

**UNIVERSITY OF NAIROBI**

**INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES**

**MULTIPLE MEDIATION AND CONFLICT RESOLUTION: THE CASE  
OF KENYA'S POST-ELECTORAL CONFLICT (2007/2008) <sup>1/</sup>**

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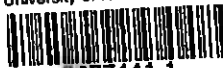
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THE DEGREE OF MASTER OF ARTS IN DIPLOMACY**

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**DECLARATION**

I, Maureen Achieng' Odhiambo, hereby declare that this research project is my original work and has not been presented for a degree in any other University.

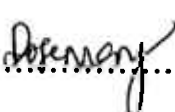
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DATE.....05/11/2014.....

## **DEDICATION**

**This research project is dedicated to my father, Silas Odhiambo Ambogo.**

**Thank you for your moral and material support. This is for you dad.**

## **ACKNOWLEDGEMENTS**

I would like to thank God for being with me throughout this study. I am also grateful to the following:

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## **ABSTRACT**

Conflicts are experienced in different parts of the world. Kenya experienced a violent conflict in 2007/2008 after a disputed presidential election. There were some mediation attempts to resolve the crisis but the parties in conflict did not accept them the African Union intervened and appointed a panel of eminent African personalities to mediate. This panel included three people: the former UN Secretary General, Kofi Annan, former First lady of Mozambique, Graca Machel, former president of Tanzania, Benjamin Mkapa. These individuals were accepted by the parties in conflict. Multiple mediation involves more than one individual mediating in a conflict. It is usually complex as opinions of all the mediators are taken into consideration. In some cases where multiple mediators are involved, mediation process comes to a halt. In cases where it is successful, the process is usually prolonged as in the conflicts in the former Yugoslavia. However, in the Kenyan case, the three mediators successfully mediated the conflict in a period of only forty one days. The objectives of this study are: to find out the factors that led to the success of multiple mediators in resolving the Kenyan crisis, to analyze the mediation process of the Kenyan post electoral conflict and to examine the strategies used by multiple mediators in resolving the Kenyan conflict. The study highlights important points to take into consideration when multiple mediators are involved in conflict resolution.

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## **ABBREVIATIONS**

<b>AU</b>	<b>-</b>	<b>African Union</b>
<b>ECK</b>	<b>-</b>	<b>Electoral Commission of Kenya</b>
<b>EU</b>	<b>-</b>	<b>European Union</b>
<b>GSU</b>	<b>-</b>	<b>General Service</b>
<b>IREC</b>	<b>-</b>	<b>Independent Review Commission</b>
<b>KANU</b>	<b>-</b>	<b>Kenya Africa National Union</b>
<b>KICC</b>	<b>-</b>	<b>Kenyatta International Conference Center</b>
<b>MP</b>	<b>-</b>	<b>Member of Parliament</b>
<b>NARC</b>	<b>-</b>	<b>National Rainbow Coalition</b>
<b>ODM</b>	<b>-</b>	<b>Orange Democratic Movement</b>
<b>PNU</b>	<b>-</b>	<b>Party of National Unity</b>
<b>R2P</b>	<b>-</b>	<b>Responsibility to Protect</b>
<b>TJRC</b>	<b>-</b>	<b>Truth Justice and Reconciliation</b>
<b>UN</b>	<b>-</b>	<b>United Nations</b>
<b>UNHCR</b>	<b>-</b>	<b>United Nations High Commissioner for Human Rights</b>
<b>USA</b>	<b>-</b>	<b>United States of America</b>
<b>KNDR</b>	<b>-</b>	<b>Kenya National Dialogue and Reconciliation Committee</b>
<b>KANU</b>	<b>-</b>	<b>Kenya African National Union</b>
<b>KADU</b>	<b>-</b>	<b>Kenya African Democratic Union</b>
<b>GEMA</b>	<b>-</b>	<b>Gikuyu Embu and Meru Association</b>
<b>KPU</b>	<b>-</b>	<b>Kenya People's Union</b>

- NDP - National Development Party**
- CCP - Concerned Citizens for Peace**
- KPTJ - Kenyans for Peace, Truth and Justice**
- KEPSA- Kenyan Private Sector Alliance**
- KAM - Kenya Association of Manufacturers**

## Chapter One

### Introduction to the Study

#### 1.0 Background

Conflicts are endemic in the society. When they erupt, they are seen as a threat to international peace and security. The effects of conflicts are usually very devastating. They lead to destruction of property and loss of lives.<sup>1</sup> People are usually displaced as some are separated from their families. Their economic activities are also interfered with. There are different methods of conflict resolution that can be used to resolve conflicts.

Methods of conflict resolution include: arbitration, mediation, negotiation and adjudication. Mediation has been used for a long time and in different parts of the world. In the current world, the destructive ability of weapons makes conflict very costly. There is no world government to control international behavior. Power is found in numerous units that guard their sovereignty with a lot of jealousy. Mediation is seen as a good means of addressing disagreements between and among states that are antagonistic to each other.<sup>2</sup> Mediation can also be used to resolve conflicts within a state as well as conflicts between states and non state actors.

In the contemporary world, mediation is the most common method used in conflict resolution. It is a complex kind of negotiation whereby parties negotiate in the presence of a third party. It is the continuation of negotiations by other means. Parties resort to mediation because they cannot negotiate at all or they have reached a deadlock after negotiation has begun. Parties in a conflict agree on the choice of the mediator.<sup>3</sup> This implies that mediation is non-coercive. Parties in conflict are free to choose to negotiate in the presence of a third party or not. When parties reach a deadlock it means that the parties cannot agree hence they need a third party to help them negotiate. Mediation is preferred by many because of its non-coercive nature. Parties enjoy autonomy in negotiations and the third party helps them to reach an agreement.

Kenya experienced a violent conflict in 2007/2008 due to the disputed presidential election in December 2007. Before this, the East African country was considered politically stable. Violence affected the economic prosperity as well as the political stability of Kenya. It led to loss of lives

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<sup>1</sup> Bercovitch, Jacob and Jackson, Richard 'Conflict Resolution in the Twenty-first Century: Principles, Methods and Approaches' (Ann Arbor: University of Michigan Press, 2009) p. 14

<sup>2</sup> Bercovitch Jacob 'International Mediation' Journal of Peace Research Vol. 28, No. 1 (Feb, 1991) pp. 3-6

<sup>3</sup> Mwangi Makumi 'The Water's Edge' (Nairobi: Institute of Diplomacy and International Studies, 2008) p. 15

and destruction of property.<sup>4</sup> Many people got injured during the conflict. Violence also caused displacement of tens of thousands of Kenyans hence disrupting their lives. There was a political conflict and ethnic rivalries were crystallized. The resolution of the conflict by peaceful means was a great concern to the international community<sup>5</sup>

Mediation was the method of conflict resolution that was used to resolve the Kenyan crisis. There was a mediation framework formulated by the AU (African Union) which was accepted by the parties in conflict. Eminent personalities representing the AU came to the country to help in the mediation of the conflict. Kenyan stakeholders mounted pressure on the parties as well as the mediators to restore peace in the country.<sup>6</sup> The AU intervention included good offices employed by Kufuor and mediation chaired by Kofi Annan. The use of good offices by Kufuor was to facilitate negotiations between the parties in conflict.<sup>7</sup> A conflict can be mediated by one mediator or by multiple mediators. The Kenyan electoral violence was mediated by multiple mediators. Post electoral conflict has not erupted again in Kenya. Thus, this study seeks to analyze the factors that led to the success of multiple mediators in mediating the Kenyan crisis.

### **1.1 Statement of the Research Problem**

Violence erupted in Kenya after the announcement of the results of the presidential election in December 2007. This election was disputed. The Party of National Unity and the Orange Democratic Movement could not negotiate and find a solution to the problem. This is because both parties believed they had won the election. The violence escalated and the death toll increased. About 1000 people lost their lives in the violence.<sup>8</sup> There was need for peaceful resolution of the conflict. Mediation was the method used to resolve the conflict. Renowned African persons including former Tanzanian president, Benjamin Mkapa, former UN Secretary General, Kofi Annan and former first lady of Mozambique, Graca Machel were the mediators. This mediation was supported by the European Union, United Nations and the United States of America. The Kenyan electoral conflict was mediated by multiple mediators. Multiple mediation involves more than one individual in a conflict. Bohmelt confirms that multiple mediators can make the mediation process complex. They may have conflicting ideas and interests. This can

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<sup>4</sup> Kanyiga Karuti 'The Legacy of the White Highlands: Land rights, Ethnicity and the Post-2007 Election Violence in Kenya' *Journal of Contemporary African Studies*, Vol. 27, No. 3, (July, 2009) pp. 325-344

<sup>5</sup> Lafargue, Jerome 'General Elections in Kenya, 2007' (Dar es Salaam: Mkuki na Nyota Publishers, 2009) p. 22

<sup>6</sup> Juma, Monica Kathina 'African Mediation of the Kenyan Post 2007 election crisis' *Journal of Contemporary African Studies* Vol.27, No.3 (July, 2009) pp 407- 430

<sup>7</sup> Mwangiri Makumi 'The Water's Edge' (Nairobi: Institute of Diplomacy and International Studies, 2008) pp 55, 56, 68

<sup>8</sup> Snekhawat Seema and Modi Renu 'Aftermath of the Kenyan Crisis' *Economic and Political Weekly*, Vol. 43, No. 18 (May, 2008) pp. 25-27

worsen the conflict situation or bring the mediation process to a halt. Multiple mediators may not have a common goal. They may send varied messages leading to a deadlock in communication.<sup>9</sup> The efforts of multiple mediators led to the resolution of the post election violence in Kenya. The mediators were successful despite the complexity of multiple mediation. Thus, this study will find out what led to the success of multiple mediators in mediating the Kenyan crisis.

## **1.2 Objectives**

The objectives of this study are:

1. To find out what led to the success of multiple mediators in resolving the Kenyan crisis.
2. To analyze the mediation process of the Kenyan post election violence.
3. To examine the strategies used by multiple mediators in resolving the Kenyan post election violence.

## **1.3 Literature Review**

Literature review in this study will include literature on the concept of mediation, the concept of multiple mediation, mediation phases, mediation theories, post election violence in Kenya and the mediation of the Kenyan crisis by multiple mediators. Under the concept of mediation, there will be an explanation of what mediation is, the parties involved in mediation and who a mediator is. Under multiple mediation, literature will include discussions on what multiple mediation is and its dynamics. It will include examples of countries where multiple mediators have participated and their successes or failures. It will bring out the fact that multiple mediators can actually complicate the mediation process. Under mediation theories, different theories that attempt to explain mediation as a method of conflict resolution will be discussed. Under mediation phases, there will be a discussion on what happens at the pre-mediation, mediation and post-mediation phase. Under post election violence, there will be an account of what took place during the violence, its causes as well as its effects. Under mediation by multiple mediators, literature will include the mediation process and how it was conducted by the multiple mediators.

### **1.3.1 The Concept of Mediation**

Mediation is a process that involves a third party who assists parties in conflict to resolve their conflict. Through mediation, the parties have a chance of reaching their goal. Before negotiations begin, a lot has to be done to make sure that the expectations of the parties regarding the

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<sup>9</sup> Bohmelt Tobias 'Why Many Cooks if they can spoil the Broth? The Determinants of Multiparty Mediation' Journal of Peace Research Vol. 49, No. 5 (2012) pp. 701-715

mediation such as norms and procedures converge.<sup>10</sup> This implies that the parties in conflict are helped by the third party to make a decision. The parties agree to go through the process of mediation hoping that their issues will be addressed. They must agree on the norms and procedures of the mediation even before it starts. It is important for the mediator to listen to suggestions of the parties regarding norms and procedures of the mediation. If the parties have norms and procedures that they both agree on, then it is easier for the mediator to help them in the process of negotiation.

Ott asserts that the presence of a mediator helps in the process of conflict resolution. The mediator can change the behavior of the parties just by being present. The parties begin to listen to each other hence progress is made towards resolution of the conflict. The mediator eliminates any communication that will make conflict resolution difficult. He can also suggest solutions that the parties may not have seen.<sup>11</sup> Mediation is presented as a method of conflict resolution whereby the mediator facilitates communication between the parties in conflict. He comes up with options that parties can explore so that they reach an agreement that satisfies them. Ott further holds that a mediator must be someone who is accepted by the parties and he or she should not have any other interest in the conflict apart from achieving a resolution.<sup>12</sup> This means that the only interest of the mediator should be to achieve a peaceful settlement. However, mediators usually have other interests other than resolution of conflict such as enhancing their international standing and being stronger politically.

In political conflicts, mediation is aimed at conflict resolution. When conflict is resolved, the parties' needs are met. There is autonomy since the parties are allowed to agree on the choice of the mediator, the conduct of the mediation process as well as the outcome. Mediation has attributes that lead to conflict resolution. These attributes include: focus on interests and not rights, cost effectiveness, allowing creative solutions, non-coerciveness, addressing the root causes of conflicts, informality, enduring outcomes and autonomy.<sup>13</sup> Mediation has attributes that makes it the most common used method of conflict resolution.

Since it is basically peaceful, it does not involve military force. Through mediation, the uncertainties between parties are lessened, there is more exchange of information hence the chances of achieving a peaceful outcome are increased. However, sometimes mediation can fail

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<sup>10</sup> Roberts, Mirian 'Developing the Craft of Mediation: Reflections on Theory and Practice' (London: Jessica Kingsley Publishers, 2007) p. 69

<sup>11</sup> Ott, Marvin 'Mediation as a Method Conflict Resolution: Two Cases' International Organization Vol. 26 No.4(1972) pp. 595-618

<sup>12</sup> Ibid

<sup>13</sup> Muigwa, Kariuki 'Resolving conflicts through mediation in Kenya' (Nairobi: Greenwich Publishers limited, 2012) pp 7-8

to resolve a conflict. This is because conflicts are complex and there is usually overreliance on a few personalities to mediate making it possible for mediation to fail. For instance, a mediator who is believed to be skilled is preferred by parties to mediate in various conflicts. There can be too many parties to a conflict yet a mediator has to be well informed about the parties as well as the conflict itself.<sup>14</sup> Although conflicts are complex and sometimes difficult to resolve, mediation is still preferred because it is non-coercive.

Thus, mediation can be based on assumptions such as: it is a continuation of negotiation efforts of parties in conflict; it involves the intervention of a third party into a conflict between two or more parties. Mediation is a non-coercive form of third party intervention. Mediators intervene in a conflict to affect and ultimately resolve it. They bring with them knowledge, resources, ideas as well as their interests or the interest of the organization they represent. Mediation is voluntary hence parties have control over the outcome. They can accept or reject the suggestions of the mediator. Mediation takes place only on an ad hoc basis.<sup>15</sup>

Mediation as a method of resolving conflicts can be useful in different ways to ensure that atrocities do not occur. It can be used to facilitate talks between parties to bring violence to an end. It can also be used to ensure that in places where there has been violence, it does not occur again. Mediation can be used to promote human rights, fight impunity, and promote economic reconstruction as well as reconciliation. Through mediation, parties in conflict can be persuaded to come up with security measures and ensure there is access to humanitarian assistance.<sup>16</sup>

Mediators in a conflict can be states, international organizations, non-governmental organizations or individuals. Parties in conflict can call in a mediator or a mediator can offer to mediate to help in the resolution of conflict. Mediators usually intervene because they would like to change the course of the conflict, enhance their status, influence the conflict or impose their ideas in conflict resolution. They use resources in the mediation process hence they would like to get something in return. Thus, mediators just do not intervene in a conflict purely for altruistic reasons. For instance, regional organizations such as the African Union engage in mediation so as to resolve conflicts that may have a great effect on their political interests. They also mediate

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<sup>14</sup>Wundke, Patrick 'The Role of Mediation in Conflict Resolution: Managing Conflict in the Developing World' Essays From Emerging Scholars (Australia: The University of Adelaide, 2013) pp 48-51

<sup>15</sup> Jeffrey Z. Rubin and Bercovitch Jacob 'Mediation in International Relations' (London: Macmillan Press Ltd, 1992) pp 4-5

<sup>16</sup> Australian Civil Military Center 'The Prevention Toolbox: Systematizing Policy tools for the Prevention of Mass Atrocities- Mediation' (University of Oxford: Oxford Institute for Ethics, Law and Armed Conflict)

to fulfill their charters' obligations.<sup>17</sup> Bercovitch supports this view as he asserts that states, organizations or individuals acting as mediators engage in a mediation process not only to resolve the conflict but also to protect or promote their interests.<sup>18</sup> For a mediator to be effective in mediation, he must be viewed as reasonable, knowledgeable and acceptable. He must have the ability to influence the parties to cooperate. He must also win the trust of the parties. The prestige, resources and authority of the mediator are also important in conflict resolution.<sup>19</sup>

In mediation, the mediator has the intention of affecting the perceptions and attitudes of the parties towards the conflict. The parties also intend to affect the mediator and the way in which the process will lead to acceptable outcomes. There is so much influence from the parties in the mediation process. A mediator that is biased usually has something at stake. This kind of mediator is closer to one party than the other culturally, economically and politically. An impartial mediator is balanced in that he/she does not hold any opinion about the conflict.<sup>20</sup>

Bias in mediation refers to a situation where a mediator favours one party in a mediation effort. The mediator strives at achieving the interests of one party at the expense of the other(s).<sup>21</sup> Parties in a conflict must trust a mediator to allow him or her to mediate in the conflict. A mediator who is unbiased wins the trust of the parties rather than one that is biased. They ensure that parties are committed to the mediation process by communicating the parties' trustworthiness. They show private information that reduces information irregularities.<sup>22</sup> If one of the parties in conflict realizes that the mediator is unbiased, the mediation process may come to a halt. It is difficult and almost impossible for a mediator to be completely impartial. This is because mediators have interests that they would like achieve in mediation.

However, scholars like Zartman and Touval hold that bias can enhance mediation if the mediator has the capacity to conduct the mediation process and the desire to influence the process towards resolution. Though there is a bias, the mediator can have access to the other party and the ability to deliver agreements and concessions. The party that the mediator favours intends to preserve his relationship with the mediator and the one that is not favoured intends to

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<sup>17</sup> Mwagiru, Makumi 'The Water's edge' (Nairobi :Institute of Diplomacy and International Studies, 2008) pp 31-32

<sup>18</sup> Bercovitch, Jacob 'Resolving International conflicts: The Theory and Practice of Mediation' (Colorado: Lynne Rienner Publishers, 1996) p.4

<sup>19</sup> Bercovitch, Jacob 'Theory and Practice of International Mediation: Selected Essays' (2011) p. 44

<sup>20</sup> Carnevale Peter et al 'Bias and Impartiality in International Mediation; Resolving International Conflicts: The Theory and Practice of Mediation' (Colorado: Lynne Reiner Publishers, 1996) p. 39

<sup>21</sup> Beber Bernd 'International Mediation, Selection Effects, and the question of Bias' Conflict Management and Peace Science Vol. 29, No. 4 (2012) pp. 397-424

<sup>22</sup> Gent Stephen and Shannon Megan 'Bias and Effectiveness of Third-Party: Conflict Management Mechanisms' Conflict Management and Peace Science Vol. 28, No. 2 (2011) pp. 124-144



earn the goodwill of the mediator especially if there are resources to reward cooperation and concessions.<sup>23</sup>

As Kydd puts it, mediators are rarely impartial to the terms being negotiated. Though their main goal is to attain peace, they try to avoid the terms that do not agree with their interests. To them, mediation is conducted in the context of power politics. Leverage is applied to the parties to get concessions. Bias is not an impediment to the success of mediators. Impartiality is not the condition for the success of a mediator.<sup>24</sup> Smith supports this argument. He argues that mediators need leverage to influence the parties towards resolving their conflict. Leverage (resources) boosts the ability of the mediator to influence the outcome of the mediation. Mediation is an exercise of power politics. The mediator has the power to punish, reward and influence the parties in reaching an agreement.<sup>25</sup>

A mediator is supposed to be unbiased and impartial. She should not be on the side of one party at the expense of the other. The parties are highly likely to agree on the choice of a mediator they both believe is impartial and unbiased and is therefore in a better position to help in the resolution of their conflict. However, it is rare for a mediator to be completely impartial and unbiased. Mediators come into conflict situations with their own interests in mind. They use their resources hence they expect to get something out of the mediation they are conducting. They do not mediate just for altruistic reasons. The impartiality of a mediator is not necessarily the ticket to a successful mediation. Leverage proves to be very important in mediation. It enhances the ability of the mediator to influence the outcome of the mediation despite bias.

### 1.3.2 Multiple Mediation

Multiple mediation refers to a situation that involves more than one mediator in conflict resolution. A conflict can have more than one individual acting as multiple mediators. Other conflicts have states or organizations acting as mediators.<sup>26</sup> Conflicts can have one team multiple mediators or more than one team multiple mediators. One team multiple mediators refer to mediators acting as a team to help in conflict resolution. For instance, the Kenyan conflict had three mediators working as one team mandated by the AU to mediate.<sup>27</sup> The three mediators

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<sup>23</sup> Carnevale Peter et al 'Bias and Impartiality in International Mediation; Resolving International Conflicts: The Theory and Practice of Mediation' (Colorado: Lynne Reiner Publishers, 1996) Pp. 42-43

<sup>24</sup> Kydd Andrew 'Which Side Are You On? Bias, Credibility, and Mediation' American Journal of Political Science Vol. 47, No. 4 (Oct., 2003) pp. 597-611

<sup>25</sup> Smith D. D. James 'Mediator Impartiality: Banishing the Chimera' Journal of Peace Research, Vol. 31, No. 4 (Nov., 1994), pp. 445-450

<sup>26</sup> Makumi Mwangi 'The Water's Edge' (Nairobi :Institute of Diplomacy and International Studies, 2008) p. 31

<sup>27</sup> Josefina Rendon 'Interdisciplinary Co-Mediations: The Good, Bad and the Imago' (July, 2008) p. 1

were: former UN Secretary-General Kofi Annan, former president of Tanzania Benjamin Mkapa and former first lady of Mozambique Graca Machel.<sup>28</sup> In more than one team multiple mediations, the teams of mediators all get involved in conflict resolution. For instance, the Burundi crisis of 1990s had more than one team multiple mediators. The EU and the UN had their own teams. The Arusha group of states was also a team involved in conflict resolution.<sup>29</sup>

Efforts of mediators to mediate in a conflict may be sequential- one mediator at a given time or simultaneous- various mediators at the same time as it happened in Zaire in 1997 and in Kenya in 2007(the three mediators worked at the same time). The presence of multiple mediators in a conflict can sometimes make the mediation process complex, raising the question of who is in charge of the process.<sup>30</sup> In most multiple mediations, every mediator usually has their own interests. This makes the mediation process complex because every mediator wants their interests to be catered for. Every mediator has their own opinions and they would like them to be taken into consideration. This can slow down the mediation or even end it before the conflict has been resolved.

