquiry into Tribal Clashes' Report, Government of Kenya. At http://www.marsgroupkenya.org/use_violence_in_kenya/
- Cheeseman N and Tendi B M., *The Journal of Modern African Studies* / Volume 48 / Issue 02 / June 2010, pp 203 Published online: 19 May 2010
- Cheeseman N and Tendi B.M., (2010). "Power -sharing in comparative perspective: the dynamics of 'unity government' in Kenya and Zimbabwe"., *The Journal of Modern African Studies*, 48, pp 203 -229
- Cheeseman, N. 2008. 'The Kenyan election of 2007: an introduction', *Journal of Eastern African Studies* Vol 2, 2: pp 166– 184
- Cheeseman, N. 2009. 'Kenya', in A. Mehler, H. Melber, & K. V. Walraven, eds. *Politics, Economy and Society South of the Sahara 2008*. Leiden: Brill, pp 321–333
- CIPEV (2008)., Government of Kenya, Report of the Commission of Inquiry into Post-Election Violence, (CIPEV), aka The Waki Report, Nairobi, Kenya at <http://www.eastandard.net/>
- Cooper T. A H.H,(2008) "Decision making in Crisis", *Journal of Police Crisis Negotiations*, Vol 7, No.2 , pp5
- Dagne, T. (2008) 'Kenya: The December 2007 Elections and the Challenges Ahead, Report For Congress. Congressional Research Service CRS, 17th September, 2008. <http://fpc.state.gov/documents/organization/104721.pdf>
- Daily Nation of 26th September, 1997 Kenya's former Constitution
- Frei D. (ed), "International crises and crisis management An East –West Symposium," Hermann F. C., "Types of actors and their implications for crisis management"

- Gecaga, G. M. (2007) „Religious Movements and Democratisation in Kenya: Between the Sacred and the Profane’, in *Kenya, the Struggle for Democracy*, G. R. Murunga and S. W. Nasong’o (eds) London: Zed Books, pp.58-89
- Gertzel, C. 1970. “The Politics of Independent Kenya”, Nairobi: East African Publishing House
- Gibson, C. C. & Long, J. D. (2009) ‘The Presidential and Parliamentary Elections in Kenya, December 2007’, *Electoral Studies*, Vol. 3, pp. 1-6 and
- Gilbert N. A. and Lauren G. P.,(1980) ‘Crisis Management: An Assessment and Critique’; *The Journal of Conflict Resolution*, Vol. 24, No. 4, pp. 641-664
- Harneit-Sievers A. and Ralph-Michael P., “Kenya’s 2007 General Elections and its Aftershocks, *Africa Spectrum* vol. 43 No 1 Horn of Africa (2008), pp 133- 144
- Hermann C.F and Brady L.P, (1972) “Alternative Models of International Crisis Behavior”, in *International Crisis: Insights from Behavioral Research*; The Free Press New York, p282
- Hermann, C.F. (1989) “On International Crises and National Security” in T. Kolodziej, and P. Morgan eds. *Security and Arms Control*, pp. 357-385. New York: Greenwood Press
- Hermann, M.G. and Hermann, C.F. (1989) “Who Makes Foreign Policy Decisions and How: An Empirical Inquiry” *International Studies Quarterly* 33: (3) 361-387
- Horowitz J.,(2009) ., “Ethnic groups and Campaign Strategy in Kenya’s 2007 election”, University of California
- Horowitz, Donald. 1985. *Ethnic Groups in Conflict*. Berkeley: University of California Press.
- Houben M, (2005) “International Crisis Management: the approach of European States”, London, Routledge, pg 15
- Hoyt, P. (1997) “The Political Manipulation of Group Composition: Engineering the Decision Context”. *Political Psychology* 18:771-790
- http://www.crisisgroup.org/library/documents/africa/horn_of_africa/137_kenya_in_crisis_web.doc
- <http://www.statehousekenya.go.ke/speeches/kibaki/2002301201.htm>
- Human Rights Watch - HRW (1993) ., *Divide and Rule: State-Sponsored Ethnic Violence in Kenya.* African Watch, USA at <http://www.hrw.org/en/reports/1993/11/01/divide-and-rule-state-sponsored-ethnic-violence-kenya>