In most of the contemporary negotiations, it is rare for a mediator to mediate in a conflict alone. For instance, parties can desire to have more than one mediator to mediate. Sometimes, they do not agree on the choice of a particular mediator or they can jump from one mediator to another when the negotiation is taking place. In some cases, the global and regional organizations can provide a mediator(s) to mediate in a conflict. These mediators intervene to ensure that the conflict is resolved as well as to protect their interests.<sup>31</sup>

The international intervention in conflicts in most cases involves multiple mediation. When mediators are many, the negotiation efforts usually become chaotic, messy or difficult. The principal mediator in mediation efforts that involve multiple mediators finds it hard to carry out negotiations. This is because she has to ensure that the simultaneous interventions of the multiple mediators do not cancel each other out. She must also ensure that the divergent interests of the mediators are catered for. The multiple mediators are usually autonomous organizations or individuals who rarely cooperate. They can walk away in the course of the mediation if they disagree since they all want their divergent opinions to be used in the mediation. This can bring

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<sup>28</sup> Ibid p. 33

<sup>29</sup> Bohmelt Tobias 'Disaggregating Mediations: The Impact of Multiparty Mediation' British Journal of Political Science Vol. 41, No. 4 (October, 2011) pp. 859-881

<sup>30</sup> Crocker A. Chester et al 'Herding Cats: Multiparty Mediation in a Complex World' (Washington, D.C: US Institute of Peace Press, 1999) pp. 9

<sup>31</sup> Ibid pp. 4-5

the mediation process to a halt. The principal mediator cannot coerce them to cooperate but they must be persuaded to work together and have a relationship that strengthens rather than undermines the mediation process.<sup>32</sup>

Given the complexity of multiple mediation, some mediation efforts have not been effective. For instance, in Bosnia, Burundi and Kosovo, efforts of multiple mediators delayed the resolution of the conflicts or led to total confusion in the mediation process.<sup>33</sup> Multiple mediators exchange information and share resources hence having more leverage than individual mediators. However, they can make the mediation process complex if there is no cooperation due to divergent interests hence worsening the conflict situation. For instance, the Burundi crisis in the 1990s had a number of mediators: the EU, UN and the Arusha group of states. These organizations had agendas, motivations and interests that did not converge. Ban Ki-Moon, the UN Secretary-General emphasized that “ Multiple actors competing for a mediation role create an opportunity for forum shopping as intermediaries are played off against one another. Such a fragmented international response reinforces fragmentation in the conflict and complicates resolution.”<sup>34</sup> Therefore, conflict resolution through multiple mediation is not an easy task. The process can fail or sometimes, take a very long time. This increases the suffering of those affected by conflict.

The Balkans wars since 1991 show the difficulty of mediation when there are many mediators working to resolve a conflict. There is a problem of ensuring that multiple mediation is on track. There were conflicts in the former Yugoslavia. The Serbian-Croatian war took place from 1991 to 1992 and the Bosnian war took place from 1992 to 1995. In these conflicts, there were multiple mediation efforts to resolve them. The EU, UN, US and former president Jimmy Carter. The interventions were sequential. The EU intervened first followed by the UN. Later on, the EU and the UN intervened together. Carter intervened followed by the US. The mediators had conflicting statements and were competing with each other. The conflicts in the former Yugoslavia ended in 1999. Multiple mediation was also seen in Mozambique from 1991 to 1992. The community of Sant’Egidio, a nonofficial organization and the UN were involved in this

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<sup>32</sup> Ibid

<sup>33</sup> Crocker A. Chester ‘A Crowded Stage: Liabilities and Benefits of Multiparty Mediation’ *International Studies Perspectives* (2001) 2, pp. 51-67

<sup>34</sup> Bohmelt Tobias ‘Disaggregating Mediations: The Impact of Multiparty Mediation’ *British Journal of Political Science* Vol. 41, No. 4 (October, 2011) pp. 859-881

mediation.<sup>35</sup> These conflicts were prolonged due to their complexity and the multiple mediators that had conflicting ideas and interests.

If a conflict has mediators who are willing to cooperate, it will be easier to resolve it. However, mediation efforts that involve multiple mediators raise questions about how and why such efforts come about, how they are coordinated if at all they are coordinated, their commitment, who is responsible for ensuring that an agreement is implemented.<sup>36</sup> Because mediators usually have their own interests, mediation process can be prolonged or it can end suddenly yet the conflict has not been resolved. It is important for multiple mediators to coordinate their activities in mediation for their efforts to yield successful results. They also need to work together to avoid prolonging a conflict. This helps in ending the suffering of those adversely affected by the conflict. If each and every mediator's interest is to be considered, the process is likely to slow down or end before the conflict is actually resolved. Though every mediator enters a conflict with their own interests in mind, it is important for multiple mediators to have a common goal in conflict resolution.

### **1.3.3 Mediation Phases**

The mediation process has three phases: pre-mediation phase, mediation phase and post-mediation phase. In the pre-mediation phase, the parties are brought to the table. It is a process that tries to get the parties to show that they are willing to talk. Parties, with the help of the mediator talk about how they are going to negotiate.<sup>37</sup> This phase should be conducted well because it determines if there will be negotiation or not. It shapes the agenda for the actual mediation. As Moore puts it, the parties must be assured of the credibility of the mediator at this stage. They must have confidence in him/her. The mediator has to create a good relationship with the parties in conflict. At this stage also, the parties are educated about the mediation process which they must be committed to so as to resolve their problem.<sup>38</sup> If the pre-mediation phase is not properly conducted, there will be no negotiations. If the agenda is not shaped at this stage, then there will be nothing to be negotiated about. Therefore, negotiations cannot take place without the pre-mediation phase.

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<sup>35</sup> Crocker A. Chester et al 'Herding Cats: Multiparty Mediation in a Complex World' (Washington D.C: US Institute of Peace press, 1999) PP. 35-36

<sup>36</sup> Crocker A. Chester et al 'Herding Cats: Multiparty Mediation in a Complex World' (Washington D.C: US Institute of Peace Press, 1999) PP. 4-5

<sup>37</sup> Moore Christopher The Mediation Process: Practical Strategies for Resolving Conflicts (San Fransisco: Jossey-Bass Publishers, 1996) pp. 15

<sup>38</sup> Ibid

In the mediation phase, actual negotiations take place. The mediator facilitates the negotiation between the parties in conflict. Mediation procedures and the role of the mediator are described in the mediator's opening statement. Parties in conflict focus on positions and needs or substantive issues and interests. They exchange information by the help of the mediator who employs various tools of communication such as listening, probing, paraphrasing and restatement. At this stage, parties identify contentious issues and mutually decide on the order of addressing those issues. With the help of the mediator, they come up with options for resolution.<sup>39</sup> They then evaluate the options and choose the best one that caters for their needs. This phase is very important because in it, actual negotiations take place. This is the stage where parties reach a mutual agreement. Reaching an agreement is the reason behind mediation hence the mediation phase must be well conducted.

The post mediation phase is the phase of implementing what was agreed upon in the mediation phase. Structures through which implementation will be made are established. A plan to monitor the implementation is also developed. A successful structure for implementation includes criteria for evaluating performance, specific and general steps of implementation and methods for measuring and enforcing compliance.<sup>40</sup> If implementation does not take place, it means the negotiations were done in bad faith. During this phase, it can be known if the parties in conflict were genuinely concerned about the outcome of the mediation. It can also be known if the parties were really interested in delivering what was agreed upon.<sup>41</sup> Without the implementation of the agreement reached, the essence of the agreement will not be realized. Therefore, in every mediation effort, the post mediation phase must be thoroughly conducted.

#### **1.3.4 Theories of Mediation**

One of the theories of mediation is the power-political theory. In this theory, emphasis is laid on leverage, manipulation, coercion, processes of bargaining and forms of power. The theory holds that states are the only actors that can mediate in a conflict. Outcomes as well as issues in mediation are quantitative in nature. Mediation manipulates social environment through state centered administrative and executive power.<sup>42</sup> As Richmond asserts, the power political theory presents mediation as a coercive bargaining process that assumes rationality. Parties in

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<sup>39</sup> Moore Christopher *The Mediation Process: Practical Strategies for Resolving Conflict* (San Fransisco: Jossey-Bass Publishers, 1996) p. 209

<sup>40</sup> Ibid

<sup>41</sup> Mwangiru Makumi *The Water's Edge* (Nairobi: Institute of Diplomacy and International Studies, 2008) p.161

<sup>42</sup> Jones Dieniol Lloyd 'Mediation, Conflict Resolution and Critical Theory' *Review of International Studies* Vol.26, No.4 (Oct, 2000) pp. 647-662

conflict choose between options of compromise and violent conflict. They choose the former because they cannot achieve victory. The mediator uses coercive strategies to resolve the conflict.<sup>43</sup> In this theory, third parties are states and they mediate to elevate their power in relation to other actors in the international arena. Through mediation, the third party gains power and leverage. Costs and benefits are perceived in terms of control over military, economic and political resources.<sup>44</sup>

Another theory known as facilitation theory puts emphasis on consensus, impartiality and neutrality. As opposed to power-political theory, it emphasizes communication, non-state actors in mediation, facilitation, qualitative nature of outcomes and issues. Focus is on how obstacles such as socio-psychological perceptions can be broken down by a third party.<sup>45</sup> Mediation is seen as facilitative as well as communicational. They are initiators of change and can lead to the resolution of conflicts. No conflict is too intractable and mediators who are experienced remove obstacles to the resolution of conflicts.<sup>46</sup> Mediators are non-state actors who are committed to social change. Before any action is taken, it is necessary to have a shared agreement about the rules of social life. The unwillingness of a party to engage in negotiations is attributed to socio-psychological obstacles. The mediator therefore acts as a psychoanalyst to help the parties move the mediation process forward.<sup>47</sup>

Another theory is the ripe moment theory. Studies on this theory have been carried out for about thirty years. Its origin can be traced back to 1974 when Kissinger Henry, the then US Secretary of state made a comment in the New York Times that a stalemate was the most appropriate condition for conflict resolution. Many scholars took the idea of Kissinger, one of them being William Zartman who later on established the theory through many refinements. The basic assumption of this theory is that parties positively think about the idea of conflict resolution through mediated or direct negotiation when they see conditions of ripeness. Ripeness in this context refers to the right timing of mediation. The right time is when there is a mutually hurting stalemate and a sense of way out. When there is a mutually hurting stalemate, it means that the parties cannot achieve victory. There is deadlock between them which is hurting rather

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<sup>43</sup> Richmond Oliver 'Devious Objectives and the Disputants' View of International Mediation: A Theoretical Framework' *Journal of Peace Research*, Vol.35, No.6 (Nov, 1998) pp.707-772

<sup>44</sup> Jones Wynn Richard 'Critical Theory and World Politics' (Colorado: Lynne Reinner Publishers, 2001) pp.173-174

<sup>45</sup> Jones Dienio! Lloyd 'Mediation, Conflict Resolution and Critical Theory' *Review of International Studies* Vol.26, No.4 (Oct, 2000) pp. 647-662

<sup>46</sup> Bercovitch Jacob et al 'Some Conceptual Issues and Empirical Trends in the Study of Successful Mediation in International Relations' *Journal of Peace Research* Vol.28, No.1 (Feb, 1991) pp.7-17

<sup>47</sup> Jones Wyn Richard *Critical Theory and World Politics* (Colorado: Lynne Reinner Publishers, 2001 ) p. 177

than beneficial to them. A sense of way out means that the parties see a possibility of a way out of their problem. They see that they can reach an agreement that fulfils their needs.<sup>48</sup>

There are some moments that can lead to the success of mediation than others. For instance, mediation in Bosnia was made possible when the parties in conflict experienced grievous losses hence they had to change their perceptions about the conflict. Ripe moment is highly likely to lead to a successful mediation.<sup>49</sup> Zartman holds that parties to a conflict resolve it only when they are ready. When they feel they cannot achieve victory, it means they have reached a deadlock and this deadlock is hurting both of them. This is the time they are ready to resolve the conflict hence they look for a way out of their problem. The deadlock is an indication to them that pain will increase if they do not resolve the conflict immediately. The ripe moment theory identifies the elements necessary for the start of negotiations.<sup>50</sup>

The critical theory of mediation has the assumption that mediation is carried out by coalitions of individuals, states or organizations. According to the theory, when mediation is used in conflict resolution, there can be meaningful change in history. Emphasis is laid on coalitions. A critical mediator is not a single or unitary unit. The presence of coalitions means more generalized interests. The members of coalitions can exchange ideas on how to help in resolving a conflict. Mediation can bring about a desirable outcome and social change. Change involves historical processes. The activities of the coalition can be scrutinized publicly because they involve renowned actors.<sup>51</sup> The international system is a flexible set of relationship which can be shaped to fit human purposes. The international system does not involve states only as actors. It has gained a new shape that incorporates non state actors that enter a conflict as mediators and change its course towards resolution.<sup>52</sup>

### 1.3.5 Post-election Violence

Kenya held the fourth general elections in December, 2007 since the return of multiparty system in 1991. The general elections of 1992 and 1997 did not meet international standards regarding democratic elections. The 2002 elections were confirmed as democratic. During these elections, the voters voted out the Kenya African National Union (KANU) which was the ruling

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<sup>48</sup> Podzun Lucie 'The Theory of Ripeness: Does Development Aid Affect Conflict Ripeness?' (2011) pp.81-108

<sup>49</sup> Greig J. Michael 'Moments of Opportunity: Recognizing Conditions of Ripeness for International Mediation between Enduring Rivals' *The Journal of Conflict Resolution* Vol.4, No.6 (Dec, 2001) pp.691-718

<sup>50</sup> Zartman William 'The Timing of Peace Initiatives: Hurting Stalemates and Ripe Moments' *The Global Review of Ethnopolitics* Vol.1, No.1 (September, 2001) pp.8-18

<sup>51</sup> Jones Richard Wyn 'Critical Theory and World Politics' (Colorado: Lynne Reinner Publishers, 2001) p. 180

<sup>52</sup> Jones Dieniol Lloyd 'Mediation, Conflict Resolution and Critical Theory' *Review of International Studies* Vol.26, No.4 (Oct, 2000) p.651

party since independence. These elections built the trust of Kenyans and the international community in democracy as a political system. However, in 2007, this trust was broken. The elections in December, 2007, led to a violent electoral conflict that almost turned into a civil war. After incumbent president Kibaki was announced the winner of the elections on 30<sup>th</sup> December, violence erupted. His victory was disputed by international and domestic observers, opposition as well as civil society.<sup>53</sup>

The violence that erupted in Kenya in 2007 was surprising. This is because as a democracy, Kenya was viewed as the most successful especially after the political change in 2002.<sup>54</sup> The violence was manifested in different ways: spontaneous violence in urban centers, retaliatory violence by gangs like mungiki, organized violence by politicians as well as state violence by security officers. This violence was so overwhelming to the state that it could not shield its citizens from harm.<sup>55</sup>

In January 2008, there was violence in Nakuru, Eldoret, Naivasha and Kericho in the Rift Valley. Pregnant women, children and the disabled people were targeted during the clashes. The gangs used knives or machetes to kill. The Mungiki militia was involved in the violence, making the situation even worse. The violence involved militia (Luo, Mungiki and Kalenjin) attacking people as ordered by politicians, killings of ODM supporters by police as ordered by the government, actions of vigilante groups and people taking advantage of the crisis to destroy or grab property of rivals. Young men harassed motorists on the road. Violence was prevalent mainly in the urban areas. However, it also affected the rural areas. In Narok, there were several instances of cattle rustling.<sup>56</sup> In Kisii, both the ODM and PNU had the same number of MPs elected. There were riots. The pro-ODM youths threatened elders who they believed voted for Kibaki, a leader they considered dishonest.<sup>57</sup> In Eldoret, angry Kalenjin youth went to churches, police stations and schools where their enemies sought refuge.<sup>58</sup>

The police had a role to play in increasing the violence after it started. For instance, in Nyanza province, the police as ordered by the state, used excessive force to counter the activities

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<sup>53</sup> Sievers Harnet Axel and Peters Ralph-Michael 'Kenya's 2007 General Elections and Its Aftershocks' *Africa Spectrum*, Vol. 43, No. 1 Horn of Africa (2008) pp. 133-144

<sup>54</sup> Maupeu. H 'The General Elections in Kenya, 2007' (United Kingdom: African Books Collective, 2008) pp 187-223

<sup>55</sup> Kagwanja Peter' *Courting genocide: Populism, ethno-nationalism and the informalisation of violence in Kenya's 2008 post-election crisis* *Journal of Contemporary African Studies* Vol. 27, No. 3 (July, 2009) pp. 365-387, 367

<sup>56</sup> *Ibid* p. 17

<sup>57</sup> Lafargue Jerome 'General Elections in Kenya, 2007' Dar es Salaam: Mkuki na Nyota Publishers, 2009) pp. 181-182

<sup>58</sup> *Ibid* pp. 186



of the protestors. This led to many deaths and human rights violations.<sup>59</sup> When violence started in Kisumu, the General Service Unit (GSU) and the police set out to stop the rioting and looting. After sometime, they became overwhelmed and decided to use live ammunition to counter rioters' actions. In slums such as mathare and kibera in Nairobi, the police used heavy live fire to contain protests leading to more deaths and many sexual assaults. In Eldoret, within a period of four days, the police shot people, killing 16 of them and leaving 58 injured.<sup>60</sup>

The violence led to massive killings in the country. During the swearing in of president Kibaki, 10 people were killed in Kisii. Odinga's supporters burnt a church that provided refuge to about 200 Kikuyus and killed 35 people. The situation in the country became worse. About 1000 people lost their lives in the violence. Some of the displaced persons sought refuge with their relatives in places where people of their tribe dominated. Others depended on charitable organizations to offer assistance to them. Others went to Uganda as refugees. Women and children were sexually violated.<sup>61</sup> Most of the displaced persons were small scale farmers such as the Kamba, Kikuyu, Kisii who had lived in their homes for a long time. Some were junior Luhya or Luo civil servants living in the Central province and Eastern Rift Valley. In Nairobi, tenants in Kibera, Mathare, Kangemi, Kawangware and Eastleigh were forcefully moved out of their houses by their landlords if they were not of the same ethnic group.<sup>62</sup>

On 23<sup>rd</sup> January, 2008 as reported by the BBC, admissions for rape at the Nairobi hospital and Coast General hospital had doubled. Young girls were sexually violated in exchange for basic needs such as food. The violence greatly affected the economy. Businesses were closed leading to tax revenue losses of about \$ 29 million. Transportation of goods and services was blocked. For instance, the fishing industry suffered greatly due to the blockade. The prices of essential products sharply went up in several parts of the country. The transport of fuel and other goods and services to the neighboring countries such as Uganda and Burundi was disrupted. Burundi lost 3 million dollars in taxes every month because of importing commodities through Kenya as the Kenyan crisis interfered with supply routes of the region. The prices of commodities such as fuel that Kenya provides to the neighboring countries also increased.<sup>63</sup> The

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<sup>59</sup> Opolot Okia 'The Role of the Police in the Post Election Violence in Kenya 2007/2008' *Journal of Third World Studies* Vol. 28, No. 2 (2011) pp 260-261

<sup>60</sup> Ibid

<sup>61</sup> Shekhawat Seema and Modi Renu 'Aftermath of the Kenyan Crisis' *Economic and Political Weekly*, Vol. 43, No. 18 (May 3-9, 2008), pp. 25-27

<sup>62</sup> Lafargue Jerome 'General Elections in Kenya, 2007' (Dar es Salaam: Mkuki na Nyota Publishers, 2009) p. 187

<sup>63</sup> Ibid pp. 25-27

post election violence paralyzed Kenya's economy and brought to life the ethnic tensions that were dormant in the past.<sup>64</sup>

### 1.3.6 Mediation of Post-election Violence of Kenya by Multiple Mediators

Kenya experienced conflict during the 2007 general elections. After the announcement of the results of presidential elections, the conflict turned into violence. In 1992 and 1997, there was violence before the voting exercise but ended after the results were announced. In the 2007 election, conflict was not on the parliamentary and civic results but specifically on presidential results. The violence had its causes such as ethnicity and unaddressed past issues like the land issue. The major cause was the disputed presidential election.<sup>65</sup> There was a violent electoral conflict following a disputed presidential vote count. Conflict between the Orange Democratic Movement and the Party of National Unity led to violence, deaths of more than one thousand one hundred Kenyans, many internally displaced persons and threats to the efficiency of the state of Kenya. The violence led to the stop of main economic activities such as goods' transportation within the country as well as to the neighboring countries. The economic growth of Kenya that was at 7% in 2007 decreased to less than 2% in the first four months of 2008.<sup>66</sup>

In Article 159 of the Kenyan constitution, there is provision for the use of alternative mechanisms for conflict resolution other than the judicial authority as long as they don't breach the bill of rights. Mediation is considered one of the methods of peaceful resolution of conflicts in Kenya. Because of this provision in the constitution, it was possible for mediation to be used in resolving the Kenyan crisis.<sup>67</sup> Many critics in Kenya believed that the post election violence could be stopped through negotiations in the presence of a third party.<sup>68</sup> The AU intervention was composed of Kufuor's good offices and the mediation chaired by Kofi Annan. Were it not for the intervention of the AU in 2008, the social and economic destruction could have escalated. The panel of Eminent African Personalities was mandated to help Kenya peacefully mediate between Odinga's Orange Democratic Movement Party and Kibaki's Party of National Unity. It consisted of the former Mozambican First Lady, Mrs. Graca Machel, former President of

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<sup>64</sup> Katumanga Musambayi and Lafargue Jerome 'Kenya in Turmoil: Post-election violence and precarious pacification' (United Kingdom: African Books Collective, 2008) p 14

<sup>65</sup> Mwangi, Makumi 'The Water's Edge' (Nairobi: Institute of Diplomacy and International Studies, 2008) pp1-2

<sup>66</sup> Long, James and Karuti Kanyiga 'The Political Economy of Reforms in Kenya: The Post-2007 Election violence and a New Constitution' African Studies Review, Vol. 55 No. 1(2012) pp. 31-51, 33

<sup>67</sup> Muigua, Kariuki 'Resolving Conflicts Through Mediation in Kenya' (Nairobi: Greenwich Publishers Limited, 2012) p. 2

<sup>68</sup> Mwangi Makumi 'The Water's Edge' (Nairobi: Institute of Diplomacy and International Studies, 2008) pp38

Tanzania, Mr. Benjamin Mkapa and the former UN Secretary-General, Mr. Kofi Annan. This panel got the support of the UK and the US.<sup>69</sup>

Negotiations started on 29 January, 2008. The agenda had four items. The first item was immediate action to stop the violence and restore fundamental rights and liberties. The second one was immediate measures to address the humanitarian crisis, promote reconciliation, healing and restoration of calm. The third item on the agenda was how to overcome the political crisis. The fourth one was long term solutions like land reforms, reducing the level of unemployment, institutional and legal reforms as well as coordinating national cohesion and unity.<sup>70</sup>

During mediation, item 3 on the agenda, the outcome of the presidential elections was discussed on 5<sup>th</sup> February. The chief mediator and the Western states had the view that power sharing was the solution to the crisis. Item one and two on the agenda were not political. Therefore, the constitution and power structures in Kenya would not be involved in addressing them. They were addressed in only one week. Item three was different because it was political. Its outcome needed amendments to the constitution of Kenya. Initially, the ODM wanted a recount of the presidential votes and a re-run of the elections. PNU had responded that ODM should go to court if they had complaints about the election. Power sharing seemed to be unavoidable in resolving the conflict. The mediators had the task of coming up with a formula for power sharing that would actually work. They also had the task of reviewing the constitution, electoral laws and institutions.<sup>71</sup>

When the negotiations on item 3 began, Annan described the matter as 'very hot'.<sup>72</sup> Mkapa and Machel made numerous efforts to move the mediation forward. Machel maintained that the negotiators should put their political or personal interests aside where necessary because the fate of Kenya depended on them. Mkapa argued that since they had worked together in the past, finding a common ground was not something hard for them.<sup>73</sup>

To move the mediation process forward, Annan brought in election experts to clarify election matters. The experts were to brief the negotiators on the strengths and weaknesses of the options that they had. Information was provided on recount, fresh elections and rerun. For a

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<sup>69</sup> Ibid pp 68

<sup>70</sup> Kofi Annan Foundation and African Union Panel of Eminent African Personalities 'Kenya National Dialogue and Reconciliation' (Nairobi: Kofi Annan Foundation, 2010) pp iv-vii

<sup>71</sup> Mwagiru Makumi 'The Water's Edge' (Nairobi: Institute of Diplomacy and International Studies, 2008) pp. 121-122

<sup>72</sup> Ibid p. 122

<sup>73</sup> Kaye and Lindenmayer A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya (New York: International Peace Institute, 2009) p. 13

recount to be carried out, all the 27500 ballot boxes were to be opened. This could take a lot of time and did not guarantee a fairer result. A rerun meant that there were flaws in the former elections. It would be divisive as well as politically dangerous. Fresh elections would take a year hence could not solve the current crisis.<sup>74</sup> Getting the truth about the elections would take a long time yet the country was still at a risk of escalating violence. The country needed immediate solution to the electoral crisis.

On the second day of negotiations on item 3 on the agenda, the parties proposed how the conflict would be resolved. They agreed that there would be no recounting of votes since it was not feasible. None of the presidential candidates had scored 25% of the cast votes in five provinces as the law demanded. They briefed the principals (Raila and Kibaki) on what was going on during the negotiation, since they were not present at the negotiating table. The principals had to agree with the positions that their representatives were taking for negotiations to go on. Though ODM still held that Kibaki had not won the election, they proposed that there should be a government in which executive power would be shared equally between them and PNU. Such a government would govern Kenya for a period of 3-6 months, making reforms to pave way for a new election. PNU had earlier insisted that the electoral conflict was to be resolved as required by the law. Later, they agreed that there should be comprehensive constitutional reforms and the formation of a truth and reconciliation committee. The international community mounted pressure on the parties to reach an agreement. For instance, the EU issued a warning that if anyone disrupted the mediation, they would be punished by the international community.<sup>75</sup>

There was a possibility of a deadlock and the mediators had to find a way of moving the negotiations forward since there was a slow down on the negotiations. The chief mediator included other constituencies in order to mount pressure on the negotiators to resolve the conflict. For instance, he used the media to reprimand the principals publicly:

“You have heard the business community talk about what this crisis is doing to the economy. 49000 people have already lost their jobs and more may be on the way. Farmers cannot get to the farm to till their land; some cannot get their produce to the markets. Women, children and men are displaced in the open sun. Is this what leaders are put in office to do? So they realize they have a responsibility..... They know they have a responsibility and they know what the

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<sup>74</sup> Kaye and Lindenmayer A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya (New York: International Peace Institute, 2009) p. 13

<sup>75</sup> Ibid pp. 124-125

people and the nation expects of them.” (Annan, speaking on 8<sup>th</sup> February 2008 in Nairobi) <sup>76</sup>

The agenda had it that mediators would brief Kibaki and Raila jointly. This was done on 8<sup>th</sup> February. After the briefing, the panel of eminent personalities announced that members of parliament and the mediators would hold an informal session (Kamkunji). The mediators would brief members of parliament on how the negotiations were progressing. The chief mediator announced that the parties had agreed that it was important to resolve the political problem and discussions were held on the details of political agreement. Such an agreement would be announced to the public during the week that followed. The mediators argued that votes could not be recounted because many had lost their confidence in the ECK. Conducting fresh elections was not feasible as most of the voters had been internally displaced as a result of the violence. Therefore, the parties had to achieve a political agreement through which there would be institutional, constitutional and legal reforms. This was going to be tough. It implied that the parties had to negotiate a structure that had both parties in one government. <sup>77</sup> Executive positions were to be shared equally in the same government.

Annan made an appeal to the members of parliament to support the mediation process. He shared his thoughts on having a grand coalition that would address matters like constitutional and institutional reforms. Annan had dual strategy in mediation in that he could meet with the negotiators representing ODM and PNU as well as meet with the principals. This strategy ensured that Kibaki and Odinga were committed to key decisions. This commitment became important when the negotiations reached a deadlock and only Kibaki and Odinga could resolve the issue. <sup>78</sup>

The ODM wanted the position of an executive prime minister. They wanted to be represented equally in government ministries. However, the PNU was not for the creation of the position of an executive prime minister. They wanted a government that would give ODM certain posts in the cabinet. ODM held that they would look at the Bomas draft that had the provision of a prime minister. The two principals met for the third time. Although the agenda had it that they would have representatives at the negotiating table, Annan had a strategy to include a

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<sup>76</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' *Journal of Contemporary African Studies* Vol. 27, No.3 (July, 2009) pp. 407-430

<sup>77</sup> Mwangi Makumi 'The Water's Edge' (Nairobi: Institute of Diplomacy and International Studies, 2008) p. 126

<sup>78</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' *Journal of Contemporary African Studies* Vol.27, No.3, (July, 2009)pp. 407-430

larger constituency in the process by moving negotiations beyond the negotiating table. He wanted decision making on the political issue to be done by the principals themselves. He gave a deadline for the parties to resolve the issue by announcing to the press that details of the solution on item 3 of the agenda would be publicized the following week.<sup>79</sup>

Negotiations continued though at a slow pace. There were reports that elders and gang leaders were arming youth in preparation for violence if the negotiations failed. The country had hopes in the mediators but the negotiators were slowing down the process and the optimism exhibited by Annan would not resolve the conflict.<sup>80</sup>

When he saw that negotiations were slowing down, Annan in consultation with the other members of the panel, suspended the negotiations to meet the principals and consult with them. He stated that Odinga and Kibaki had to be directly involved in the negotiations to avoid prolonging the process. He conducted shuttle diplomacy for the principals to reach an agreement. After meeting with Annan, on 27 February, Kibaki announced that he would appoint a prime minister in a coalition government. He stated that any pending matter would be dealt with within the constitutional dispensation. In response, Odinga stated that ODM was okay with the idea of power sharing. However, they would only share power in a government that would immediately work on constitutional, legal and institutional reforms.<sup>81</sup>

Annan announced that the panel would not leave the country until the conflict was resolved. Annan insisted that the parties had to reach an agreement. The announcement that he would stay until an agreement was reached gave hope to the Kenyan people. They believed that he had no intention of leaving the mediation process. However, to Kibaki and Odinga, the announcement meant that it was their responsibility to reach an agreement and resolve the electoral conflict.<sup>82</sup>

Odinga and Kibaki bore the responsibility of resolving the Kenyan crisis. If they failed, Kenya, the East African region as well as the international community would be greatly affected. According to the nation, Annan and his team had done their best to make Kenya peaceful as it was before the violence erupted. However, the mediators had to explore other means to make

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<sup>79</sup> Ibid p. 127

<sup>80</sup> Kaye and Lindenmayer 'A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya' (New York: International Peace Institute, 2009) p.16

<sup>81</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' *Journal of Contemporary African Studies* Vol. 27, No. 3 (July, 2009) pp. 407-430

<sup>82</sup> Kaye and Lindenmayer 'A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya' (New York: International Peace Institute, 2009) p. 17

sure that the principals reached an agreement. To the international community, the Kenyan crisis had to be resolved. The principals could not afford to fail. US Secretary of state, Condoleezza Rice stated that future relationship of the US with both parties would be determined by their commitment to resolve the conflict. The UN also mounted pressure on the principals to find a solution to the problem.<sup>83</sup>

To avoid the likelihood of another deadlock, the Chief mediator called in Tanzanian President, Jakaya Kikwete to join him. Kikwete was the chairperson of the AU and was respected internationally. He could remind the principals of how prime minister and president shared power in Tanzania successfully, forming two centers of power. He could also emphasize that the African continent supported the mediation. Negotiations were held at Harambee House. Five people were involved: Kikwete, Mkapa, Annan, Kibaki and Raila.<sup>84</sup>

Annan convinced Odinga and Kibaki to negotiate an agreement in the presence of Jakaya Kikwete, AU chairperson on 28<sup>th</sup> February 2008. After the meeting that was held in the presence of AU chair, the principals were prepared to sign an 'agreement on the principles of partnership of the coalition government. Thereafter, there was the promulgation of the National Accord and Reconciliation Act. A framework for power sharing was formed leading to the official resolution of the Kenyan political conflict.<sup>85</sup> The national accord was to establish the posts of prime minister and two deputy prime ministers. It was also expected to create a coalition government with cabinet members from the PNU as well as ODM. Parliament passed an amendment of the constitution through which the National accord was enshrined. The prime minister had the power to supervise government functions. The prime minister and his deputies could only be removed from office through a vote of no confidence by parliament.<sup>86</sup>

After Annan's departure, a Nigerian diplomat, Oluyemi Adeniji took charge of negotiations on item four on the agenda. This included discussions on matters such as creation of Justice and Reconciliation Commission, constitution as well as past injustices. The negotiations faced challenges due to the change of mediator and appointment of negotiators to cabinet posts. A good number of the negotiators thought that the fact that the National Accord was signed meant that the mediation process had come to an end. Other issues were seen as long term and

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<sup>83</sup> Ibid, p.20

<sup>84</sup> Ibid, p.21

<sup>85</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' *Journal of Contemporary African Studies* Vol.27, No.3 (July, 2009) pp. 407-430

<sup>86</sup> Juma Monica Kathina 'African Mediation of the Kenyan Post-2007 Election Crisis' *Journal of Contemporary African Studies* Vol.27, No.3, (July, 2009) pp.407-430

needed internal legislative and constitutional mechanisms. Therefore, they dealt with details of item four just like they had agreed before such as, creation of the Commission of Inquiry into the Post-Election Violence, Truth and Reconciliation Commission and the Commission on the 2007 elections.<sup>87</sup> After negotiations of item four of the agenda, four documents were signed, establishing the Independent Review Commission (IREC), the Commission of Inquiry into the Post Election Violence, the Truth, Justice and Reconciliation Commission (TJRC) and a road map for a comprehensive review of the constitution.<sup>88</sup>

The implementation phase faced challenges because the successful mediation did not establish mechanisms for the correct interpretation of the National Accord and implementation of its provisions.<sup>89</sup> Forming the cabinet was the greatest challenge for implementation of the agreement. The principals had to satisfy certain constituencies before creation of the cabinet. These constituents were such as those who had voted for both ODM and PNU, members of parliament who expected cabinet posts because they had been loyal, the international community and generally, Kenyans who wanted their lives to go back to normal.<sup>90</sup>

On 3<sup>rd</sup> April, 2008, the two principals agreed that the cabinet would include forty members. Each party would appoint twenty cabinet ministers. Initially, PNU wanted a forty four member cabinet while ODM wanted a thirty four member cabinet. They finally compromised and agreed that the coalition government should have forty ministries.<sup>91</sup> This was the biggest and most expensive cabinet in the country's history.<sup>92</sup>

#### 1.4 Justification

Arguments by different scholars present mediation as the most common means of peaceful resolution of conflicts. It is preferred because it is non-coercive. Mediators have been presented as third parties who help the parties in conflict to resolve their conflicts. Apart from resolution of conflicts, they also have their own interests to promote or protect in the mediation effort. Mediators can be individuals, groups, states or organizations. A conflict can be mediated by an individual mediator or multiple mediators. Multiple mediation, as opposed to individual mediation is complex because the mediators have divergent ideas and interests. They have to

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<sup>87</sup> Ibid

<sup>88</sup> Weiss Thomas G. 'Great Decisions: Halting Atrocities in Kenya' (New York: Bunche Institute of International Studies, 2010)P.24

<sup>89</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' *Journal of Contemporary African Studies* Vol.27, No.3 (July, 2009) pp. 407-430

<sup>90</sup> Mwangi Makumi 'The Water's Edge' (Nairobi: Institute of Diplomacy and International Studies, 2008) p.171

<sup>91</sup> Ibid, p.186

<sup>92</sup> Kagwanja Peter and Southall Rojer 'Introduction: Kenya-A Democracy in Retreat?' *Journal of Contemporary African Studies* Vol.27, No.3 (July, 2009) pp. 259-277



consult one another in the mediation process and if their opinions and interests do not converge, they can end up delaying the process or even lead to its cessation without resolving the conflict. Multiple mediators in most conflicts have led to unsuccessful mediation outcome because of their complexity. In cases where they are successful, it usually takes a long time for conflicts to be resolved as in the conflicts in the former Yugoslavia. However, in the Kenyan crisis, multiple mediators were successful. As Kaye and Lindenmayer confirm, it took them only forty one days to mediate the conflict.<sup>93</sup> A good number of scholars have looked into the concept of mediation. Others have analyzed multiple mediation. Many have written about the post election violence in Kenya. However, few have looked into the factors that lead to successful outcome of multiple mediation though it is complex. This study aims to fill this gap. Given the complexity of multiple mediation, this study aims at determining what leads to the success of multiple mediation. It will particularly look at the factors that led to the success of the mediation in Kenya by multiple mediators in a period of forty one days only. This will help multiple mediators in the future in resolving conflicts.

### **1.5 Theoretical Framework**

This study is based on the critical theory of mediation. One of the basic tenets of the theory is that mediation is carried out by coalitions of individuals, states or organizations. When such coalitions are involved in conflict resolution, there can be meaningful change in history. A critical mediator is not a single unit. He or she needs to work in coalition with other mediators to help in resolving a conflict. This study presents mediation as a method of resolving conflicts conducted by more than one individual. Multiple mediators work as a coalition to help in conflict resolution. The theory has the assumption that the presence of a coalition means more generalized interests. Multiple mediators have general interests. They are interested in resolving a conflict, improving the relationship between/among the parties in conflict and to ensure that peace is restored.<sup>94</sup> According to the theory, the international system is a set of relationships which can be shaped to fit human purposes. The international system does not involve states only as the actors. It has gained a new shape that incorporates non state actors that can enter a conflict as mediators and change its course towards conflict resolution. International mediation can be carried out by states as well as multiple mediators who work as a coalition. The theory explains

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<sup>93</sup> Kaye Lianna Josie and Elisabeth Lindenmayer 'A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya' (New York: International Peace Institute, 2009) p. 1

<sup>94</sup> Jones Richard Wyn 'Critical Theory and World Politics' (Colorado: Lynne Reinner Publishers, 2001) p. 180

the variables of this study as it holds that mediators work together as a coalition to help in conflict resolution. Mediators working together can exchange ideas about how a conflict can be resolved. Their collaboration is very important in the process of conflict resolution.

### **1.6 Hypotheses**

This study will test the following hypotheses:

1. If multiple mediators are supported by the international community, they will succeed in conflict resolution.
2. If multiple mediators work together simultaneously in every phase of mediation to achieve a common goal, they will be successful in conflict resolution.
3. If multiple mediators share the knowledge and skills they have, they will succeed in conflict resolution.

### **1.7 Methodology**

This study has relied on secondary sources of information to collect data. This involves the review of literature in books, reports, journals, library research internet searches and any other relevant material. The researcher was not able to gather primary data because of the unavailability of respondents hence only secondary sources of information were used to collect data. The data collected will be analyzed through content analysis.

### **1.8 Scope and Limitations**

This study is faced by resources and time constraints. The study has to be completed after a specific period of time with the limited resources that are available. The respondents that have the information needed for this study are not available. The researcher will not be able to gather primary data because she is not able to reach the respondents that will provide the information needed. This is why the study is limited to secondary sources of information to collect data.

### **1.9 Chapter Outline**

This study will consist of five chapters. Chapter one will include the introduction to the study which has the background to the study, the statement of the research problem, the study objectives, literature review, justification, theoretical framework, hypotheses, methodology and chapter outline. Chapter two will provide a detailed account of the post-election violence of Kenya in 2007/2008. It will give information on the Kenyan political history, the causes of the violence as well as its repercussions. Chapter three will look into the mediation of the Kenyan crisis by multiple mediators. It will provide detailed information about the mediation process and

what contributed to the success of multiple mediators in resolving the Kenyan conflict of 2007/2008. Chapter four will provide an analysis and interpretation of the findings of chapter three. Chapter five will give the conclusion and recommendations of the study.

## Chapter Two

### The Post Election Violence in Kenya (2007/2008)

#### 2.0 Introduction

This chapter looks into the Kenyan electoral conflict, the causes as well as the effects of the conflict. Violence has become part of political processes in the African continent. The struggle for power is violent even in states that do not turn to armed conflict. This violent struggle for power is a significant feature of politics in Africa. There was violence following elections in Lesotho in 1998, Zimbabwe in 2008, Nigeria in 2003 and Kenya in 2007. During elections, most African states have their political stability shaken including those that are viewed as peaceful and stable. Kenya is an example of a country in the African continent that was perceived as peaceful yet it was economically and politically fragile. After the elections in 2007, violence erupted, leading to more than 1200 deaths and approximately 350000 displaced persons.<sup>1</sup>

In the 1992, 1997 and 2002 elections, violence took place during voter registration, campaigns and nominations. However, in the 2007 elections, there was violence after voting that had serious repercussions.<sup>2</sup> This is supported by Mwagiru who confirms that during the elections that took place before the 2007 one, violence took place before people voted but ended after the announcement of the results of the election.<sup>3</sup>

To understand the 2007 post election violence, it is prudent to look into the history of the Kenyan state since independence. When Kenya gained independence, the leaders governed the country through the colonialists' model of governance. The executive was dominant with a lot of powers. Kenya had been colonized by the Europeans who settled on their land hence many Kenyans were squatters on their own land. Kenyans were not allowed to own land in some places hence they could not engage in commercial agriculture. Such issues about land were the major grievances in the struggle for independence. Colonial administration restricted initial political movement to ethnically defined areas. This is the basis of ethnicity in Kenyan politics. When Kenya gained independence in 1963, the issues that feature Kenyan politics currently already existed: a centralized state, an executive with a lot of powers, political conflict about

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<sup>1</sup> Biegon, Japhet Electoral violence and fragility in Africa: Drawing lessons from Kenya's experience in 2007/2008 post-election violence Paper for presentation at the poster session of the conference of ' Financial Markets, Adverse Shocks and Coping Strategies in Fragile Countries', Accra, Ghana, (21-23 May 2009) pp. 1-2

<sup>2</sup> Njogu Kimani 'Healing the Wound: Personal Narratives About the Post-Election Violence in Kenya' (Nairobi: Twaweza Communications, 2009) p. 3

<sup>3</sup> Mwagiru Makumi 'The Water's Edge' (Nairobi: Institute of Diplomacy and International, 2008) p.1

inequality especially regarding land and a culture of violent disagreements between the opposition and the state.<sup>4</sup>

Kenyatta, the first president of Kenya, used his executive powers to give land to the Kikuyus, people of his tribe. After independence, there were two main political parties: Kenya African National Union (KANU) and Kenya African Democratic Union (KADU). KANU was led by Kenyatta. Oginga Odinga was initially a member of the party. KADU comprised the Kalenjin and other tribes in the Rift Valley and Coast Province. Kenyatta lured KADU members to join KANU in exchange for positions in the government and land allocation in the Rift Valley. In 1964, KADU and KANU became one making Kenya a one-party state.<sup>5</sup>

Due to ideological differences, Odinga left KANU and created the Kenya People's Union (KPU). Some Kikuyu leaders joined the KPU. However, the party was still seen as a party of the Luos. This division in KANU foreshadowed the same ideological and tribal differences that were seen in 2007. Kenyatta died in 1978 and Moi, who was the Vice President, became the President. His government banned ethnic organizations such as Gikuyu, Embu and Meru Association (GEMA) which was viewed as antagonistic to the government. The president weakened systems of financial management, judiciary and editor general. He took on more powers to ensure that he could maintain control. State institutions were weakened and were perceived as serving the elite at the expense of the masses. There was corruption in financial management and public procurement.<sup>6</sup>

There was a call for democracy globally hence the desire for change grew in Kenya. Moi was against a multiparty system because according to him, it would lead to ethnicity and conflicts. It would also interfere with national development. However, he could not fight this urge for multiparty politics in Kenya. With multiparty politics, corruption increased as the leaders were not sure of maintaining their positions if elections were held. There was also violence. Politicians had militias of bodyguards by their side. They could mobilize and pay gangs of young people to intimidate their political rivals. In the first multiparty elections, there was violence especially in Rift Valley. Politicians used youths to force people out of their homes so that they do not cast their votes. During the 1992 elections, about 300,000 people were displaced. Most of them were Kikuyus. About 1500 lost their lives. The opposition did not have a coalition

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<sup>4</sup> Geir Sundet et al 'Political Economy Analysis of Kenya' (Oslo: Norwegian Agency for Development Cooperation, 2009) p.6

<sup>5</sup> Ibid

<sup>6</sup> Ibid p. 7

to challenge KANU hence Moi was declared president again. The names of the leaders behind the violence were published in reports but none of them was brought to book.<sup>7</sup>

Violence was also experienced in 1997. The tribes that were against KANU were targeted. More than 100,000 people were displaced. Again, there was no coalition formed by the opposition to challenge KANU. Thus, Moi emerged victorious. The National Development Party (NDP) which was led by Raila Odinga joined KANU and Moi gave Odinga the local government ministry to keep him close. However, NDP left the government and joined the National Rainbow Coalition (NARC). In the 2002 elections, two major candidates contested: Mwai Kibaki of NARC and Uhuru Kenyatta of KANU. Kibaki won, bringing an end to the KANU era. There was no violence in the 2002 elections, which were seen to be fair, peaceful and free. The NARC Government had promised to fight corruption and put in place a new constitution. In 2003, the Constitutional Review Committee produced a draft constitution at Bomas. In the draft, there was a provision for a prime minister and federal system of government (majimbo). The government did not agree with the draft. It amended it and called it the Wako draft. Odinga opposed the amendments and led campaigns against it. He formed the Orange Democratic Movement through which people voted against the proposed constitution. In 2007, Raila Odinga was the presidential candidate of the ODM while Mwai Kibaki was the presidential candidate of the Party of National Unity (PNU).<sup>8</sup>