- Human Rights Watch - HRW (2008) *'Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance,'* Volume 20, No. 1 (A), March 2008, at <http://www.hrw.org/node/62314>
- Human Rights Watch - HRW (2008) *'Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance,'* Volume 20, No. 1 (A), March 2008, at <http://www.hrw.org/node/62314>
- IFES Kenya OSIEA Final
- Institut Francais Recherche en Afrique (IFRA), "The General Elections in Kenya, 2007", Special Issue, May – August 2008, Nairobi
- Integrated Regional Information Networks (IRIN), <http://www.irinnews.org/Report.aspx?ReportId=30729>
- International Crisis Group (ICG), Kenya in Crisis. Africa Report, no. 137, 21 February 2008. Available from <http://www.crisisgroup.org/home/index.cfm>; INTERNET
- Integrated Regional Information Networks (IRIN), 'Kenya: armed and dangerous', 22 February 2008
- Isyar, G. O, (2008) "Definition and management of International Crisis"
- Lonsdale J, 'Kenya: ethnicity, tribe and state', 17 January 2008, available on www.opendemocracy.net
- Janis, I.L. (1982) ., "Groupthink: Psychological Studies of Policy Decisions and Fiascoes," 2nd ed. Boston: Houghton Mifflin
- Kagwanja P. (2009): Courting genocide: Populism, ethno-nationalism and the informalisation of violence in Kenya's 2008 post-election crisis, *Journal of Contemporary African Studies*, 27:3, 365-387
- Kegley, C.W. (1987) "Decision Regimes and Comparative Study of Foreign Policy" in C.F. Herman, C.W. Kegley and J.N. Rosenau eds., *New Directions in the Study of Foreign Policy*, pp. 247-268. Boston: Allen and Unwin
- Kenya Human Rights Institute., (2008). 'Civil Society Responses to the Kenyan Crisis', Nairobi: KHRI

- Kenya in Crisis," *International Crisis Group*, Africa Report N°137, 21 February 2008.
- Klopp, J (2001) "Ethnic Clashes" and Winning Elections: The Case of Kenya's Electoral Despotism,' *Canadian Journal of African Studies*, Vol. 35(3):473-517
- Krigler Report
- Kwaja, C. M. A. (2009) "Do the People Have Faith in Electoral Democracy? Lessons From Kenyan 2007 Presidential Elections', *African Journal of Political Science and International Relations*, Vol. 3, no. 2, pp. 38-45 and
- Lebow, N.R., (1981) "Between Peace and War (Baltimore: Johns Hopkins University Press), pp. 11-12
- Lijphart, A. 1977. *Democracy in Plural Societies*. New Haven: Yale University Press
- Lynch, G. 2008. 'Courting the Kalenjin: the failure of dynasticism and the strength of the ODM wave in Kenya's Rift Valley province', *African Affairs* 107, 429: 541-68
- Maina K., (2008): The Political Crisis in Kenya: A Call for Justice & Peaceful Resolution, *Review of African Political Economy*, 35:115, 140-144
- Makinda M.S., "Kenya: Out of the Straitjacket, Slowly ", *The World Today* Vol 48, No. 10 (Oct 1992) pp 188-192
- McClelland A. C., (1977), 'The Anticipation of International Crises: Prospects for Theory and Research' ;*International Studies Quarterly*, Vol. 21, No. 1, Special Issue on International Crisis, Progress and Prospects for Applied Forecasting and Management, pp. 15-38
- McGowan, P. J. and R. M. Rood, (1975) "Alliance behavior in balance of power systems: applying a Poisson model to nineteenth-century Europe." *American Political Science Review* Vol 69 pp. 859-870
- Modi R and Shekhawat S., "The Kenyan Crisis : Post December 2007 Elections- Working paper 1", center for African Studies, Mumbai, India
- Moody, B. (2008) ., Kenya Gov't Activates Murder Gang: Activist.' Reuters, January 9 2008, at <http://www.reuters.com/article/worldNews/idUSL0969798620080109>
- Muranga G.R., "The State, Its Reform and the Question of Legitimacy in Kenya"; *Identity, Culture and Politics*, Vol 5, No1 and 2, 92004) pp 179- 206