## **2.1 Post Election Violence**

As Peters and Sievers confirm, Kenya held the fourth general elections in December, 2007 since the return of multiparty system in 1991. The general elections of 1992 and 1997 did not meet international standards regarding democratic elections. The 2002 elections were confirmed as democratic. During these elections, the voters voted out the Kenya African National Union (KANU) which was the ruling party since independence. These elections built the trust of Kenyans and the international community in democracy as a political system. However, in 2007, this trust was broken. The elections in December, 2007, led to a violent electoral conflict that almost turned into a civil war. After incumbent president Kibaki was

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<sup>7</sup> Geir Sundet et al 'Political Economy Analysis of Kenya' (Oslo: Norwegian Agency for Development Cooperation, 2009) p.8

<sup>8</sup> Ibid p.9-10

announced the winner of the elections on 30<sup>th</sup> December, violence erupted. His victory was disputed by international and domestic observers, opposition as well as civil society.<sup>9</sup>

The violence that erupted in Kenya in 2007 was surprising. This is because as a democracy, Kenya was viewed as the most successful especially after the political change in 2002.<sup>10</sup> Mwangiri confirms that during the voting exercise, there was no physical violence although politicians generated structural violence. Physical violence erupted after the presidential results were announced. The civic and parliamentary results were not disputed. Violence was specifically about the presidential results.<sup>11</sup> Structural violence is like 'a cooker that explodes at the slightest trigger'. There was structural violence in Kenya before 2007. The post election violence was caused by structures that did not address important issues in Kenya such as access to land, poverty, unemployment and inequitable distribution of resources.<sup>12</sup> The post election violence can also be attributed to a system of elections where politicians, during their campaigns stroke hatred against other tribes.<sup>13</sup> This is supported by Peters and Seivers who hold that the conflict was largely more of an ethnic conflict between ethnic groups that cast their votes in favor of Odinga (Kalenjin and Luo) and the ones that voted in favor of Kibaki (Embu, Kikuyu, Meru).<sup>14</sup>

News about the rigging of elections reached people in various parts of the country and after Kibaki was announced the winner, people started rioting. In its initial days, the violence was more like a social revolt. Most of the rioters were youths who were jobless and who believed that Odinga was the candidate who had their interests at heart. There were demonstrations in Kisumu and Kibera slums in Nairobi. These were ODM strongholds. The situation became worse when ethnic gangs started fighting. Kalenjin and Luo ethnic gangs fought against Kikuyu. For many days, there were riots in Kawangware, Mathare, Kibera, Korogocho, Dandora, Kariobangi and Huruma slums in Nairobi. The protests were ethnically motivated and the gangs took advantage of the situation to rape and loot.<sup>15</sup> This is supported by Njogu. Violence targeted members of particular ethnic groups like the Gikuyu, Kisii, Meru and Embu who were perceived

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<sup>9</sup> Sievers Harnet Axel and Peters Ralph-Michael 'Kenya's 2007 General Elections and Its Aftershocks' *Africa Spectrum*, Vol. 43, No. 1 Horn of Africa (2008) pp. 133-144

<sup>10</sup> Maupeu. H 'The General Elections in Kenya, 2007' (United Kingdom: African Books Collective, 2008) pp 187-223

<sup>11</sup> Mwangiri Makumi 'The Water's Edge' (Nairobi: Institute of Diplomacy and International Studies, 2008) p. 1

<sup>12</sup> Navututu Sifuma Esther 'Structural Causes of Violence; a Case of the Post Electoral Violence in Kenya' (2011)

<sup>13</sup> Mwangiri Makumi 'The Water's Edge' (Nairobi: Institute of Diplomacy and International Studies, 2008) p. 1

<sup>14</sup> Ibid

<sup>15</sup> Katumanga Musambayi and Lafargue Jerome 'Kenya in Turmoil: Post-election and precarious pacification' (United Kingdom: African Books Collective, 2008) p.16

as 'anti-change' having voted for the *status quo*. After sometime, Kikuyu youth decided to fight back in Nairobi, Nakuru and Naivasha where they targeted the Luos and Kalenjins.<sup>16</sup>

The violence was manifested in different ways: spontaneous violence in urban centers, retaliatory violence by gangs like mungiki, organized violence by politicians as well as state violence by security officers. This violence was so overwhelming to the state that it could not shield its citizens from harm.<sup>17</sup>

In January 2008, there was violence in Nakuru, Eldoret, Naivasha and Kericho in the Rift Valley. Pregnant women, children and the disabled people were targeted during the clashes. The gangs used knives or machetes to kill. The Mungiki militia was involved in the violence, making the situation even worse. The violence involved militia (Luo, Mungiki and Kalenjin) attacking people as ordered by politicians, killings of ODM supporters by police as ordered by the government, actions of vigilante groups and people taking advantage of the crisis to destroy or grab property of rivals. Young men harassed motorists on the road. Violence was prevalent mainly in the urban areas. However, it also affected the rural areas. In Narok, there were several instances of cattle rustling.<sup>18</sup> In Kisii, both the ODM and PNU had the same number of MPs elected. There were riots. The pro-ODM youths threatened elders who they believed voted for Kibaki, a leader they considered dishonest.<sup>19</sup> In Eldoret, angry Kalenjin youth went to churches, police stations and schools where their enemies sought refuge.<sup>20</sup>

The police had a role to play in increasing the violence after it started. For instance, in Nyanza province, the police as ordered by the state, used excessive force to counter the activities of the protestors. This led to many deaths and human rights violations.<sup>21</sup> When violence started in Kisumu, the General Service Unit (GSU) and the police set out to stop the rioting and looting. After sometime, they became overwhelmed and decided to use live ammunition to counter rioters' actions. In slums such as mathare and kibera in Nairobi, the police used heavy live fire to

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<sup>16</sup> Njogu Kimani 'Healing the Wound: Personal Narratives About the 2007 Post-Election Violence in Kenya' (Nairobi: Twaweza Communications, 2009) p. 4

<sup>17</sup> Kagwanja Peter 'Courting genocide: Populism, ethno-nationalism and the informalisation of violence in Kenya's 2008 post-election crisis' *Journal of Contemporary African Studies* Vol. 27, No. 3 (July, 2009) pp. 365-387, 367

<sup>18</sup> *Ibid* p. 17

<sup>19</sup> Lafargue Jerome 'General Elections in Kenya, 2007' (Dar es Salaam: Mkuki na Nyota Publishers, 2009) pp. 181-182

<sup>20</sup> *Ibid* pp. 186

<sup>21</sup> Opolot Okia 'The Role of the Police in the Post Election Violence in Kenya 2007/2008' *Journal of Third World Studies* Vol. 28, No. 2 (2011) pp 260-261



contain protests leading to more deaths and many sexual assaults. In Eldoret, within a period of four days, the police shot people, killing 16 of them and leaving 58 injured.<sup>22</sup>

## **2.2 Causes of the Post Election Violence**

The major cause of the violence was the disputed presidential election. This is supported by Kagwanja who confirms that on 28 December, Odinga was leading after getting results from Western, Nyanza and Rift Valley. On 29<sup>th</sup>, the margin decreased to 38,000 votes and almost 90% of the votes were already counted. Most of the uncounted votes were from Eastern and Central Kenya, Kibaki's strongholds. People were waiting for the final results on 29<sup>th</sup> when the chair of the Electoral Commission of Kenya (ECK), Samuel Kivuitu, suspected that results from the districts near Nairobi were delayed since 'they were being cooked'.<sup>23</sup> This showed that something went amiss in the counting of votes. The ECK chairperson suspected that results were being cooked. Therefore, Kenyans also became suspicious of the results. They could sense that something was wrong.

Suspicion of the ECK chair acted as evidence that there was rigging of the election. Tension got to its climax when the ODM and PNU leaders disagreed over the accuracy of the results from Eastern and Central Provinces. The situation worsened when the ECK chair declared Kibaki the winner of the presidential election. He had 4,584,063 votes against Odinga's 4,352,993. Kibaki was sworn in after he was announced the winner even though his victory was objected by many. Violence erupted immediately after Kibaki was announced the winner of the presidential election. Odinga rejected the election results claiming that he was the legitimate winner. What is shocking is that even after the ECK chair said that the results were being 'cooked', he still went ahead to declare incumbent president Kibaki the winner of the presidential election.<sup>24</sup> The announcement of the 'winner' of the election by the ECK chair amidst protests showed that the electoral body could not be trusted. He was not sure about the winner of the election yet he went ahead to announce the results. He showed how incompetent ECK was when at some point he said that he did not know the winner of the election. The electoral body was very important in the Kenyan election yet it failed Kenyans because it was not able to clearly prove that incumbent president Mwai Kibaki was the winner of the election.

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<sup>22</sup> Ibid

<sup>23</sup> Kagwanja Peter 'Courting genocide: Populism, ethno-nationalism and the informalisation of violence in Kenya's 2008 post-election crisis' *Journal of Contemporary African Studies* Vol. 27, No. 3 (July,2009) pp. 365-387, 368

<sup>24</sup> Ibid

The ECK chair, said that there were irregularities in the election but that was a matter to be addressed by the courts. The ODM discarded the idea of going to court to resolve the electoral conflict as they argued that judges in court were appointed by Kibaki hence they would rule in favor of him.<sup>25</sup> ODM refused to go to court because over the years, the judiciary was viewed as not being a real arbiter in conflicts of electoral nature. Presidential candidates in 1992 and 1997 tried to challenge Moi's election in court in vain. Kenyans, for many years, have not had confidence in the judiciary as they perceive it as corrupt and easily manipulated by the state.<sup>26</sup> Therefore, the court could not be used to resolve the conflict. it was not in the best position to resolve an electoral conflict.

There were four kinds of irregularities. The first three took place away from Nairobi but the fourth one occurred at the KICC (Kenyatta International Conference Center) in Nairobi. The KICC was the tallying center. The irregularity that took place at the KICC affected the outcome of the presidential election. Irregularity was identified in the election as 15% dead voters were registered. It was also identified when the result presented voter turn out to figures that were higher than 100%. In constituencies of North-Eastern and North Rift where there were high illiteracy levels, it was suspected that government agents convinced ODM agents to allow them buy votes. There was also alteration of results when they were being transported from the polling stations to the tallying center. These irregularities impacted greatly on the final outcome of the presidential election. On 30 December, PNU and ODM observers all agreed that there were irregularities that affected 44 constituencies.<sup>27</sup>

According to economic and political weekly, many independent observers questioned Kibaki's victory due to rigging and other electoral malpractices. This shows that the presidential results was largely disputed and was the major cause of the post election violence in Kenya.<sup>28</sup>

Apart from the disputed presidential election, there are other factors that led to the continuance of the conflict. Personal narratives about the 2007 violence confirm that violence was not only about the results of the presidential elections. For one to comprehend the electoral crisis, one should look into long standing issues about land, impunity, ethicized politics, unemployment and poverty as well as the flaws of the Electoral Commission of Kenya. This

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<sup>25</sup> Ibid

<sup>26</sup> Njogu Kimani 'Healing the Wound: Personal Narratives About the 2007 Post-Election Violence in Kenya' (Nairobi: Twaweza Communications, 2009) pp. 3-4

<sup>27</sup> Lafargue Jerome 'General Elections in Kenya, 2007' (Dar es Salaam: Mkuki na Nyota Publishers, 2009) pp. 176-177

<sup>28</sup> Economic and Political Weekly 'Strains in Kenya' Vol. 43, No. 4 (January 26- February 1, 2008) p. 6

means that the attackers and rioters used the Kenyan crisis to express their economic frustrations.<sup>29</sup> As emphasized by analysts, electoral conflict is a recurrent issue in the process of democratization in Kenya. It is closely related to land policies that were formulated after independence particularly during the reign of President Kenyatta who allocated land to the Kikuyus in the Rift valley. Since that time, the kikuyus have been viewed as intruders in the Rift Valley.<sup>30</sup>

The Kenyan violence erupted partly because of complex and long accounts of land dealings among ethnic groups. Members of the ethnic group in power were allocated land or allowed to utilize land often at the expense of other ethnic groups. The Kalenjins and Kikuyus had past issues concerning land that were never addressed. This further fueled the post election violence. In 1939, before Kenya attained independence, the Kikuyus were forcefully moved from their land in central province. Their land was occupied by the white settlers. They went to settle in Rift Valley province.<sup>31</sup> After Kenya gained independence, more Kikuyus settled in the Rift Valley since they were protected by the power of Kenyatta who was the president at that time. During Moi's tenure, he used his powers to settle the Kalenjins in the Mau forest. In 2003, Kibaki forced the Kallenjins out of the Mau forest although some returned saying that they were given the land by Moi hence they had a right to it.<sup>32</sup> This fight over land characterized the violence in Kenya.<sup>33</sup> The United Nations High Commissioner for Human Rights further confirms that although, the disputed presidential election triggered the violence, it was fueled by the unresolved conflicts over land rights that had been there for a long time. The Kenyan constitution gave the president powers to lease land for 99 years as well as agricultural land for 999 years. In Kenya, politics is based on ethnicity and land is used to form alliances and strengthen support. Colonialists moved the Samburu, Nandi, Turkana and Maasai from their land. Kikuyus worked in the white highlands, after independence, Kikuyus bought the land that they were working on in areas such as Uasin Gishu, Trans Nzoia, Nakuru and Narok. During the tenure of Moi,

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<sup>29</sup> Njogu Kimani 'Healing the Wound: Personal Narratives About the 2007 Post-Election Violence in Kenya' (Nairobi: Twaweza Communications, 2009) pp.1-2

<sup>30</sup> Maupou H 'Revisiting post election violence: The General Elections in Kenya, 2007' (United Kingdom: African Books Collective' 2008) p. 203

<sup>31</sup> Roberts Mara J. 'Conflict Analysis of the 2007 Post-election Violence in Kenya' (Rowman and Littlefield, 2009) p.9

<sup>32</sup> Ibid

<sup>33</sup> Hickman John 'Explaining Post election violence in Kenya and Zimbabwe' Journal of Third World Studies (2011) Vol. 28, No. 1 pp. 29-46, 31

politicians from the Kalenjin and Maasai ethnic groups called for eviction of the Kikuyus from their land to Central Province.<sup>34</sup>

Kanyiga also confirms that the unaddressed land issues contributed to the post election violence. The manner in which the land question has been addressed contributed greatly to the violence. This includes the question of control of, access to and land rights in land that was known as the white highlands during the colonial period. Since independence, the government has not satisfactorily addressed land matters. After the colonial rule ended, the government came up with land reforms through land purchase programme and settlement schemes. These reforms are perceived to have turned the land question into an ethnic issue. People were allowed to control or access land based on their ethnic groups. Since the land question was ethnicized, it acted as a pillar for political conflict.<sup>35</sup>

For instance, in the first settlement schemes, the government and the white settlers focused on settling the Kikuyu at the expense of the Kalenjins. This created animosity between the two ethnic groups. The Kalenjins claimed to be given the right to land in an area they claimed was theirs since they had settled there before colonialists came to Kenya. Ethnicity was used as the means to get access to land.<sup>36</sup>

The Kalenjin saw the incumbent president Kibaki as a barrier to land access. They were motivated to vote ODM because they wanted to have access to the land they claimed was rightfully theirs. They wanted to prevent Kibaki from enjoying a second term in office. After they voted and felt that their votes had been stolen, tension began and when Kibaki was announced the winner, violence erupted.<sup>37</sup> Land was the driving force behind casting of votes by the Kalenjin people. They believed that ODM would help them get back their land once they were in office. This is why they were angered by the results that were announced after rigging of the elections.

Ethnicity is another factor that fueled the violence. At the end of Moi's tenure, people hoped that ethnicity had been eliminated. However it resurfaced in 2007 and was a threat to political and economic achievements that had been realized in the past five years.<sup>38</sup> Ethnicity in

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<sup>34</sup> United Nations High Commissioner for Human Rights 'Fact-finding Mission to Kenya' Report from UN Office of the High Commissioner for Human Rights (OHCHR) (6-28 February 2008) P. 6

<sup>35</sup> Kanyiga Karuti 'The legacy of the white highlands: Land rights, ethnicity and the post-2007 election violence in Kenya' *Journal of Contemporary African studies* Vol. 27, No. 3 (July 2009) pp 325-344, 326

<sup>36</sup> *Ibid* p 330

<sup>37</sup> Lafargue Jerome 'General Elections in Kenya, 2007' (Dar es Salaam: Mkuki na Nyota Publishers, 2009) p. 180

<sup>38</sup> Landau et al 'Who to blame and what's to Gain? Reflections on Space, State, and Violence in Kenya and South Africa' *Africa Spectrum*, Vol. 44, No. 1 (2009), pp. 99-110

the Kenyan society contributed to imbalance in development in the country. Political parties established to fight colonial rule were distinct ethnic unions since a single ethnic group could not win elections on its own. These political parties made it possible to gain political and economic power. Through ethnicity, access to resources was made easier and political power was preserved. As a result, communities that had people of their tribe as leaders seemed to be more developed as compared to others. Presently, the support of a political candidate is increased by the fact that he/she belongs to a particular ethnic group. It is perceived that if members of a particular tribe have one of them in State House, they can easily have access to the national cake.<sup>39</sup> Kenyan political parties are operated under ethnic lines. Value is attached to ethnicity rather than political policy and ideology. This is because the members of a particular tribe hope that state resources will be shared with them if the party they are inclined to wins the election.<sup>40</sup>

This is confirmed by the office of the AU panel of Eminent African Personalities which asserts that regimes in Kenya were focused on making sure that ethnic group of the sitting president had better access to political positions hence more development in their regions at the expense of other tribes.<sup>41</sup> Inequitable distribution of resources also fueled the violence. This can be attributed to the adoption of sessional paper number 1 of 1965 on African socialism and its application to planning in Kenya. According to the paper, there would be investment focused on regions that were considered as having great potential. These regions cover approximately 20% of Kenyan land and are along the railway line. Regions that did not have “great potential” were poorly developed hence the regional imbalances that exist today.<sup>42</sup> These neglected regions have poor access to education, health and roads. People living in such regions are frustrated hence they saw violence as a way of making their grievances known.

Hickman holds that people vote according to their ethnic groups. Voters believe that candidates will distribute patronage if they win office. Members of political parties in Kenya are viewed to belong to three ethnic blocs- Kalenjin/Maasai/Turkana/Samburu, Luo and Kikuyu/Meru/Embu. The 2007 election reflected years of competition among different tribes.<sup>43</sup> When Kenya became independent, Kenyatta and Moi ruled the country and their party; KANU represented an alliance between Kalenjin/Samburu/Turkana/Maasai and Kikuyu/Embu/Meru.

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<sup>39</sup> Guilbert, Laura and Gabriel Perez-Quiros 'Measuring the Economic Cost of the 2007/08 Post-Election violence in Kenya' (2012) p 3

<sup>40</sup> Ibid pp 6-7

<sup>41</sup> The Office of the AU Panel of Eminent African Personalities 'Back from the Brink: The 2008 Mediation Process and Reforms in Kenya' African Union Commission, 2014) p. 15

<sup>42</sup> Ibid

<sup>43</sup> Hickman John 'Explaining Post election violence in Kenya and Zimbabwe' Journal of Third World Studies (2011)Vol. 28, No. 1 pp. 29-46

Moi took over leadership after Kenyatta's death and favored the Samburu/Maasai/Turkana/Kalenjin. His rule came to an end when the NaRC's presidential candidate Kibaki supported by Odinga won the election. Kibaki failed to support Odinga for presidency after one term as they agreed hence the two had to contest for presidency in 2007. The Kikuyu/Embu/Meru voted for Kibaki while the Luo and Kalenjin/Maasai/Turkana/Samburu voted in favor of Odinga. A good number of the Luhya and the Kisii also voted for Odinga. When the ECK chairman Samuel Kiviutu announced Kibaki as the winner, violence erupted. The supporters of Kibaki and Odinga attacked each other.<sup>44</sup>

Traill holds that it was shocking to see dormant tribal cleavages brought to life by the political conflict. Odinga's supporters belonging to the Luo, Luhya and Kalenjin ethnic groups were chanting 'Kibaki must go' and 'No Raila no peace'. The political culture in Kenya is not only democratic but also ethnically inclusive.<sup>45</sup>

Biegon further supports ethnicity as one of the factors that led to the violence. He holds that the unprecedented electoral crisis was a result of deep tribal divisions as well as economic frustrations. Economic resources have been made accessible to the people that belong to the tribe of the president that is in power excluding members of other tribes. This has happened since independence hence deepening ethnic division in the country. Land is one of these resources. Therefore, post election violence erupted as reaction to exclusion of people in accessing resources based on tribes. Kenyans who were excluded were fighting to be included in sharing the national cake in the future.<sup>46</sup>

Lafargue and Katumanga also hold that Kenya has a tradition of political violence that reaches its climax at the time of elections especially since multiparty politics was introduced in 1991. The use of ethnicity in social as well as political relations creates tension during elections. After NaRC came into power, they were expected to fulfill promises such as addressing unemployment issue. After five years, there was a feeling that the government had not addressed such important issues as unemployment and land distribution. Ethnic groups that felt they were left out in matters of development vented out their frustrations through the violence.<sup>47</sup> Violence

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<sup>4</sup> Ibid

<sup>5</sup> Traill Richard 'Is Power Sharing the Answer in Kenya?' *Fortnight* No. 427 (February, 2008) pp. 5-6

<sup>6</sup> Beigon Japhet 'Electoral violence and fragility in Africa: drawing lessons from Kenya's experience in 2007/2008 post-election violence' Paper or presentation at the conference on 'Financial Markets, Adverse Shocks and Coping Strategies in Fragile Countries' (Accra, Ghana, 21-23 May 2009) pp. 7-8

<sup>7</sup> Katumanga Musambayi and Lafargue Jerome 'Kenya in Turmoil: Post-election violence and precarious pacification' (United Kingdom: African Books Collective, 2008) pp 13-32

was used to show that Kenyans were angered by the fact that the government had not addressed issues that affected them.

During the violence, Nicholas Kristof, a columnist of *New York Times* came to Kenya and in the Times issue of 21<sup>st</sup> February, 2008 he described the situation in Kenya as “primeval tribal tensions that threaten Kenya’s future”. He held that tribalism is a great problem in Africa. Before that, in its issue of 2<sup>nd</sup> January, the *Los Angeles Times* reported that in Kenya, there were “savage tribal killings”. Therefore the violence in Kenya was presented as violence based on tribe.<sup>48</sup>

Kagwanja holds that the Kenyan crisis can be attributed to the fact that ethnicity is used as an instrument by the Kenyan elite in their struggle for power. The leaders did not address corruption, poverty, the necessity for constitutional and institutional reforms as well as inequality. The leaders made a pillar for violence in 2007 when they turned to ethno-nationalism as their instrument to win an election that was hotly contested in the country.<sup>49</sup> For a long time, Kenyans have felt that their social and economic rights have not been fulfilled satisfactorily. This is due to high rate of unemployment, inequalities, poor access to water, decent housing, food and health. As World Bank presents, the inequality in Kenya is such that the wealthiest families control more than 42% of Kenyan income while the poorest ones live on 1% of the country’s income. Adult literacy rates as well as access to health care in provinces differ greatly, showing that some areas get the attention of the government for years yet others survive on little or no infrastructure or services.<sup>50</sup> Such issues fueled the Kenyan electoral conflict

### 2.3 Effects of the Post Election Violence

The violence started in form of riots in places where the opposition had won such as Kisumu, Mombasa and some areas in Nairobi like Kawangware, Kibera and Mathare slums. When the violence began in Kisumu, streets were destroyed but there were no deaths. In Nakuru, Eldoret and Kericho, there was peasant uprising planned by politicians. The Kisiis and the Cikuyus were targeted and there were violent deaths. The looting, murders and riots majorly

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<sup>48</sup> Ngeta Kabiri and Njogu Kimani ‘Ethnic Diversity in Eastern Africa: Opportunities and Challenges’ (Nairobi: Twaweza Communications, 2010) Kenya p. 3

<sup>49</sup> Kagwanja Peter ‘Courting genocide: Populism, ethno-nationalism and the informalisation of violence in Kenya’s Post-election crisis’ *Journal of Contemporary African Studies* Vol. 27, No. 3 (July, 2009) pp. 365-387

<sup>50</sup> United Nations High Commissioner for Human Rights ‘Fact-finding Mission to Kenya’ Report from the UN Office of the High Commissioner for Human Rights (OHCHR) 6-28 February 2008

took place in densely populated areas such as Western Kenya, Nairobi, Mombasa and Rift Valley.<sup>51</sup>

As Poster confirms, in regions such as the Coast and the Rift Valley, the Kikuyu and Kisii ethnic groups were targeted. The intention seemed to be to displace and destroy their property rather than to kill them. In Nyanza and Western provinces, target was government facilities. There was destruction and looting. Human Rights Watch holds that local and village leaders, politicians and businessmen also planned the violence as they recruited criminal gangs to carry out the violence.<sup>52</sup> This particularly took place in Nairobi and Rift valley. In Nakuru, Naivasha and slums in Nairobi, kikuyu gangs executed violence against Luhyas, Kalenjins and Luos and removed them from their areas of residence. Kalenjins attacked Kikuyus in the North Rift and expelled them from their residential areas. There was sexual violence targeted at women and girls in form of rape and forced female genital mutilation. Men were also forcefully circumcised. In some instances, people were forced to watch their family members as they were sexually abused. Gangs, citizens and security forces members such as the General Service Unit were identified as the sexual violence perpetrators.<sup>53</sup> It is surprising that the security forces that are given the mandate to protect the Kenyan people were among the people that abused Kenyans sexually.

The post election violence led to the displacement of at least 350,000 people, many victims of social violence, destruction of 491 government properties such as vehicles, offices, schools and health centers 117,216 government properties were also destroyed.<sup>54</sup> Kenya was being destroyed economically, socially as well as politically.

Violence took the form of youths blocking roads and burning homes of those that were seen as 'outsiders'. Agricultural activity was seriously interfered with since farmers were displaced from their fields. This threatened food security in the country. Health and education sectors were also interfered with as many professionals were displaced.<sup>55</sup>

The violence led to massive killings in the country. During the swearing in of president Kibaki, 10 people were killed in Kisii. Odinga's supporters burnt a church that provided refuge to about 200 Kikuyus and killed 35 people. The situation in the country became worse. About

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<sup>51</sup> Lafargue, Jerome 'General Elections in Kenya, 2007' (Dar es Salaam: Mkuki na Nyota Publishers, 2009) pp 182-183

<sup>52</sup> Poster Emily 'Post Election Violence in Kenya and its Aftermath' (Center for Strategic International Studies, 2009)

<sup>53</sup> Ibid

<sup>54</sup> Poster Emily 'Post Election Violence in Kenya and its Aftermath' (Center for Strategic International Studies, 2009)

<sup>55</sup> IRIN Humanitarian News and Analysis In-depth A service of the UN office for the Coordination of Humanitarian Affairs 'Kenya's Post election crisis' (2014)



1000 people lost their lives in the violence. Some of the displaced persons sought refuge with their relatives in places where people of their tribe dominated. Others depended on charitable organizations to offer assistance to them. Others went to Uganda as refugees. Women and children were sexually violated.<sup>56</sup> Most of the displaced persons were small scale farmers such as the Kamba, Kikuyu, Kisii who had lived in their homes for a long time. Some were junior Luhya or Luo civil servants living in the Central province and Eastern Rift Valley. In Nairobi, tenants in Kibera, Mathare, Kangemi, Kawangware and Eastleigh were forcefully moved out of their houses by their landlords if they were not of the same ethnic group.<sup>57</sup>

On 23<sup>rd</sup> January, 2008 as reported by the BBC, admissions for rape at the Nairobi hospital and Coast General hospital had doubled. Young girls were sexually violated in exchange for basic needs such as food. The violence greatly affected the economy. Businesses were closed leading to tax revenue losses of about \$ 29 million. Transportation of goods and services was blocked. For instance, the fishing industry suffered greatly due to the blockade. The prices of essential products sharply went up in several parts of the country. The transport of fuel and other goods and services to the neighboring countries such as Uganda and Burundi was disrupted. Burundi lost 3 million dollars in taxes every month because of importing commodities through Kenya as the Kenyan crisis interfered with supply routes of the region. The prices of commodities such as fuel that Kenya provides to the neighboring countries also increased.<sup>58</sup> The post election violence paralyzed Kenya's economy and brought to life the ethnic tensions that were dormant in the past.<sup>59</sup>

Lafargue supports this. Due to the violence, economic activities were put on hold. Because of the violence, mobility was reduced and there was no activity going on in the markets. Business people feared looting hence they stopped going to the markets. There were many barriers on the roads created by the police and vigilante. Roadblocks made it impossible for goods and services to be transported from one place to another. For instance, movement to the Western part of the country was blocked for transporters who belonged to the Kikuyu ethnic group.<sup>60</sup>

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<sup>56</sup> Shekhawat Seema and Modi Renu 'Aftermath of the Kenyan Crisis' Economic and Political Weekly, Vol. 43, No. 18 (May 3-9, 2008), pp. 25-

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<sup>57</sup> Lafargue Jerome 'General Elections in Kenya, 2007' (Dar es Salaam: Mkuki na Nyota Publishers, 2009) p. 187

<sup>58</sup> *ibid* pp. 25-27

<sup>59</sup> Katumanga Musambayi and Lafargue Jerome 'Kenya in Turmoil: Post-election violence and precarious pacification' (United Kingdom: African Books Collective, 2008) p 14

<sup>60</sup> Lafargue Jerome 'General Elections in Kenya 2007' (Dar es Salaam: Mkuki na Nyota Publishers, 2009) pp. 186-187

The violence had a great effect on antiretroviral HIV therapy in Kenya. For antiretroviral therapy to be effective, patients need to access medication frequently. Access to medication was interrupted because of the violence. Daily visits to the medical centers decreased due to lack of transportation and fear brought about by violence. The violence proved that patients suffering from HIV depend on a stable government to get access to medication. Reid et al support this.<sup>61</sup> The violence negatively affected the health sector. Particularly, those providing health care to HIV patients found it very difficult to do so. For instance, in Kibera slum in Nairobi, most of the health workers were Kikuyus who were targeted by Odinga's supporters. The attackers made it difficult for the health workers to provide antiretroviral drugs to patients hence treatment of HIV patients were greatly interrupted. Some health workers as well as patients who had travelled upcountry to vote could not travel back to Nairobi to report back to work due to the violence that affected transportation. As a result, health services to HIV patients were greatly interfered with.<sup>62</sup>

In the urban areas, violence impacted on small traders most of whom were Kikuyus. In rural areas, violence affected land owners who were believed to be 'outsiders'. Outsiders were those who did not belong to a particular community in a particular geographical area like the Kikuyus in most parts of the Rift Valley. The violence resulted into the destruction of homes belonging to 'outsiders'. Some of the people whose homes were destroyed had stayed there since 1960. The attackers knew the owners of some of the destroyed homes. Some 'outsiders' had been their neighbors for a very long time.<sup>63</sup>

Education was also affected. In 2008, the Kibaki government ordered schools to reopen. However, when students went to their various schools, some of them found out that their schools were used as shelters for the internally displaced persons. Many schools did not open in good time due to the violence. Some had been burnt down so learning could not go on. Rebuilding them would take quite some time hence affected students had to look for other schools to continue with their education.<sup>64</sup> The violence paralyzed education in the country. School going children could not go back to school at the time they were expected to. Others could not go back

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<sup>61</sup> Reid et al 'Providing HIV care in the aftermath of Kenya's post-election violence' A short Report on Conflict and Health (Medecins Sans Frontieres, 2008) pp 1-2

<sup>62</sup> Stewart Grace et al 'The consequences of post election violence on anti-retroviral HIV therapy in Kenya' *AIDS Care* Vol.23, No.5 (May, 2011) pp 562-568

<sup>63</sup> Lafargue Jerome 'General Elections in Kenya, 2007' (Dar es Salaam: Mkuki na Nyota Publishers, 2009) p. 185

<sup>64</sup> Traill Richard 'Is Power-Sharing the Answer in Kenya?' *Fortnight*, No. 457 (February, 2008) pp. 5-6

to their usual schools since they were closed down. Time for learning was wasted as students looked for other schools to enroll in.

The post election violence led to many children becoming orphans after losing their parents in the deadly violence. The number of destitute also went up. Many students dropped out of institutions of learning. It was also difficult for people to access good medical services as a result of the violence hence cases of illnesses went up in Kenya. These are some of the challenges that the country had to face as a result of the post election violence.<sup>65</sup>

The electoral crisis in Kenya also had global effects. For a long time, Kenya has been seen as model of democracy as well as stability for other states in Africa. The violence resulted into challenges for matters such as good governance, human rights and democracy in Kenya. The west saw the violence as an impediment to their commitment of nurturing of legitimate democracy in the whole world. The violence showed that Kenya was poorly governed in that the interests of the leaders overshadowed the interests of people. Due to the crisis, the global business partners of Kenya incurred losses.<sup>66</sup>

The post election violence in Kenya erupted as a result of disputed presidential elections. Irregularities were identified in the election and many objected the results. This led to a violent electoral system. Members of various ethnic communities used the violence to express their frustrations. Most of them felt that the government had not addressed issues that greatly affected them such as unemployment, poverty, inequalities and the land question. Ethnic cleavages that were believed to be dead were brought back to life during the violence. Different ethnic blocs fought against each other. The repercussions of this violent electoral conflict were far reaching. There were many deaths, displacement of people and destruction of property. The economy was also paralyzed as businesses could not go on as usual. Road blocks made transportation of goods and services difficult. This is why the conflict needed to be resolved. Civil society groups, Kenyans and the international community were concerned about the situation in Kenya. There was need for international mediation to end the crisis. The panel of eminent personalities under the auspices of the AU intervened to help in the resolution of the conflict and restore peace in Kenya. The panel included three mediators: former UN Secretary-General, Kofi Annan, former First Lady of Mozambique, Graca Machel and former Tanzanian president, Benjamin Mkapa.

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<sup>65</sup> Shekhawat and Modi 'Aftermath of the Kenyan Crisis' Economic and Political Weekly, Vol. 43, No. 18 (May 3-9, 2008) pp. 25-27

<sup>66</sup> Ibid

## **Chapter Three**

### **Mediation of the Kenyan Conflict by Multiple Mediators**

#### **3.0 Introduction**

This chapter is about the mediation of the Kenyan crisis by mediators under the auspices of the African Union (AU). It looks into the mediation attempts by different individuals before the AU mandated mediation. It also discusses what took place at every phase of the mediation of the Kenyan conflict.

The general elections in Kenya in December 2007 resulted into a big disaster. Violence erupted because the results of presidential election were disputed. More than one thousand people lost their lives and about 350,000 got displaced from their homes. Property worth millions of shillings also got destroyed during the violence. Kenyans could not solve this disaster. They did not accept the initial attempts of international mediation until when a panel of eminent African personalities under the auspices of the AU led by the former UN Secretary General, Kofi Annan intervened. This panel was able to bring the parties in conflict to the negotiating table in Nairobi.<sup>1</sup> The three mediators were given the task of mediating the conflict, coming up with ways of building a durable peace and helping in negotiation of a political agreement that would deal with the root causes of the conflict.<sup>2</sup> The panel identified that the root causes of the conflict were historical injustices, inequitable distribution of resources, poverty and exclusion in various sectors of the society.<sup>3</sup> The mediators had to come up with ideas on how the root causes of the conflict would be dealt with to avoid eruption of a similar conflict in the future. The acceptance of the panel of eminent personalities by parties in conflict gave Kenyans hope that the conflict would be resolved. It was a sign that peace would be restored since parties would negotiate and reach an agreement.

#### **3.1 Mediation Attempts in Resolving the Kenyan Crisis**

Various actors attempted to resolve the conflict in Kenya. Desmond Tutu attempted to mediate but the parties in conflict did not allow him to mediate. Both Kibaki and Odinga believed that they had won the election. The moment for mediation was not ripe hence the two

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<sup>1</sup> Jorgen Eklit 'The Role of International Organizations during Electoral Crises: The Case of Kenya 2007-2008' Representation Vol. 4, (2011)pp. 399-415

<sup>2</sup> The Office of the AU Panel of Eminent Personalities 'Back From the Brink: The 2008 Mediation Process and the Reforms in Kenya' (African Union Commission, 2014) p. 1

<sup>3</sup> Ibid p. 7

parties could not agree to come to the negotiating table to solve the problem in the country.<sup>4</sup> As a single mediator, Desmond Tutu was the first mediator to come to Kenya after the violence began. At this time, ODM accused PNU of rigging elections. President Kibaki was controlling the country through force. The streets had security forces and a ban was issued on media broadcasts. The country was in a crisis and the principals were not ready to negotiate. Kibaki insisted that ODM should take its complaints to court. ODM refused to go to court because to them, the courts were dominated by PNU allies hence there could be no justice.<sup>5</sup> They said that the judiciary was not independent as election petitions were always delayed. There were ten petitions after 2002 general elections which had not been adjudicated by 2007.<sup>6</sup> Civil society groups such as the national congress and Kenyans for Peace with Truth and Justice (KPTJ) also rejected the court as a solution to the crisis. The court was seen as biased.<sup>7</sup> It was believed that there was no justice in court hence ODM could not accept it as a solution to their problem. Mediation efforts of Archbishop Desmond Tutu could not help in resolving the conflict. The parties were not ready to mediate. They did not experience a mutually hurting stalemate so they believed they would achieve victory. They did not see a way out of their problem and a possibility of reaching an agreement that fulfilled their needs.

As violence escalated, other mediators rushed to Kenya. There were parallel and multiple mediations that complicated the subsequent efforts to find a diplomatic solution. Jendayi Frazier, the US assistant Secretary of State for African Affairs came on January 4<sup>th</sup> after Tutu. Four former presidents followed shortly after. Benjamin Mkapa of Tanzania, Kenneth Kaunda of Zambia, Joachim Chissano of Mozambique and Katumile Masire of Botswana arrived in the country on January 8<sup>th</sup>. They went with Frazier to Eldoret to meet those who had been greatly affected by the post election violence. AU Chairman, John Kufuor was invited by Kibaki. His coming coincided with the arrival of the former presidents. Ugandan president, Yoweri Museveni arrived in the country on 22<sup>nd</sup> January, the very day that mediation by the panel of eminent personalities began. The mediation efforts of Frazier, former presidents and Museveni

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<sup>4</sup> Odallo Beatrice An Analysis of the Post 2007 General Election Conflict Mediation Process in Kenya (Pretoria: University of Pretoria, 2010) p. 19

<sup>5</sup> Kaye and Lindenmayer A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya (New York: International Peace Institute, 2009) P. 4-5

<sup>6</sup> The office of the AU Panel of Eminent African Personalities 'Back from the Brink: the 2008 Mediation Process and Reforms in Kenya (African Union Commission, 2014) p. 9

<sup>7</sup> Kanyiga Karuti 'Stopping a Conflagration: The Response of Kenyan Civil Society to the Post-2007 Election Violence' Vol.38, No.1 (2011) pp. 85-109

turned out unsuccessful.<sup>8</sup> The ODM rejected Museveni because he had congratulated Kibaki after he was declared the winner of presidential elections. They viewed him as being on Kibaki's side hence he could not act as a mediator.<sup>9</sup> The former presidents and the former US Assistant Secretary of State were unsuccessful in their mediation efforts because the parties in conflict were not ready for any mediation exercise. These unsuccessful mediation efforts showed that it is a waste of time to try to mediate a conflict if the time is not ripe.

Kufuor met Kibaki at state house and Odinga of the ODM at the intercontinental hotel in Nairobi. Museveni's efforts before mediation by the panel began were favoured by PNU but rejected by the ODM.<sup>10</sup> All the parties in a conflict must accept a mediator for mediation to be carried out. If one party does not accept the mediator, there will be no mediation. This is why Museveni could not mediate in the Kenyan conflict. ODM did not have confidence in him. The PNU accepted him because he had congratulated Kibaki after he was announced the winner of the election. They knew he would rule in their favour. Since he was not accepted by both parties, he could not mediate.

The African Union intervention in the Kenyan crisis consisted of the use of good offices by Kufuor, the AU chairperson and mediation by eminent African personalities chaired by Kofi Annan. President Kufuor was in Kenya for three days. His intention was to facilitate negotiations between the parties in conflict by the use of good offices. In the use of good offices, a third party tries to make sure that a conflict does not escalate and facilitates movement of the parties in conflict towards negotiations.<sup>11</sup> President Kufuor later announced that there would be a mediation exercise conducted by Kofi Annan, chairing a panel of eminent African personalities. Kufuor had certain accomplishments. Firstly, the parties agreed that the violence should end. Secondly, they agreed that they should hold peace talks facilitated by the eminent persons and thirdly, that every issue would be addressed including electoral and constitutional reforms.<sup>12</sup> This is supported by Ikejiaku who holds that Odinga had initially refused to hold talks with Kibaki directly unless Kufuor took part in those talks. On 9<sup>th</sup>, January 2008, Kufuor met with Kibaki and Odinga but separately. Later, the parties agreed that violence should cease and ways

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<sup>8</sup> Kaye and Lindenmayer A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya (New York: International Peace Institute, 2009) p. 5

<sup>9</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' Journal of Contemporary African Studies Vol. 27, No.3 (July, 2009) pp. 407-430

<sup>10</sup> Ibid P. 5-6

<sup>11</sup> Mwangi Makumi The Water's Edge (Nairobi: Institute of Diplomacy and International Studies, 2008) pp. 55

<sup>12</sup> Ibid, pp. 60

of peacefully resolving the crisis should be sought.<sup>13</sup> Therefore, Kufuor's presence was very important in bringing the parties to agree to negotiate. It brought the parties in conflict to the realization that there was a possibility of them negotiating to bring an end to the violence and restore peace in the country. Kenyans were suffering hence the conflict had to be resolved.

AU chair, Kufuor talked to Kofi Annan, asking him to mediate together with the other Eminent African persons and help in resolving the Kenyan crisis.<sup>14</sup> Akpedonu et al further confirm that during the violence, Kufuor came in the country to attempt to negotiate an agreement between the parties in conflict. Due to his intervention, there was an agreement to resolve the conflict with mediation by eminent African persons chaired by Kofi Annan.<sup>15</sup> Kufuor wrote a letter to Kofi Annan, requesting him to take up the role of principal mediator of the panel. He was to work in collaboration with the other members of the panel to resolve the conflict.<sup>16</sup>

Kufuor's good offices ensured that the parties agreed to negotiate and that they accepted the people that were to act as mediators in negotiations. It also led to the creation of a panel of eminent African personalities, representing the AU to mediate in the electoral conflict.<sup>17</sup> This panel was supported by the AU, EU, US and Britain in its efforts to resolve the Kenyan crisis.<sup>18</sup> The EU Commissioner, Louis came to Kenya to offer moral support to the mediators as well as the mediation process. His statement showed that the EU offered leverage to the mediators. He told Kibaki and Raila that EU would firmly deal with anyone who interfered with the negotiations.<sup>19</sup> The mediation efforts were also supported by the UN. On February 1<sup>st</sup>, the UN Secretary-General Ban Ki moon emphasized this. He stated that the UN supported the efforts of Kofi Annan and the mediating team.<sup>20</sup> Annan asked for international support. He called the AU, UN, EU and US. He explained how his team would approach the conflict and the kind of support they needed. Ban Ki Moon allowed the mediators to get support from UN staff who would act as

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<sup>13</sup> Ikejiaku, Brian Vincent African Union, conflict and conflict resolution in Africa: A Comparative Analysis of the Recent Kenya and Zimbabwe conflicts International Journal of Development and Conflict Vol. 1, No.1 (2011) pp.61-83

<sup>14</sup> Weiss Thomas G. Great Decisions: Halting Atrocities in Kenya (New York: Bunche Institute for International Studies, 2010) P.21

<sup>15</sup> Akpedonu et al Keeping the peace: Lessons learned from preventive action towards Kenya's 2013 elections Geneva peace building platform paper no. 19, 2013 pp. 4

<sup>16</sup> Kaye and Lindenmayer A Choice for Peace? The Story of Forty-One Days of mediation in Kenya (New York: International Peace Institute, 2009) p. 6

<sup>17</sup> Mwagiru Makumi The Water's Edge (Nairobi: Institute of Diplomacy and International Studies, 2008) p. 68

<sup>18</sup> Southhall Rojer and Peter Kagwanja Introduction: Kenya-A Democracy in Retreat? Journal of Contemporary African Studies Vol. 27, No.3 (2009) pp. 259-277

<sup>19</sup> The Office of the AU Panel of Eminent African Personalities 'Back from the Brink: the 2008 Mediation Process and Reforms in Kenya (African Union Commission, 2014) P.31

<sup>20</sup> Kaye and Lindenmayer A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya (New York: International Peace Institute, 2009) p. 10

secretariat. They got logistical and administrative support from UN agencies in Nairobi. UN Department of Political Affairs set up the secretariat. AU also gave the mediators their staff to help in the process.<sup>21</sup>

The international community was in support of the entire process of mediation. It was willing to fund the process in good time so that the negotiations were not delayed. Funding was done for mediators to work without constraints attached to government grants. AU Commission Chair, Jean Ping called the mediators to give moral support and find out how AU would support the mediation process.<sup>22</sup> Intergovernmental Authority on Development (IGAD) came to support mediators and to show solidarity with Kenyans following a decision of IGAD Summit in Addis Ababa.<sup>23</sup> The international community had confidence in the mediators. This is why the mediation exercise conducted by the panel was fully supported by the AU, EU, UN, US, IGAD and Canada. International community provided moral support and support in terms of leverage. This was very important to the mediators as well as the mediation process. Support from the international community contributed greatly to the success of the mediators in resolving the Kenyan conflict.