- Murunga, G. and S. Nasong'o. 2006. 'Bent on self-destruction: the Kibaki regime in Kenya',
Journal of Contemporary African Studies 24, 1 : 1-28
- Murunga, G.R. and Nasong'o S. W. (eds) (2007) *Kenya, the Struggle for Democracy*, London:
Zed Books
- Mwagiru M. (2008) "*The water's edge mediation of violent electoral conflict in
Kenya*", (Nairobi: Institute of Diplomacy and International Studies
- Mwagiru, M.(1996) "*Conflict in Africa: Theory, Processes and Institutions of Management*",
(Nairobi: Centre for Conflict Research
- Mwenje's admission to supporting the gang, see
<http://news.bbc.co.uk/1/hi/world/africa/3108171.stm>
- Nasong'o, S. W (2007) 'Negotiating New Rules of the Game: Social Movements, Civil Society
and the Kenyan Transition', in *Kenya, the Struggle for Democracy*, G. R. Murunga and S.
W. Nasong'o (eds) London: Zed Books, pp. 19-57
- Ndungu Njoki S. " Kenya: 2007 Election Crisis"
- News clip on gang operations in Kibera and Mathare including a "Gaza strip separating Mungiki
Taliban" [http://mfoa.africanews.com/site/Kenya_Militias_turn_slums_into_nogo_zones/list
_messages/15897](http://mfoa.africanews.com/site/Kenya_Militias_turn_slums_into_nogo_zones/list_messages/15897) Also the article "Beholden to Proscribed Societies", East African
Standard, 25th May, 2007.
- Njogu K., "Defining Moments: Reflections on Citizenship, Violence and the 2007 General"
NSIS Act
- O'Brien P. S.,(1996) 'Foreign Policy Crises and the Resort to Terrorism: A Time-Series Analysis
of Conflict Linkages'; The Journal of Conflict Resolution, Vol. 40, No. 2. pp. 320-335
- Open Society Institute, East Africa initiative (OSIEA), IFES Final Report 2008
- Otieno, D (2007) 'Ruto, Magara Caught in Kisii Violence. Nation Newspaper, September 2007.
<http://politics.nationmedia.com/inner.asp?sid=581&page=1>
- Pfalzgraff R. Jr., (July 2008) "Crisis management: looking back and looking ahead", Presented at
the Crisis Management Conference, Athena; The Hellenic Ministry of National Defence

- Philips W. and Rimkunas R., (1978), "The concept of crisis in international politics", *Journal of Peace Research*, Vol 15, No 3, pp 259-268, 1978, p. 41 Publishers, 1963, p. 16
- Rabushka, A and Kenneth S. 1972. *Politics in Plural Societies: A Theory of Democratic Instability*. Columbus, OH: Charles E. Merrill Publishing
- Shrader-Frechette K. S., (1991)'Risk and Rationality', Berkeley University of California Press
- Simon A. H, (March 1995)" Rationality in political behavior", *Political Psychology* Vol 16 no. 1 special Issue: political economy and political Psychology, pp 45-61
- Siringi, S (2009) ., Ocampo Set to Start Sifting Evidence against Architects,' *Daily Nation*, July 9,2009.<http://www.nation.co.ke/News/politics/-/1064/621814/-/item/1/-/10dlmn8z/-/index.html>
- Snow, S (2009) _Unhindered by the rule of law: ethnic terrorism and the 2007 Kenyan presidential election', *South African Journal of International Affairs*,16(1):115 — 127
- Snyder, J., (2000), *From Voting to Violence: Democratization and Nationalist Conflict*. New York: Norton
- Standard Group press briefing clip from you tube
- Stathis K,(2006), *The Logic of Civil War*. Cambridge: Cambridge University Press
- Steeves J (2006): Presidential succession in Kenya: The transition from Moi to Kibaki, *Commonwealth & Comparative Politics*, 44:2, 211-233
- Steeves, J. (1996) "Unbounded politics in the Solomon Islands: leadership and party alignments", *Pacific Studies*, 19(1), 115–138
- Taeyoung Y.,(2003) "Between Peace and War, South Korea's Crisis Management Strategies towards North Korea", *East Asian Review*, Vol 15, No.3, pp 3-22
- The International Federation For Human Rights - FIDH (2007) _Massive Internal Displacements In Kenya Due To Politically Instigated Ethnic Clashes: Absence Of Political And Humanitarian Responses,' Paper Number 471/2. With the Kenya Human Rights Commission, April 2007 at <http://www.fidh.org>

- Thomas P. Wolf (2009): 'Poll poison'?: Politicians and polling in the 2007 Kenya election, *Journal of Contemporary African Studies*, 27:3, 279-304
- Throup, D. and Hornsby C. (1998) *Multi-Party Politics In Kenya: The Kenyatta And Moi States And The Triumph Of The System In The 1992 Election*. London: James Currey, Nairobi: East African Educational Publishers
- Traill R., "Is power-sharing the answer in Kenya?", *Fortnight* No 457 (Feb 2008); *Fortnight Publications Ltd*, pp 5-6
- Waki Report
- Wanyande, P. (2006) 'Electoral Politics and Election Outcomes in Kenya', *Africa Development*, Vol. 31(3):62-80
- Widner, J. 1992. "The Rise of a Party-State in Kenya: from 'Harambee' to 'Nyayo'.", Berkeley, CA: University of California Press
- Wilkenfeld J., et al,(June2003) "Mediating International Crises Cross National and Experimental Perspectives", *Journal of conflict resolution*, Department of Government and Politics, University of Maryland, Sage Publications, pp 279 - 301
- Wohlstetter, R.,(1962) 'Pearl Harbor: Warning and Decision.' Stanford, CA: Stanford Univ. Press