Annan insisted that only the mediators belonging to the panel would mediate in the conflict. There would be no other alternatives unless the parties in conflict agreed with the proposals of other actors. The lack of coordination in the previous weeks of the violence could not be seen again. The multiple mediation efforts were not properly coordinated. The mediators did not bring their efforts together to help in restoring peace in Kenya. This shows how complex multiple mediation is in conflict resolution. If multiple mediators do not work together, they are highly likely to be unsuccessful in their efforts. According to Annan, the actors had noble intentions but had inadequate resources or tools hence their efforts failed. No one was allowed to interfere in the mediation unless the panel asked for his/her support. Africa had a great interest as well as skill to find an African solution to an African crisis.<sup>24</sup> The mediating team had skills, experience and expertise to handle the Kenyan conflict. These eminent persons enjoyed respect in the country as well as internationally. Therefore, confidence was raised in the mediation

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<sup>21</sup> The Office of the AU Panel of Eminent African Personalities 'Back from the Brink: the 2008 Mediation Process and Reforms in Kenya (African Union Commission, 2014) p. 23

<sup>22</sup> Ibid p.33

<sup>23</sup> Ibid p.36

<sup>24</sup> Ibid p. 6



process.<sup>25</sup> The skills, expertise and experience that the mediators had were important in the mediation. They had seen such conflicts before and knew how they would approach the conflict and ensure a mutual agreement was reached. Since they were respected persons, Kenyans as well as the international community had confidence in them.

When the mediators arrived in Kenya, they found a country that had sexually assaulted women, internally displaced persons, and 18 out of 134 schools closed with about 240 teachers failing to go to work because of fear for their lives. This showed that there was a crisis that had to be dealt with immediately. As Annan put it “the purpose of our mission is to help the Kenyan people find peace and a just solution in the current crisis. We expect all people to work hard to find a solution. The interests of the nation and the people must be paramount.”<sup>26</sup> As soon as they arrived in the country, they pointed out that the interests of Kenyans were to be put first. They intended to work hard to achieve peace and fulfill the interests of Kenyans. Their goal was to help find a solution to the problem in the country. The fact that they were all working to achieve a common goal contributed greatly to their success.

The panel of eminent personalities came to Kenya on 22<sup>nd</sup> January, 2008. During the first week, there were consultations with different stakeholders in and outside the country. For the first time since the beginning of the conflict, Kibaki and Odinga shook hands. This was a very important step since it showed that the parties were willing to find a solution to their problem. It raised the hope of the Kenyan people that the problem would be solved. Former Tanzanian president, Benjamin Mkapa was involved in Swahili translations during the press conferences. This was to involve the locals in the process. On 29<sup>th</sup> January, the parties agreed on the agenda. The first three items on the agenda were to be discussed in a period of four weeks. These were: immediate cessation of violence and restoration of basic rights and freedoms. Immediate measures to deal with the humanitarian crisis, reconciliation, healing and restoration of calm and strategies to attend to the political problem. The fourth agenda was to be addressed within a period of one year.<sup>27</sup>

Efforts of the mediators in mediating the Kenyan crisis were based on the concept of liberal peace which has been used to end conflicts in countries such as Congo, South Africa and

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<sup>25</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election crisis' *Journal of Contemporary African Studies* Vol.27, No.3 (July, 2009) pp. 407-430

<sup>26</sup> Saeed Shabazz 'Kofi Annan- Kenya Bound' *New York Amsterdam News, New York*, 24<sup>th</sup> January- 30<sup>th</sup> January, 2008, p.2

<sup>27</sup> Weiss Thomas G. 'Great Decisions Halting Atrocities in Kenya' (New York: Bunche Institute for International Studies, 2010) PP. 21-22

Sudan. The concept of liberal peace has it that there should be a negotiated resolution of a conflict through power sharing between former enemies in a grand coalition government.<sup>28</sup>

### 3.2 Mediators of the Crisis

Mediation of the Kenyan crisis involved former Secretary-General of the UN, Kofi Annan, former Tanzanian President, Benjamin Mkapa and former First Lady of Mozambique, Graca Machel as mediators.

Kofi Annan has many years experience in mediation. He is a renowned personality internationally. He has a great political experience and exceptional skills for negotiation that can bring parties to the negotiating table. There had been tragedies when he was the Secretary-General of the UN. Therefore, he knew that another crisis would have devastating effects in East Africa and the African continent as well. He felt that he was morally obligated to ensure that peace was restored in Kenya. On 16<sup>th</sup> January, Annan fell ill. While in the hospital, he talked with renowned political actors and leaders globally to get support for the mediation process he was to lead. According to him, the process was to be transparent as well as inclusive of civil society groups such as women's groups and religious leaders. He was able to convince the parties to negotiate.<sup>29</sup> Annan's international standing enabled him to shame and threaten and also cajole and coax the negotiators when they were required to make decisions during the negotiations.<sup>30</sup>

Benjamin Mkapa was familiar with the parties in conflict as well as the citizens of Kenya. He was a neighbour who understood the Kenyan conflict.<sup>31</sup> He translated the press conferences into Swahili to ensure that everyone in the country could understand what was being said. It was important that the messages were delivered to the people by a person they could trust.<sup>32</sup> Being a former journalist, he emphasized the importance of the media. Involving the media in the mediation process would help to avoid false rumours about the process. Decisions made in the negotiations were publicized throughout the process.<sup>33</sup> He urged the parties to put their demands

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<sup>28</sup> Peter Kagwanja and Rojer Southhall Kenya's Uncertain Democracy: The Electoral Crisis of 2008 (:Routledge, 2013)P. 16

<sup>29</sup> Kaye and Lindenmayer A choice for Peace? The Story of Forty-One Days of Mediation in Kenya (New York: International Peace Institute, 2009) pp. 8-9

<sup>30</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' Journal of Contemporary African Studies Vol. 27 No. 3(July, 2009) pp. 407-430

<sup>31</sup> Ibid

<sup>32</sup> Kaye and Lindenmayer A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya (New York: International Peace Institute, 2009) p. 10

<sup>33</sup> The Office of the AU Panel of Eminent African Personalities 'Back from the Brink: The 2008 Mediation Process and Reforms in Kenya (African Union Commission, 2014)P. 29

aside and have the interests of Kenyans at heart. He stated that it did not matter who Kenyans voted for. The leaders were to work to serve them.<sup>34</sup>

Graca Machel had a strong international standing. She had experience in addressing such crises as well as a gender perspective. She had knowledge of the politics in Kenya after chairing the Africa Peer Review Process in 2005 and 2006 in the country. The three eminent persons were committed to resolving the Kenyan crisis. Mediators had consultations with various stakeholders in the country to foster public dialogue and ensure that people had confidence in the negotiations.<sup>35</sup> The skills and knowledge that the mediators had were very important in mediation to resolve the crisis in the country.

Annan engaged in pre-mediation diplomacy with his team soon after they came to Kenya. The panel met with former president Chissano, ODM leaders, speaker of the national assembly and president Yoweri Museveni to come up with the framework under which mediation would be conducted. Pre-mediation diplomacy led to the first meeting between the parties in conflict on 24<sup>th</sup> January. According to Annan, this first meeting was a symbol of hope to the people of Kenya.<sup>36</sup>

The negotiating team from the PNU side included Sam Ogeri, Mutula Kilonzo and Martha Karua. Their liaison officers were Dr. Ludeki Chweya, Moses Wetangula and Gichira Kibaara. The negotiators from the ODM side were William Ruto, Sally Kosgei, James Orenge and Musalia Mudavadi. Their liaison officer was Karoli Omondi. The two teams were to negotiate the schedule of the negotiations under Annan's mediation.<sup>37</sup>

Various groups in the country provided the mediators with information about the history of Kenya, the nature of the post election violence, relationship between the parties in conflict as well as the grievances of the Kenyan people since independence. This information was important to the formulation of the agenda that would address reforms in the country. The mediators helped the parties to fix their eyes on finding solutions to the issues on the agenda.<sup>38</sup> Mediators got help from civil society groups. These included Concerned Citizens for Peace (CCP) and Kenyans for Peace, Truth and Justice (KPTJ). Machel focused on ensuring that women groups provided

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<sup>34</sup> Ibid p. 37

<sup>35</sup> Juma Kathina Monica African Mediation of the Kenyan Post-2007 Election Crisis *Journal of Contemporary African Studies* Vol. 27, No. 3, (July, 2009) pp. 407-430

<sup>36</sup> Mwangi Makumi *The Water's Edge* (Nairobi, Institute of Diplomacy and International Studies, 2008) p. 98

<sup>37</sup> Ibid p. 108

<sup>38</sup> The Office of the AU Panel of Eminent Personalities 'Back from the Brink: the 2008 Mediation Process and Reforms in Kenya (African Union Commission, 2014) p.2

information about women's problems so that they would be addressed. Kenyan Private Sector Alliance (KEPSA) and Kenya Association of Manufacturers (KAM) were used to help mediators get the point of view of the private sector. Information about the violence provided by the civil society helped the mediators in coming up with solutions to the crisis.<sup>39</sup> Kenyan stakeholders such as the civil society groups and women groups were very helpful in providing advice and information to the mediators.

### 3.3 Pre-mediation phase

The opening ceremony for mediation was chaired by the speaker of parliament, Kenneth Marende. It took place in parliament and was broadcast live. The mediators aimed at fostering solidarity through working at achieving a common goal. The goal was to achieve justice, durable peace as well as stability in the country through the rule of law and respect for human rights.<sup>40</sup> After the mediators had stayed in Kenya for one week, the parties agreed to dialogue. They were to be represented in the negotiations by team members that they had appointed. During this first week, the panel's secretariat in consultation with team members produced the agenda (road map) for the negotiations including the panel's structure and terms of reference, the rules of procedure and the modalities for the negotiation. The road map was accepted.<sup>41</sup> It was important for the parties to agree on the agenda for the negotiations. The agenda had the guideline for the negotiations. It also clearly spelt out what the parties were to negotiate.

There were four items on the agenda. The first one was: immediate action to stop violence and restore fundamental human rights and liberties. The second one was: immediate measures to address the humanitarian crisis, promote reconciliation, healing and restoration. The third one was: to overcome the political crisis. The fourth one was: to address long term issues such as unemployment, poverty and inequality, land reform, impunity, national cohesion and transparency. Agenda provided the structure and motivations in the negotiations. The chief mediator, Annan, publicly announced that there could be cessation of violence in one week, short-term issues could be addressed in twenty eight days, and the long-term issues could be addressed within a period of one year.<sup>42</sup> Mediators started with the less contentious matters so as

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<sup>39</sup> Ibid p. 29 and 30

<sup>40</sup> The Office of the AU Panel of Eminent African Personalities 'The 2008 Mediation Process and Reforms in Kenya (African Union Commission, 2014)P. 26

<sup>41</sup> Kaye and Lindenmayer 'A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya (New York: International Peace Institute, 2009) p. 10

<sup>42</sup> Ibid

to build confidence in dealing with the contentious ones.<sup>43</sup> Dividing issues into two categories made it easier for parties and mediators to deal with conflict. They could exhaustively address every issue at its own time before moving on to the next.

The mediators came up with the annotated agenda, considering that Kenya was divided and the two major political parties had to work together. None could govern alone. Mediators argued that a good number of institutions such as the ECK did not have credibility leading to the eruption of the violence. Root causes of the conflict especially land matters had to be addressed to avoid another conflict in the future. It was not possible to get the truth about the winner of the elections hence a political agreement could end conflict and provide the framework for dealing with long-term matters.<sup>44</sup>

According to the mediators, Kenyan issues would be addressed in two phases: the short term that would solve the political problem and the long term that would address land issues affecting Kenyans right from the colonial period. Although Annan said that they had not come to the country with solutions to the problem, they had thought of ways of resolving the conflict.<sup>45</sup>

Cessation of violence was the first item on the agenda to allow negotiations to take place in a peaceful environment. Negotiations began in the Serena hotel in Nairobi. It was a windowless and well-guarded room. It was perceived that the principals were committed to reach an agreement peacefully.<sup>46</sup> It was a big step to bring the parties to the negotiating table so that they could resolve electoral conflict.

The mediators held that item one on the agenda could be achieved by bringing the violence to a halt, investigating and prosecuting the perpetrators of the violence, lifting the ban on media coverage to make sure there were no rumors, and banning vernacular radio stations from broadcasting messages of hate. To obtain item two, humanitarian assistance was needed. It was proposed that Members of parliament should make visits to areas that were affected. Item two also needed a fund set up for affected people. The government set up a fund for helping and resettling the victims of the violence on 30<sup>th</sup> January.<sup>47</sup> The mediators chose to be directive in this mediation. They came up with solutions to the problems that Kenyans were facing and their

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<sup>43</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' *Journal of Contemporary African Studies* Vol. 27, No.3, (July, 2009) pp. 407-430

<sup>44</sup> The Office of the AU Panel of eminent African Personalities 'Back from the Brink: the 2008 Mediation Process and Reforms in Kenya' (African Union Commission, 2014) p. 18

<sup>45</sup> Mwangi Makumi The Water's Edge (Nairobi: Institute of Diplomacy and International Studies, 2008) p. 99

<sup>46</sup> Kaye and Lindenmayer A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya (New York: International Peace Institute, 2009) P. 11

<sup>47</sup> Mwangi Makumi The Water's Edge (Nairobi: Institute of Diplomacy and International Studies, 2008) p. 111

ideas were accepted by parties in conflict. Being directive made them handle issues faster so that the conflict was resolved within a short period of time.

The third and fourth items on the agenda raised questions about the mediators' role; whether the mediators should be directive or whether the parties should be allowed to negotiate and reach an agreement. Annan, in consultation with the other mediators, proposed that the third item could be obtained by power sharing, a review of the constitution of Kenya and reforms of electoral laws to avoid electoral conflicts in future. To achieve the fourth item, mediators proposed that there should be land reforms. Poverty, regional imbalances, unemployment and inequality should be addressed. There should be efforts towards achieving national cohesion. Mediators' suggestions raised questions of whether the outcome of the mediation of the Kenyan crisis was pre-determined or whether it was an outcome that was reached by the parties through negotiations.<sup>48</sup> Outcome based on mediators' suggestions would be perceived as pre-determined rather than negotiated by the parties in conflict. It was perceived that they had come to the country with solutions to Kenyan problems in mind.

During this phase, certain preliminary issues that might have delayed the launching of the mediation were addressed. These were such as the identity of some negotiators. The ODM did not want Mutula Kilonzo on the PNU side because he belonged to the ODM Kenya yet negotiations were between PNU and ODM. Later on, it was agreed that he would stay. Another issue was whether it was important that there were officers known as 'liaison officers'. They were later renamed as secretaries. The other issue was a question of whether what was taking place was mediation or a national dialogue. It was also questioned whether the disputed presidential elections should be addressed as a third item on the agenda. These issues were addressed hence they did not derail the mediation.<sup>49</sup> It was important to address such issues before actual mediation began. It was important for every member of the negotiating teams to be accepted by everyone so that there would be meaningful negotiations. The team members needed to have confidence in each other for negotiations to go on. The method used to resolve the Kenyan crisis was mediation. The negotiations were conducted in the presence of parties in conflict as well as a third party (multiple mediators), therefore, mediation.

During the first meeting of the team consisting of representatives from the ODM and PNU sides, there were negotiations about the agenda items that mediators had proposed. In a

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<sup>48</sup> Mwangi Makumi The Water's Edge (Nairobi: Institute of Diplomacy and International Studies, 2008) p. 112

<sup>49</sup> Ibid p. 114

press briefing, the spokesmen of ODM and PNU announced that most of the agenda items had been agreed. A number of agreements were reached in the first phase of the mediation. One of the agreements was that a truth and reconciliation commission would be established. It was also agreed that there should be efforts to resettle the internally displaced persons and that there should be freedom of expression, press and peaceful assembly. Leaders of political parties were to promote peace, healing and reconciliation. After these agreements, the government lifted the ban on live coverage by the media.<sup>50</sup> This proves that sometimes, certain agreements can be reached in the pre-mediation phase even before beginning negotiations in the mediation phase of the mediation process. With the help of the mediators, the parties agreed on the agenda items.

During this phase, states and institutions like the UN made threats that could fasten the mediation process. They supported the mediators by offering leverage. Canada and USA threatened to ban Kenyan families and leaders who were thought to be perpetrators of violence from entering their states. The UN made a threat of moving its office from Nairobi if the problem was not solved.<sup>51</sup> The US Congressional subcommittee on Africa, UN Security Council and EU threatened to intervene if parties could not reach an agreement.<sup>52</sup>

This brings out the use of directive strategies such as threats in mediation. As Bercovitch puts it, in most cases, the use of directive strategies contributes to the success of mediation.<sup>53</sup> The states and institutions that issued these threats supported the Annan led mediation in Kenya. They used directive strategies to influence the mediation in Kenya because they had the resources to do so. The US and Canada threatened to deny Kenyans the prestige they enjoyed when they travelled to their countries to move the mediation process forward. Kenya could not afford to lose the prestige of having the UN office in Nairobi. The parties had to compromise and resolve the crisis. This proves that sometimes when negotiations seem to deteriorate, directive strategies can be used to make the parties negotiate an agreement.

On 1<sup>st</sup> February, 2008, the agenda on mediation was agreed on. Firstly, talks would be held about ending the violence, enhancing security of Kenyans and their belongings, upholding the press freedom and freedom of speech. Secondly, humanitarian assistance would be provided effectively to affected people. Violators of human rights would be brought to book. The process

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<sup>50</sup> Mwangiru Makumi *The Water's Edge* (Nairobi: Institute of Diplomacy and International Studies, 2008) pp. 115-116

<sup>51</sup> *Ibid*

<sup>52</sup> The Office of the AU Panel of Eminent African Personalities 'Back from the Brink: the 2008 Mediation Process and Reforms in Kenya' (African Union Commission, 2014) p.23

<sup>53</sup> Bercovitch Jacob 'Mediation and Conflict Resolution' (London: Sage, 2009) pp. 340-354

of restoration, reconciliation and healing was to start immediately. Thirdly, there would be discussions about adjustments of legal, institutional and constitutional frameworks and lastly there would be talks on legal, institutional and constitutional reforms, addressing unemployment, inequalities, poverty, land question, transparency, impunity and accountability as well as consolidating national cohesion and unity.<sup>54</sup> The negotiators decided that violence would be stopped by disarming militias and making sure that security forces worked as required by the constitution as well as the law. After making this decision, blocked roads were opened and the killings ended. On 4<sup>th</sup> February 2008, negotiations on item two of the agenda were completed. There was humanitarian relief including operation 'Rudi Nyumbani.'<sup>55</sup>

### 3.4 Mediation Phase

During the mediation phase, item 3 on the agenda, the outcome of the presidential elections was discussed on 5<sup>th</sup> February, 2008. The mediators and the Western states had the view that power sharing was the solution to the crisis. Item one and two on the agenda were not political. Therefore, the constitution and power structures in Kenya would not be involved in addressing them. They were addressed in only one week. Item three was different because it was political. Its outcome needed amendments to the constitution of Kenya. Initially, the ODM wanted a recount of the presidential votes and a re-run of the elections. PNU had responded that ODM should go to court if they had complaints about the election. Power sharing seemed to be unavoidable in resolving the conflict. The mediators had the task of coming up with a formula for power sharing that would actually work. They also had the task of reviewing the constitution, electoral laws and institutions.<sup>56</sup> The mediators had the task of persuading the parties to agree to share. They had to convince leaders to adopt a power sharing agreement since it seemed to be the solution to the political problem.

When the negotiations on item 3 began, Annan described the matter as 'very hot'. Because the matter was hot, suspicion and distrust increased among the parties. For the first time since the negotiations began, they had lunch separately. Annan postponed negotiations to the next day. He confessed that he could not have managed to mediate alone without the help of Mkapa and Machel.<sup>57</sup> Mkapa and Machel made numerous efforts to move the mediation

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<sup>54</sup> Mwangi Makumi The Water's Edge (Nairobi: Institute of Diplomacy and International Studies, 2008) pp. 117-118

<sup>55</sup> Juma Kathina Monica African 'Mediation of the Kenyan Post-2007 Election Crisis' Journal of Contemporary African Studies Vol.27, No.3 (July, 2009) pp.407-430

<sup>56</sup> Mwangi Makumi The Water's Edge (Nairobi: Institute of Diplomacy and International Studies, 2008) pp. 121-122

<sup>57</sup> Ibid p. 122



forward. Mkapa argued that since they had worked together in the past, finding a common ground was not something hard for them. Machel maintained that the negotiators should put their political or personal interests aside where necessary because the fate of Kenya depended on them.<sup>58</sup> She stated that the country was bleeding and was divided hence people were to be reunited and every Kenyan was to feel a sense of belonging. Divisions were widened in the 2005 referendum and these had to be done away with.<sup>59</sup> The three mediators urged the parties to come to an agreement to end the suffering of Kenyans. They persuaded the parties to solve the problem as this was their mission in the country. They had to ensure that peace was restored in the country.

On the first day of the negotiations about the disputed presidential elections, the ODM held that PNU had rigged the elections and had manipulated the results of the presidential election at the Kenyatta International Conference Center (KICC). ODM held that Odinga had won in six provinces while Kibaki had won in only two hence ODM was the winner. They wanted a re-run of the elections or creation of an interim government in preparation for fresh elections. On the other hand, PNU maintained that results of the presidential results were verified by representatives of both parties. They claimed that ODM rigged the elections in its strongholds. They maintained that ODM should go to court if they did not accept the result of the presidential elections.<sup>60</sup>

To move the mediation process forward, mediators agreed that election experts were to be brought in to clarify election matters. The experts were to brief the negotiators on the strengths and weaknesses of the options that they had. Information was provided on recount, fresh elections and rerun. For a recount to be carried out, all the 27500 ballot boxes were to be opened. This could take a lot of time and did not guarantee a fairer result. A rerun meant that there were flaws in the former elections. It would be divisive as well as politically dangerous. Fresh elections would take a year hence could not solve the current crisis.<sup>61</sup> Getting the truth about the elections would take a long time yet the country was still at a risk of escalating violence. The country needed immediate solution to the electoral crisis. The mediators thought of

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<sup>58</sup> Kaye and Lindenmayer *A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya* (New York: International Peace Institute, 2009) p. 13

<sup>59</sup> The Office of the AU Panel of Eminent African Personalities *Back from the Brink: The 2008 Mediation Process and Reforms in Kenya* (African Union Commission, 2014) p.37

<sup>60</sup> Mwangi Makumi *The Water's Edge* (Nairobi: Institute of Diplomacy and International Studies, 2008) p. 122-123

<sup>61</sup> Kaye and Lindenmayer *A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya* (New York: International Peace Institute, 2009) p. 13

every possible way that could make parties compromise. They brought in the election experts so that the parties could understand that power sharing was the only solution to the crisis.

On the second day of negotiations on item 3 on the agenda, the parties proposed how the conflict would be resolved. They agreed that there would be no recounting of votes since it was not feasible. None of the presidential candidates had scored 25% of the cast votes in five provinces as the law demanded. They briefed the principals (Raila and Kibaki) on what was going on during the negotiation, since they were not present at the negotiating table. The principals had to agree with the positions that their representatives were taking for negotiations to go on. Though ODM still held that Kibaki had not won the election, they proposed that there should be a government in which executive power would be shared equally between them and PNU. Such a government would govern Kenya for a period of 3-6 months, making reforms to pave way for a new election. PNU had earlier insisted that the electoral conflict was to be resolved as required by the law. Later, they agreed that there should be comprehensive constitutional reforms and the formation of a truth and reconciliation committee. The international community mounted pressure on the parties to reach an agreement. For instance, the EU issued a warning that if anyone disrupted the mediation, they would be punished by the international community.<sup>62</sup>

There was a possibility of a deadlock and the mediators had to find a way of moving the negotiations forward since there was a slow down on the negotiations. The chief mediator included other constituents in order to mount pressure on the negotiators to resolve the conflict. For instance, he used the media to reprimand the principals publicly:

“You have heard the business community talk about what this crisis is doing to the economy. 49000 people have already lost their jobs and more may be on the way. Farmers cannot get to the farm to till their land; some cannot get their produce to the markets. Women, children and men are displaced in the open sun. Is this what leaders are put in office to do? So they realize they have a responsibility..... They know they have a responsibility and they know what the people and the nation expects of them.” (Annan, speaking on 8<sup>th</sup> February 2008 in Nairobi)<sup>63</sup>

The agenda had it that mediators would brief Kibaki and Raila jointly. This was done on 8<sup>th</sup> February. After the briefing, the panel of eminent personalities announced that members of

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<sup>62</sup> *Ibid* pp. 124-125

<sup>63</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' *Journal of Contemporary African Studies* Vol. 27, No.3 (July, 2009) pp. 407-430

parliament and the mediators would hold an informal session (*Kamkunji*). The mediators would brief members of parliament on how the negotiations were progressing. The chief mediator announced that the parties had agreed that it was important to resolve the political problem and discussions were held on the details of political agreement. Such an agreement would be announced to the public during the week that followed. The mediators argued that votes could not be recounted because many had lost their confidence in the ECK. Conducting fresh elections was not feasible as most of the voters had been internally displaced as a result of the violence. Therefore, the parties had to achieve a political agreement through which there would be institutional, constitutional and legal reforms. This was going to be tough. It implied that the parties had to negotiate a structure that had both parties in one government.<sup>64</sup> Executive positions were to be shared equally in the same government.

The *Kamkunji* was a good opportunity for members of parliament to be included in the negotiations. They had been excluded since the negotiations had been between either the negotiators and mediators or the principals themselves and the mediators. They had a chance to voice their fears and frustrations. During the opening session, the media was present. Annan insisted that change is not an event but a process. He stated that there were urgent matters to be dealt with. Machel emotionally appealed to the parliamentarians by insisting that resolution of the conflict was needed to bring the suffering of Kenyans to an end. Many parliamentarians insisted that emphasis should be laid on unity rather than division. Women MPs spoke about suffering in their communities, ways of addressing the issue and activities that could be carried out to respond to the repercussions of the post election violence.<sup>65</sup> The mediators were determined to help resolve the conflict. Including other constituents in the process helped to mount pressure on the parties to reach an agreement and bring the suffering of Kenyans to an end. Through the *kamkunji*, members of parliament emphasized that Kenyans were suffering hence ways of resolving the conflict were to be sought. They also suggested ways of addressing the effects of the violence.

Annan made an appeal to the members of parliament to support the mediation process. He shared his thoughts on having a grand coalition that would address matters like constitutional and institutional reforms. Mediators had a dual strategy in mediation in that they could meet with

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<sup>64</sup> Mwangi Makumi *The Water's Edge* (Nairobi: Institute of Diplomacy and International Studies, 2008) p. 126

<sup>65</sup> Kaye and Lindemayer *A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya* (New York: International Peace Institute, 2009) p. 14

the negotiators representing ODM and PNU as well as meet with the principals. This strategy ensured that Kibaki and Odinga were committed to key decisions. This commitment became important when the negotiations reached a deadlock and only Kibaki and Odinga could resolve the issue.<sup>66</sup>

The ODM wanted the position of an executive prime minister. They wanted to be represented equally in government ministries. However, the PNU was not for the creation of the position of an executive prime minister. They wanted a government that would give ODM certain posts in the cabinet. ODM held that they would look at the Bomas draft that had the provision of a prime minister. The two principals met for the third time. Although the agenda had it that they would have representatives at the negotiating table, Annan had a strategy to include a larger constituency in the process by moving negotiations beyond the negotiating table. The mediator wanted decision making on the political issue to be done by the principals themselves. He gave a deadline for the parties to resolve the issue by announcing to the press that details of the solution on item 3 of the agenda would be publicized the following week.<sup>67</sup> The mediators realized that pressure had to be mounted on the principals so that they could reach an agreement. There was a danger of prolonging the conflict if they did not resolve it immediately. The announcement made by the chief mediator to the press made the mediators realize that they had to reach an agreement before the end of the following week. They did not have so much time to think. They had to act within the time they had been given.

Vice president, Kalonzo Musyoka stated that parties should not rush into a power sharing solution because it would not address the root causes of the conflict. He argued that there was to be a review of the proposed solution and its effects on the conflict before an agreement were reached. Similarly, Odinga said that ODM had to inform their supporters in the whole country and get their consent before committing the party to resolutions of national dialogue and reconciliation committee. ODM would not agree to have a solution that did not deal with injustices done in the past like the rigged elections.<sup>68</sup>

Negotiations continued though progress was not so much. There were reports that elders and gang leaders were arming youth in preparation for more violence if the negotiations failed.

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<sup>66</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' *Journal of Contemporary African Studies* Vol.27, No.3, (July, 2009)pp. 407-430

<sup>67</sup> *Ibid* p. 127

<sup>68</sup> *Ibid* p. 128

The country had hopes in the mediators but the negotiators were slowing down the process and the optimism exhibited by Annan was not enough to resolve the conflict.<sup>69</sup> The parties had to reach an agreement as fast as they could to normalize the situation in the country.

When he saw that the negotiations were slowing down, Annan in consultation with the other members of the panel, suspended the negotiations to meet the principals and consult with them. He stated that Odinga and Kibaki had to be directly involved in the negotiations to avoid prolonging the process. He conducted shuttle diplomacy for the principals to reach an agreement. After meeting with Annan, on 27 February, Kibaki announced that he would appoint a prime minister in a coalition government. He stated that any pending matter would be dealt with within the constitutional dispensation. In response, Odinga stated that ODM was okay with the idea of power sharing. However, they would only share power in a government that would immediately work on constitutional, legal and institutional reforms.<sup>70</sup>

The international community influenced the parties to continue looking for ways of reaching an agreement. EU said it would not be involved in business with Kenya if an agreement was not reached. Australia issued a warning that it would have little contact with the cabinet of President Kibaki.<sup>71</sup> This showed that the international community was offering leverage to support the efforts of mediators in resolving the problem.

Annan announced that the mediators would not leave the country until the conflict was resolved. They insisted that the parties had to reach an agreement. The announcement that they would stay until an agreement was reached gave hope to the Kenyan people. They believed that they had no intention of leaving the mediation process. However, to Kibaki and Odinga, the announcement meant that it was their responsibility to reach an agreement and resolve the electoral conflict.<sup>72</sup> The announcement made by the chief mediator showed just how much the mediators were committed to the mediation they were conducting. They wanted to be sure that the conflict was resolved before they left the country.

Odinga and Kibaki bore the responsibility of resolving the Kenyan crisis. If they failed, Kenya, the East African region as well as the international community would be greatly affected.

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<sup>69</sup> Kaye and Lindenmayer A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya (New York: International Peace Institute, 2009) p.16

<sup>70</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' Journal of Contemporary African Studies Vol. 27, No. 3 (July, 2009) pp. 407-430

<sup>71</sup> The Office of the AU Panel of Eminent African Personalities 'Back from the Brink: the 2008 Mediation Process and Reforms in Kenya' (African Union Commission, 2014) p. 32

<sup>72</sup> Kaye and Lindenmayer A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya (New York: International Peace Institute, 2009) p.17

According to the nation, Annan and his team had done their best to make Kenya peaceful as it was before the violence erupted. However, the mediators had to explore other means to make sure that the principals reached an agreement. To the international community, the Kenyan crisis had to be resolved. The principals could not afford to fail. US Secretary of state, Condoleezza Rice stated that future relationship of the US with both parties would be determined by their commitment to resolve the conflict. The UN also mounted pressure on the principals to find a solution to the problem.<sup>73</sup>

When the negotiations reached a deadlock, the Chief mediator suggested that they should call in Tanzanian President, Jakaya Kikwete to join them in helping to resolve the conflict. The other mediators supported the idea and Kikwete was called in. Kikwete was the chairperson of the AU and was respected internationally. He could remind the principals of how prime minister and president shared power in Tanzania successfully, forming two centers of power. He could also emphasize that the African continent supported the mediation. Negotiations were held at Harambee House. Five people were involved: Kikwete, Mkapa, Annan, Kibaki and Raila.<sup>74</sup>

Annan convinced Odinga and Kibaki to negotiate an agreement in the presence of Jakaya Kikwete, AU chairperson on 28<sup>th</sup> February 2008. After the meeting that was held in the presence of AU chair, the principals were prepared to sign an 'agreement on the principles of partnership of the coalition government'. Thereafter, there was the promulgation of the National Accord and Reconciliation Act. A framework for power sharing was formed leading to the official resolution of the Kenyan political conflict.<sup>75</sup> The national accord was to establish the posts of prime minister and two deputy prime ministers. It was also expected to create a coalition government with cabinet members from the PNU as well as ODM. Parliament passed an amendment of the constitution through which the National accord was enshrined. The prime minister had the power to supervise government functions. The prime minister and his deputies could only be removed from office through a vote of no confidence by parliament.<sup>76</sup> Raila Odinga was appointed prime minister. Two deputy prime ministers Musalia Mudavadi of ODM and Uhuru Kenyatta of PNU

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<sup>73</sup> Ibid, p.20

<sup>74</sup> Ibid, p.21

<sup>75</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' *Journal of Contemporary African Studies* Vol.27, No.3 (July, 2009) pp. 407-430

<sup>76</sup> Juma Monica Kathina 'African Mediation of the Kenyan Post-2007 Election Crisis' *Journal of Contemporary African Studies* Vol.27, No.3, (July, 2009) pp.407-430

were to help him. This was the second time for the position of prime minister to be created in the history of Kenya.<sup>77</sup>

After Annan's departure, a Nigerian diplomat, Oluyemi Adeniji took charge of negotiations on item four on the agenda. This included discussions on matters such as creation of Justice and Reconciliation Commission, constitution as well as past injustices. The negotiations faced challenges due to the change of mediator and appointment of negotiators to cabinet posts. A good number of the negotiators thought that the fact that the National Accord was signed meant that the mediation process had come to an end. Other issues were seen as long term and needed internal legislative and constitutional mechanisms. Therefore, they dealt with details of item four just like they had agreed before such as creation of the Commission of Inquiry into the Post-Election Violence, Truth and Reconciliation Commission and the Commission on the 2007 elections.<sup>78</sup> After negotiations on item four of the agenda, four documents were signed, establishing the Independent Review Commission (IREC), the Commission of Inquiry into the Post Election Violence, the Truth, Justice and Reconciliation Commission (TJRC) and a road map for a comprehensive review of the constitution.<sup>79</sup> Mediators left negotiations on agenda four to Oluyemi Adeniji and this was a hard task. They did a commendable job, staying in the country until the political agreement was reached. However, their departure negatively affected the negotiations on item four. Negotiators thought that negotiations were over because item three had been successfully addressed. Had they stayed in the country a little bit longer, they would have made it easier for agenda four to be addressed.

The international community supported the mediation in Kenya. The mediation process was inclusive of civil society groups such as women's and religious leaders groups. In mediation, issues were divided into two: long-term and short-term issues. There was emphasis on practical matters. Parties were urged to put their political and personal interests aside and restore peace in Kenya. The parties as well as the mediators understood that peace is not just an event, it is a process. The mediators had exceptional skills in mediation to resolve the crisis. They were

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<sup>77</sup> The Office of the AU Panel of Eminent African Personalities 'Back from the Brink: The 2008 Mediation Process and Reforms in Kenya' (African Union Commission, 2014) p. 70

<sup>78</sup> *Ibid*

<sup>79</sup> Weiss Thomas G. *Great Decisions: Halting Atrocities in Kenya* (New York: Bunche Institute of International Studies, 2010)P.24

flexible as well as creative. These are some of the reasons why the mediation of the Kenyan crisis turned out successful.<sup>80</sup>

### 3.5 Post Mediation Phase

This is a very important phase as implementation on what was agreed on in the mediation phase is done. As Mwangi puts it, it is in this phase that one will find out if the negotiations were done in good faith or not. If implementation takes place, then it means that negotiations were done in good faith. Other actors that were not present at the negotiating table come in at this phase. They can help financially in implementing the agreement as well as monitor implementation. In the Kenyan case, the post negotiation phase involved negotiations on implementation of the agreements reached. It involved passage of the National Accord and Reconciliation Act and the constitutional amendment Bill by parliament, negotiations about size and composition of the coalition government and appointments of members of that government by the president.<sup>81</sup>

The implementation phase faced challenges because the successful mediation did not establish mechanisms for the correct interpretation of the National Accord and implementation of its provisions.<sup>82</sup> Forming the cabinet was the greatest challenge for implementation of the agreement. The principals had to satisfy certain constituencies before creation of the cabinet. These constituents were such as those who had voted for both ODM and PNU, members of parliament who expected cabinet posts because they had been loyal, the international community and generally, Kenyans who wanted their lives to go back to normal.<sup>83</sup>

On 3<sup>rd</sup> April, 2008, the two principals agreed that the cabinet would include forty members. Each party would appoint twenty cabinet ministers. Initially, PNU wanted a forty four member cabinet while ODM wanted a thirty four member cabinet. They finally compromised and agreed that the coalition government should have forty ministries.<sup>84</sup> This was the biggest and most expensive cabinet in the country's history.<sup>85</sup>

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<sup>80</sup> Australian Civil Military Centre 'The Prevention Tool box: Systematic Policy Tools for the Prevention of Mass Atrocities-Mediation' (London: Oxford Institute for Ethics, Law and Armed Conflict, ) p.2

<sup>81</sup> Mwangi Makumi The Water's Edge (Nairobi: Institute of Diplomacy and International Studies, 2008) pp. 161-162

<sup>82</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' *Journal of Contemporary African Studies* Vol.27, No.3 (July, 2009) pp. 407-430

<sup>83</sup> Mwangi Makumi The Water's Edge (Nairobi: Institute of Diplomacy and International Studies, 2008) p.171

<sup>84</sup> *Ibid*, p.186

<sup>85</sup> Kagwanja Peter and Southall Rojer 'Introduction: Kenya-A Democracy in Retreat?' *Journal of Contemporary African Studies* Vol.27, No.3 (July, 2009) pp. 259-277



On 14<sup>th</sup> March, 2008, a decision was adopted by AU Peace and Security Council that among others commended the mediators for their mediation efforts as well as the two parties for their efforts in ending the violence. On 30<sup>th</sup> July, 2008, a Coordination and Liaison Office was set up to help in implementing the Kenya National Dialogue and Reconciliation Committee (KNDR) agreements.<sup>86</sup>

The mediation turned out successful in the resolution of the Kenyan conflict. The parties agreed to share power in a coalition government with Kibaki as the president and Odinga as the prime minister. The mediation by the mediators under the auspices of the AU showed that the international community can play an important role in implementing the doctrine of the “responsibility to protect” (R2P). This doctrine was formulated after the genocide in Rwanda and has been ratified by the UN and endorsed by Pope Benedict XVI. It holds that a government should protect its citizens from war crimes, genocide as well as crimes against humanity. In the event that a government fails to do this, the international community has a responsibility to intervene.<sup>87</sup>

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<sup>86</sup> Kofi Annan Foundation and African Panel of Eminent African Personalities ‘Kenya National Dialogue and Reconciliation’ (Kofi Annan Foundation, 2010)

<sup>87</sup> Signs of the Times ‘Corruption and Inaction Leave Kenya on the Brink’ America Press, America, 28<sup>th</sup> September, 2009, p. 8

## **Chapter Four**

### **A Critical Analysis of the Mediation of the Kenyan conflict by Multiple Mediators**

#### **4.0 Introduction**

This chapter provides an analysis and interpretation of data. It analyzes the factors that lead to the success of multiple mediators in resolving conflicts. Mediation can be used to resolve conflicts. Conflict resolution is not just an event, it is a process. Multiple mediators' efforts in resolving a conflict can be effective if they work together for a common goal.

#### **4.1 Mediators Working Together for a Common Goal in Mediation**

The mediators demonstrated the importance of speaking in one voice. As soon as they came to Kenya, they stated that their mission was to help Kenyans find a solution to their problem. They expected everyone to work hard to find solution to the problem. They insisted that the spirit of togetherness was to be cultivated among the people. When a deadlock was creeping in the mediation, mediators shared their sentiments with the parties to make them compromise. Annan stated that the leaders had a responsibility to reach an agreement. They were expected by the international community as well as Kenyans to restore peace in Kenya. The future of the country depended on them. Mkapa urged the parties to focus on reaching a mutual agreement. He argued that since the parties had worked together before, reaching an agreement was possible. Machel emotionally appealed to the parties to bring the conflict to an end since Kenyans were suffering a great deal. She appealed to them to put aside their personal and political differences and reach an agreement that could ensure peace is restored in Kenya. From what they said and did, the common goal of the mediators was to help in resolving the Kenyan electoral conflict.

#### **4.2 Support from the International Community**

The mediators of the Kenyan crisis had the full support of the international community. Firstly, the AU mandated the three eminent African personalities to mediate in the crisis. They had the full support of the regional organization they represented. Before he left Kenya, Kufuor announced that there would be a mediation exercise conducted by a panel of eminent personalities supported by the AU. The three mediators, Graca Machel, Benjamin Mkapa and Kofi Annan were assured of the support of the AU. The Kenyan mediation was also supported by the UN.<sup>1</sup>

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<sup>1</sup> The Office of the AU Panel of Eminent African Personalities ' Back from the Brink: the 2008 Mediation Process and Reforms in Kenya' (African Union Commission, 2014) p.23

The US Secretary General Ban Ki Moon made it clear that the UN was behind the mediators in their efforts to resolve the Kenyan crisis. Ban Ki Moon allowed the mediators to get support from UN staff who would act as secretariat. They got logistical and administrative support from UN agencies in Nairobi. UN Department of Political Affairs set up the secretariat. AU also gave the mediators their staff to help in the process. When the mediation process was slowing down at some point, the UN threatened to have its offices moved from Nairobi if the crisis was not resolved immediately. This shows just how much the UN was in support of the mediation. Kenya could not bear having UN offices moved from Nairobi since this could adversely affect the economy. When conferences are held in Nairobi, delegates enjoy accommodation services in big hotels hence having UN offices in Nairobi is not only prestigious but also a source of income in the country. This threat issued by the UN made the parties in conflict hasten their negotiations to bring the conflict to an end.

Countries and institutions in the international community issued statements that could make the mediation process move forward as fast as possible to bring the crisis to an end. This is because they supported the mediation chaired by Kofi Annan. Canada and USA said they would deny Kenyan leaders visa to their countries if they did not commit themselves to resolve the conflict. The leaders in the two negotiating teams are the ones that frequently travel to such states. They could not afford to lose the prestige of travelling to the US and Canada. Some of them travel to monitor their businesses abroad. They could not have anything interfere with their profit making businesses. These threats made them fasten the negotiations and end the conflict. The US Secretary of state, Condoleezza Rice, stated that the future relationship of the US and both parties depended on how much they were committed to resolve the conflict. The parties had no choice but to negotiate and resolve the problem. The EU and Britain also supported the mediation.<sup>2</sup> Members of the international community offered moral support to the mediators as well as support in terms of leverage. They had the power and the resources to influence the parties in reaching an agreement. The support that the mediators got from the international community spearheaded the mediation process to resolve the Kenyan electoral conflict. The leverage offered by members of the international community led to the success of mediation conducted by multiple mediators.

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<sup>2</sup> Ibid

### 4.3 Mediators' skills

The mediators of the crisis in Kenya had great skills and knowledge to handle the problem. As Annan put it, the previous mediation efforts failed due to lack of coordination. The actors had noble intentions of resolving the crisis but they had inadequate resources and skills. Annan maintained that only the panel of eminent personalities would mediate in the conflict. Nobody was to interfere unless the panel asked for his or her assistance. The mediating team enjoyed respect in the country as well as internationally, raising confidence in the mediation process. They had skills, expertise and experience to help in resolving the conflict. Kofi Annan has many years experience in mediation. He has a great political experience and exceptional negotiation skills to bring the parties in conflict to the negotiating table. He felt he was morally obligated to help restore peace in Kenya. His standing enabled him to threaten and shame and also coax the parties to reach an agreement. For instance, when at some point a deadlock was reached in the negotiations, he used the media to reprimand principals publicly:

“You have heard the business community talk about what this crisis is doing to the economy. 49000 people have already lost their jobs and more may be on the way. Farmers cannot get to the farm to till their land; some cannot get their produce to the markets. Women, children and men are displaced in the open sun. Is this what leaders are put in office to do? So they realize they have a responsibility..... They know they have a responsibility and they know what the people and the nation expects of them.” (Annan, speaking on 8<sup>th</sup> February 2008 in Nairobi)<sup>3</sup>

If the leaders did not resolve the conflict it would be a great shame and a show of irresponsibility on their part. It would be opposite of what was expected of them by the international community as well as the Kenyan people. Therefore, they had to reach an agreement to bring the crisis to an end.

To move the mediation forward, Annan included other constituents. The mediators held an informal session (*kamkunji*) with the members of parliament. They briefed the members of parliament on the progress of the negotiations. Annan announced that the parties had agreed that it was important to resolve the political conflict. The parties had to reach a political agreement through which there would be institutional, constitutional and legal reforms. Through the *kamkunji*, the MPs were included in the negotiations. The media was also present.<sup>4</sup>

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<sup>3</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' *Journal of Contemporary African Studies* Vol. 27, No. 3 (July, 2009) pp. 407-430

<sup>4</sup> Kaye and Lindenmayer A choice for Peace? The Story of Forty-One Days of Mediation in Kenya (New York: International Peace Institute, 2009) p.14

Suspending the negotiations when a deadlock was reached worked, Annan called in the Tanzanian president, Jakaya Kikwete. Kikwete reminded the principals of how prime minister and president shared power in Tanzania successfully. This made the principals realize that it is actually possible to share power. These negotiation skills demonstrated by Annan made the process move forward. He asked leaders and renowned political actors globally to support the mediation he was to lead. In handling the deadlock, Annan and his team demonstrated great negotiation skills. The skills that the mediators had contributed greatly to the success of the mediation.

Benjamin Mkapa was familiar with the parties in conflict. He had an international standing. He had the skill of translating the press conferences into Swahili. This was to make sure that everyone in Kenya understood what was being said. It was important for people to know the progress of the mediation process. Since people were familiar with him, they could trust the message that he was delivering.<sup>5</sup>

Graca Machel had an international standing and experience in addressing crises such as the Kenyan one. She had chaired the Africa Peer Review in Kenya in 2005 and 2006 hence she had a knowledge of the politics in Kenya. She appealed to the parties to resolve the conflict. Emotionally, she pleaded on behalf of Kenyans who were in great suffering. According to her, this suffering had to come to an end and the people were counting on the leaders to bring it to an end. Mkapa and Machel made many efforts to move the mediation forward when a deadlock was creeping. Machel appealed to the parties to put their personal and political interests aside and think of the lives of the Kenyan people. Mkapa persuaded them to reach an agreement. He held that the parties in conflict had worked together in the past hence reaching an agreement would not be hard.<sup>6</sup>

Dividing issues into two categories was a wise move. The parties agreed on agenda one and two thereby raising confidence in mediation. It also made the parties realize that the other agenda items could be achieved as well. Using the media was important in maintaining Kenyans confidence in the mediation process. The principals were not present at the negotiating table but had representatives. This helped in avoiding confrontation between the two. They were met by

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<sup>5</sup> Juma Kathina Monica 'African Mediation of the Kenyan post-2007 Election Crisis' *Journal of Contemporary African Studies* Vol. 27, No.3, (July, 2009) pp.407-430

<sup>6</sup> Ibid

mediators when the negotiations reached a deadlock because it was a decision that only the two of them could make.

The skills that the three mediators had were important in the mediation. They were all committed to resolving the Kenyan conflict. They knew that the skills of every mediator were needed in the mediation to bring the conflict to an end. Because of their skills and international standing, they were readily accepted by the parties in conflict to act as mediators and help them in resolving a crisis they were unable to resolve on their own. The people of Kenya as well as the international community also had faith in them hence they had confidence in the mediation process that was going on.

The success of multiple mediation can be attributed to the skills and knowledge that the mediators bring together in conflict resolution. As in the Kenyan case, the mediators had mediation skills and knowledge of Kenya as well as Kenyan politics. Mkapa demonstrated that he knew the political history of Kenya. He used this to urge the leaders to reach an agreement. He said that it would not be hard for them to agree since they had worked together in the past. He was a close neighbor to Kenya. Annan knew how to pressure the parties to reach an agreement. He would issue deadlines so that the parties could negotiate within a specific period of time. Grace had knowledge of Kenyan politics and an experience in solving such crises.<sup>7</sup>

#### **4.4 Dealing with the Root Causes of the Conflict**

Although the disputed presidential results triggered the post election violence in Kenya, there were underlying issues that fueled the violence, there was structural violence before 2007. The post election violence was caused by structures that did not address important issues in Kenya such as land, poverty, unemployment, and inequitable distribution of resources. Kenyans used the violence to express their frustrations. A good number of the youth were angered especially because of unemployment. They felt that violence was the only way that they could voice their frustrations. Violence was also fueled by ethnicity among the people of Kenya. Ethnicity contributed to imbalance in development in the country. The tribes that had their people in power as leaders had their regions developed as compared to those who did not have people from their tribe in power. Due to this, people voted according to their ethnic groups and when violence erupted, tribes fought against tribes. Complex and long accounts of land among ethnic groups also fueled the violence. Leaders distributed land to people of their ethnic groups

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<sup>7</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' *Journal of Contemporary African Studies* Vol. 27, No.3 (July, 2009) pp. 407-430

at the expense of the other ethnic groups. These underlying causes of the violence had to be addressed to resolve the conflict.

The mediators held that the issues that led to the conflict could be dealt with in two categories: the short-term issues which would address the political conflict and long-term issues which would address the issues affecting Kenyans from independence; unemployment, land, poverty and institutional and legal reforms. Dividing the issues in the conflict into two made it easier for the mediators and parties to address the causes of the violence. They decided to address the political problem first since this was the major cause of the violence. Once the political problem was solved, violence would stop and it would be easier deal with the other issues affecting Kenyans right from the colonial freedom such as the land question. After intense negotiations, the political problem was resolved. The parties agreed to share power in a coalition government. According to the Kofi Annan Foundation and African Union Panel of Eminent African Personalities, on 14<sup>th</sup> February 2008, an agreement that outlined the principles of partnership for a coalition government was signed. The power sharing agreement was signed on 28<sup>th</sup> February 2008.<sup>8</sup>

Negotiations on long-term issues included discussions on creation of justice and reconciliation commission. There were also discussions on constitutional matters and past injustices. These issues needed internal legislative and constitutional mechanisms. After negotiations, four agreements were signed: general principles and parameters for the Independent Review Committee on the 2007 general election, general principles and parameters for the Commission of Inquiry into the post election violence, general principles and parameters for the Truth, Justice and Reconciliation Commission and a roadmap for a comprehensive constitutional Review process.<sup>9</sup>

From time to time, Kenyans were informed by the media about the progress of mediation. The public was aware of the agenda of mediation. They knew the violence was not only about the disputed presidential elections. There were other underlying causes and they were interested to know how such issues were handled during the process. They had lost trust in the judiciary hence there was a great demand for reforms. When the chief mediator suggested power sharing as a solution to the problem, the then vice president, Kalonzo Musyoka, stated that the agreement

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<sup>8</sup> Kofi Annan Foundation and African Union Panel of Eminent African Personalities 'Kenya National Dialogue and Reconciliation' (Kofi Annan Foundation, 2010) pp. iv-vii

<sup>9</sup> Ibid

reached should take into consideration the root causes of the conflict to avoid the eruption of another conflict. The ODM claimed they had to inform their supporters and get their consent before committing the party to the resolution of National Dialogue and Reconciliation Committee. The Party would not agree to have a solution that did not address past injustices. To address past injustices such as unequal distribution of resources, there had to be institutional and constitutional reforms. The leaders knew what their people wanted. The mediation was to address not only the interests of the parties in conflict but also the interests of their supporters.

When the parties agreed to share power, their supporters felt that their problems could be addressed in the coalition government since both principals were in power. The signing of the power sharing agreement ended the conflict. The four agreements signed after negotiations on long term issues also made Kenyans have faith that there would be reforms especially institutional and constitutional reforms. Through these reforms, issues such as control and access to land as well as distribution of resources could be addressed. Dealing with the major cause of the violence (disputed presidential elections) as well as its underlying causes led to its end. The country gained its normalcy and businesses were run as usual. Kenyans got back on their feet to get back what had been lost during the devastating violence.

#### **4.5 Mediators' Strategies**

There are three strategies that can be used in a conflict. They include: communication-facilitation, procedural and directive strategies. Communication-facilitation strategies are used to improve the relationship between the parties in conflict so that they can come to the negotiating table to talk. Procedural strategies are used to structure the agenda, to come up with ways of solving the problem and to give needed information. Directive strategies are used to issue threats, pressure parties to compromise and to bribe them to reach an agreement. The most commonly used strategies are the communication-facilitation and the procedural strategies. Directive strategies are used less frequently. However, directive strategies prove to be more successful.<sup>10</sup>

In mediating the post election violence, the mediating team employed various mediation strategies. They used communication-facilitation strategies, procedural strategies as well as directive strategies. When they arrived in the country, they used communication-facilitation strategies to bring the parties in conflict to the negotiating table and to coax the parties into negotiations on the agenda. For the first time since the beginning of the conflict, the two

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<sup>10</sup> Bercovitch Jacob 'Mediation and Conflict Resolution' (London: Sage, 2009) pp. 340-354



principals (Kibaki and Raila) shook hands, a sign that they were willing to talk. Communication-facilitation strategies were used to improve the relationship between the parties. The parties agreed to appoint representatives to represent them in the negotiations. Procedural strategies were used to structure the agenda and formulate different ways of resolving the conflict. Different solutions to issues were provided. For instance, it was proposed that the political problem could be solved by power sharing between the parties in conflict. All the four items on the agenda were accepted. As mediators planned, it was prudent to hold negotiations first on less contentious issues such as the humanitarian crisis to build confidence in dealing with the more contentious ones. Cessation of violence would allow negotiations to go on in a peaceful environment hence it was to be addressed first.

At some point during the mediation, directive strategies were used mainly through threats and mounting pressure on the parties to compromise. The mediators had the support of the international community which was ready to offer help to ensure that the conflict was resolved. The international community issued threats on those who would disrupt negotiations. The UN threatened to move its offices from Nairobi if the conflict was not resolved. The US and Canada threatened to deny leaders visa. These threats were to compel the leaders to engage in negotiations and resolve the crisis. The EU issued a warning to anyone who would derail the mediation that they would be punished by the international community.<sup>11</sup> It was a conflict that needed immediate attention. There was so much pressure from the international community that the parties did not have a choice but to engage in negotiations to bring the conflict to an end.

When negotiations reached a deadlock during the mediation phase, the chief mediator announced to the press that details of agreement on item three on the agenda would be publicized the following week.<sup>12</sup> This was to mount more pressure on the parties to reach an agreement. The announcement that the agreement would be made public the following week meant that Kenyans knew when to expect an agreement to be reached. Thus, the parties had to reach an agreement and bring the electoral conflict to an end. This great pressure mounted on the parties made them engage in intense negotiations and reach an agreement. Because pressure was mounted on the parties, the mediation process was not prolonged.

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<sup>11</sup> Kaye and Lindenmayer 'A choice for Peace? The Story of Forty-One Days of Mediation in Kenya (New York: International Peace Institute, 2009) p. 13

<sup>12</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' *Journal of Contemporary African Studies*, Vol.27, No.3 (July, 2009)pp. 407-430

#### **4.6 Directive mediators**

The mediators were depicted as being directive. Though they said they had not come to the country with solutions to the conflict, their proposals were negotiated and agreed on by the parties. They proposed that agenda item one would be addressed by persecuting perpetrators of the violence and lifting the ban on media coverage. Agenda two could be obtained by offering humanitarian assistance to the affected people. On 30<sup>th</sup> January, 2008, the government set up a fund for helping and resettling the victims of the violence. On the third item, power sharing was proposed. Power sharing is what settled the political problem. On item four, the mediators proposed land reforms, addressing poverty, unemployment and inequality. All these items on the agenda were achieved as per the proposals of the mediators. Because the mediators were directive, the process of resolving the conflict was fastened.

#### **4.7 A Carefully Devised Media Strategy**

The mediators used the media skillfully to influence the parties in reaching an agreement and avoid prolonging the conflict. The media is a very powerful tool that can be used to influence people. Before Kufuor left the country, he announced that there would be a mediation exercise conducted by Kofi Annan, Graca Machel and Benjamin Mkapa. The media was involved in informing Kenyans on what was going on in the country. The mediators used the media to hasten the mediation process. From time to time, there were press conferences to update people on the progress of the mediation. Mkapa was involved in Swahili translations during the press conferences.<sup>13</sup> This was to ensure everyone understood what was going on and that the message was translated by someone they could trust. This made them more confident in the mediation. The mediators worked together knowing Kenyans and the international community had confidence in the mediation they were conducting.

When there was a creeping deadlock in the course of the mediation, the mediators used the media to reprimand the principals publicly. The chief mediator stated that the crisis was destroying the economy. He further implied that the leaders were put in office to improve the lives of Kenyans rather than making them suffer. He insisted that the leaders knew what was

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<sup>13</sup> Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' *Journal of Contemporary African Studies* Vol.27, No. 3 (July, 2009) pp. 407-430

expected of them. Through the media, the mediators could shame and pressure the parties to reach an agreement.<sup>14</sup>

Annan announced that the mediators would not leave the country unless the conflict was resolved. This gave Kenyans hope and made the parties realize that they had a responsibility to resolve the conflict. Everyone was counting on them to reach an agreement that could restore peace in Kenya. The mediators carefully used the media to pressure the parties to reach an agreement as was expected of them.<sup>15</sup>

#### **4.8 Testing the hypotheses**

This study has tested three hypotheses:

1. If multiple mediators are supported by the international community, they will succeed in conflict resolution. This has been proven in the study. This mediation was supported by the UN, US, Canada, EU, AU, UK and the African continent. There was both moral support and support in terms of leverage. For instance, the US, UN and Canada issued threats and warnings to the parties so that the process could move forward. The UN also provided staff members who formed the Secretariat.
2. If multiple mediators work together simultaneously at every phase of the mediation to achieve a common goal, they will be successful in conflict resolution. It has been proven that if they work together for a common goal, they will succeed since they have their eyes fixed on one thing: resolving the conflict. They work together to assist in resolving the conflict since that is their main aim.
3. If multiple mediators share the knowledge and skills they have, they will succeed in conflict resolution. This has been proven in this study. Multiple mediators had the knowledge and skills to conduct mediation in Kenya. They had knowledge of the political history of Kenya and the grievances of the Kenyan people hence such issues were infused in the agenda of the negotiations and were addressed. They also knew how to persuade and also pressure parties to reach an agreement. They used the knowledge and skills they had together to help in resolving the crisis.

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<sup>14</sup>Juma Kathina Monica 'African Mediation of the Kenyan Post-2007 Election Crisis' *Journal of Contemporary African Studies* Vol.27, No. 3 (July, 2009) pp. 407-430

<sup>15</sup> Kaye and Lindenmayer 'A choice for Peace? The Story of Forty-One Days of Mediation in Kenya (New York: International Peace Institute, 2009) p. 16

## **Chapter Five**

### **Conclusion and Recommendations**

#### **5.0 Summary**

This research has discussed mediation as a method of resolving conflicts. It has presented mediation as a voluntary method of conflict resolution where the parties allow a third party to help them resolve a conflict they are not able to resolve on their own. There is no coercion in mediation. The parties agree to be helped by a third party out of their own free will. The mediator is expected to be impartial and neutral in the process although in most cases he is not since he has his own interests in the mediation being conducted. The study has also looked into the concept of multiple mediation. Multiple mediation has been presented as mediation carried out by more than one individual. It has been seen to be complex because the mediators usually have divergent opinions which must be considered. This usually slows down the mediation or brings it to a halt before the conflict is resolved. Therefore, multiple mediators must have a common goal they work together to achieve at the end of the process.

The study has discussed the post election violence in details. It has shown how various ethnic groups attacked each other because of the disputed presidential election. It has brought out the causes of the violence as well as its devastating effects. It has been seen that the violence was not only caused by the disputed presidential election. There were other underlying causes such as the matters about land, poverty, inequality, ethnicity and unemployment especially among the youth. Kenyans used the violence to voice their frustrations. The violence had grievous effects. Property was destroyed, many lives were lost and thousands of people were displaced from their homes. The economy was adversely affected since businesses could not be carried out normally. There was difficulty in transporting goods from one place to another and services could not be rendered smoothly as before.

The mediation process conducted to help restore peace in Kenya has been discussed right from the pre-mediation to the post-mediation phase. This mediation was conducted by three eminent personalities: Kofi Annan, Benjamin Mkapa and Graca Machel. The three were mandated by the AU and supported by the international community to mediate the conflict. The study has presented the three mediators as multiple mediators representing the AU and has shown that multiple mediators need to coordinate their efforts to make sure that a particular conflict is resolved. It is important for them to consult one another and bring their ideas together

to help parties to solve their problem. They should also work fast and pressure the parties to reach an agreement to avoid prolonging conflicts. This will bring the suffering of the affected persons to an end.

### **5.1 Conclusion**

As it has been presented, the post election violence in Kenya had devastating effects. As violence was escalating, the parties in conflict could not find a way of restoring peace in Kenya. People continued to lose lives as well as property. The two principals both claimed victory in the election hence violence continued. Something had to be done to stop the suffering of Kenyans. Concern grew among the members of the international community. Mediation was seen as the best method of resolving the conflict. The AU decided to intervene and help restore peace in Kenya. There was international mediation carried out by multiple mediators representing the AU.

The method chosen to resolve the conflict was the best as it is non coercive. The parties accepted the mediators to be part of the process of solving the problem. The mediators were three different individuals but they worked together as a team sent by the AU to help solve the crisis in the country. These mediators could share their ideas and opinions on how the conflict would be resolved. Grace Machel talked to women groups to get women's sentiments on the situation in the country and shared this with the other members of the panel. Mediators had suggested power sharing as the solution to the political problem. When negotiations on this issue reached a deadlock, Annan suggested that the leaders could be encouraged to agree to share power. He suggested that they could call in the Tanzanian president, Jakaya Kikwete, to help in the negotiations. The other mediators agreed with this idea and Kikwete was called in. Tanzania had also had president and prime minister who shared power equally in the government. In one voice, they encouraged the principals that power sharing was possible and it was the only solution to the crisis that was ongoing. All the three mediators voiced their sentiments about the plight of the Kenyan people. They emphasized that the problem should be solved as soon as possible to end the suffering of Kenyans. When Annan stated that they would not leave the country until the conflict was resolved, he showed how committed they were to find a solution to the problem. Multiple mediators should strive to help solve conflicts together. Their common goal should be to help bring conflict to an end. If they fix their eyes on a common goal, they will be successful in their effort.

Working with other stakeholders was also a wise move. It made the mediators get adequate information about the people of Kenya and the problems affecting them. They got to know about the causes of the violence which were to be included in the agenda of the negotiations to ensure that such a conflict did not occur again in the country. Involving the media in the process was also important as it showed that they were transparent in their dealings with the parties in conflict. Kenyans were briefed from time to time about the progress of the mediation. Although negotiations take place where the public can not access, it is important for them to be informed on what is going on in those negotiations. Multiple mediators must be as transparent as they can so that people can have confidence in them and in the process they are conducting.

In mediation, the mediator facilitates the negotiations while the parties come up with options of solving their problem. The option they go for is believed to be the one they have chosen for themselves. However, in some cases, mediators can also come up with solutions to the problem and share it with the parties in conflict. They can persuade or pressure the parties to choose a particular option as a solution to their problem. When multiple mediators are directive, they are likely to have a successful mediation outcome. The multiple mediators in the Kenyan case were directive, making it easier for the problem to be resolved in a short period of time. They came to the country saying they did not have a solution. However, they suggested power sharing as the solution to the political problem. At the end of negotiations on agenda item 3, the parties agreed to share power in a coalition government. If they were not directive, it would have taken a longer period of time to solve the problem. This is because parties would have taken too long thinking of a solution to their problem. The conflict would have been prolonged making Kenyans to suffer even more.

The mediators were determined to help the parties in conflict resolve the crisis in Kenya. At every mediation phase, they worked together to ensure that negotiations were geared towards conflict resolution. They emphasized that it was the responsibility of the parties to resolve the conflict. The restoration of peace in Kenya depended on them. The skills and experience of the mediators also contributed to their success. Through their skills and experience, they could coax shame and threaten the parties to reach an agreement and avoid prolonging the conflict. The post election violence was caused by factors other than the disputed presidential election. It was important for these underlying causes to be addressed as well. Multiple mediators came up with

ways of addressing the root causes of the conflict. Multiple mediators who are directive in their mediation effort have a successful mediation outcome. The mediators came up with solutions which the parties in conflict eventually adopted. Being directive also helps in resolving a conflict within a shorter period of time. The parties resort to solutions suggested by the mediators hence the conflict is not prolonged.

When mediators use various strategies in mediation, they increase their chances of becoming successful in conflict resolution. Using only one strategy may not be effective in all the stages of the conflict. For instance, when there was a deadlock during the Kenyan mediation, the mediators, supported by the international community, had to use heavy strategies to make the parties compromise. Mediators' strategies were used appropriately in the Kenyan case. Light strategies were used to improve relationship between parties so that they could agree to negotiate through the help of the mediators. Medium strategies were used to structure the agenda and to formulate ways of resolving the conflict. Heavy strategies were used to move the mediation forward when there was a deadlock.

Mediators who use the media carefully during the mediation increase the chances of having a successful outcome. The media was used to inform the people on what was going on during the mediation. When a deadlock was reached, mediators used the media to reprimand the parties publicly and to remind them that everyone expected them to resolve the conflict as soon as possible. These pressured the parties to compromise and reach an agreement.

For multiple mediators to succeed in conflict resolution, they should work simultaneously as a team at every phase of the mediation. They need to look at the causes of a conflict to ensure it is resolved and to avoid the eruption of another conflict in the future. They also need to be supported by members of the international community both morally and through the use of leverage. Multiple mediators should be mediators who have the necessary skills and experience in mediation. Such skills are important in conflict resolution. They should be able to coax as well as threaten or pressure parties to compromise. Graca was able to sentimentally appeal to the parties to solve the problem and end the suffering of Kenyans. Annan was able to pressure the parties to make decisions by issuing deadlines which were announced to the public through the media. Kenyans were expecting them to make decisions on stipulated dates. This made them work faster to resolve the crisis.

Although multiple mediation is very complex, it is possible for it to lead to conflict resolution in the shortest time possible. Though they may have different opinions and ideas regarding the solution of a problem, multiple mediators can bring their thoughts together and agree to solve a problem. The more cooperative they are, the more likely they are to become successful. As long as they have a common goal in mediation, they will be successful. They also need to be transparent in their work so that the public is aware of what is going on in the process. If they are determined to ensure that a conflict is resolved, they will do all they can to restore peace. As in the Kenyan case, all the multiple mediators stayed in the country until they were sure the political problem was solved. Multiple mediation is complex but it can be used skillfully to resolve a conflict(s). The mediators in Kenya all had mediation skills which they used together for the purpose of ensuring that the violence in Kenya ended. They knew when to persuade and when to pressure the parties to reach an agreement. They shared the knowledge they had about Kenya to help resolve the conflict.

## **5.2 Recommendations**

For multiple mediators to be effective, they need to be cooperative. All their ideas should be geared towards one goal: conflict resolution. At every phase of the mediation, it should be seen that they are working together so that people can have confidence in them and the mediation they are conducting. If their efforts are not properly coordinated, then they will be seen as having other interests different from helping parties to solve their problem. It is also important for them to stay in the country until they are sure the crisis is dealt with. They should leave only when they that a particular conflict is resolved hence there are no chances of it erupting again in the future. Multiple mediators need to be directive in order to solve a problem within a relatively shorter period of time. When they are directive, they come in with their own suggestions on how issues can be addressed hence parties do not waste a lot of time thinking of how solve their problem. Multiple mediators that use their skills together in conflict resolution are effective. Because they are working together, they share the burden of resolving the conflict. They use the knowledge and the skills they have together to help in dealing with crises. Just like single mediation, multiple mediation can also be used successfully in conflict resolution.

## **5.3 Suggestion on Area for Further Study**

For further study, one can look into the challenges that multiple mediators face in their efforts to mediate in conflicts.



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