

NATIONAL ETHNIC CONFLICT AND INTERNATIONAL MEDIATION:

KENYA, 2008.

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**A Project submitted to the Institute of Diplomacy and International Studies at
University of Nairobi in partial fulfillment of the requirement of Master of Arts
Degree in International Studies, 2011.**

DECLARATION:

This project is my original work. It has not been submitted for any other degree or examination in any other university.

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

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DEDICATION

This study is dedicated to the many people who lost their lives or were injured during the violence that ensued after the release of the result 2007 general elections. To the Kenyan citizens whose homes and properties were destroyed and were rendered homeless in their own country. To those children who were orphaned as a result of the senseless violence. This study is also dedicated to the team of eminent personalities who stepped in from their busy schedules and made time to unite Kenyans and restores sanity to Kenya. Lastly, to the two principles who put Kenya first before their ego and ended the crisis therefore restoring Kenya to its glorious state of being an island of peace in the Horn of Africa.

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ABBREVIATIONS

AU -	African Union
CIPEV -	Commission of Inquiry into Post-Election Violence
COTU -	Central Organization of Trade Unions
DP -	Democratic Party
ECK -	Electoral commission of Kenya
ECOWAS -	Economic Community of West African States
IDIS-	Institute of Diplomacy and International Studies
GRIT-	Graduated Reciprocation In Tension-reduction
JKML -	Jomo Kenyatta Memorial Library
KANU-	Kenya African National Union
KBC -	Kenya Broadcasting Corporation
KICC-	Kenyatta International Conference Center
KNDR -	Kenya National Dialogue and Reconciliation
KTN-	Kenya Television Network
NARC-	National Rainbow Coalition
NEPAD -	New Partnership for African Development
PNU -	Party of National Unity
ODM -	Orange Democratic Party
ODM-K -	Orange Democratic Party of Kenya
SADC -	Southern Africa development Community
SLDF-	Sabaot Land Defense Force
UN -	United Nations
UNHCR-	United Nations High Commission for Refugees
OCHA -	Office for Coordination of Humanitarian Affairs

ABSTRACT

During the Cold War, most international relations theorists and strategic studies analysts paid little attention to ethnic and other forms of communal conflict. Disregard for the importance of ethnic and nationality issues in world affairs, always misguided so far as the developing world was concerned, has been overtaken, in stunning fashion, by events in Kenya. This study to advance our understanding of the causes of ethnic and communal conflict, and if by learning from the events that led to the ethnic conflict in Kenya can shed light on signs that point to the same occurrence anywhere else.

In Kenya, unlike Rwanda there was an attempt by the United Nations together with the African Union trying to come to the center of the conflict and mediate for the restoration of peace. This study has tested the influence of the international community through the United Nations and the African Union had in ending the conflict and what this meant in terms of maintaining international security which is one of the major functions of the United Nations. It also followed the mediation process and how it followed the six principles of mediation.

In the course of this study the contribution achieved is the in depth exploration to the extent that Chief Mediator Kofi Annan assisted the two principle reach consensus to work together in order to end the violent conflict that had erupted in Kenya .

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CHAPTER 1

INTRODUCTION TO NATIONAL ETHNIC CONFLICT AND INTERNATIONAL MEDIATION IN KENYA

Introduction:

The objective of this chapter is to lay the background to the analysis of National ethnic conflict and international mediation in Kenya. The chapter contains the research problem, objectives for carrying out the study, conceptual framework of the study, literature review hypothesis, methodology employed in conducting the study and an outline for each chapter of the project.

The Research Problem

Africa is one of the regions in the world with notable incidents of national conflict, war, and instability. This has attracted numerous studies and theory building in academic circles. Many studies however, tend to lump all the African states together as suffering from the same problems. This is true of the turbulent Post Cold War period in which Africa has experienced violent and intractable conflicts. The genocide and ethnic cleansing in Rwanda and to some extent Burundi; the civil wars in Liberia, Sierra Leone, the Democratic Republic of Congo, Sudan , Cote d'Ivoire and Somalia; minority uprisings in Nigeria and separatist agitation in Cameroon and Senegal are illustrations of the prevalence of conflict in Africa. However, some African countries have recently depicted violent conflict. The most outstanding that this study will focus on is conflict in Kenya that followed the 2007 disputed General elections results. Although conflicts in Africa generally have deep historical roots that date back to the colonial and even pre-colonial periods, they have become more prevalent and destructive in the post-Cold War period.

Researchers have been particularly interested in the explanation of the deterioration of the conflict situation and the management of the conflicts. Those who consider the explanation of the increase in prevalence and intensity of conflict to be the main priority of research have

identified a range of key precipitants, such as the contradictions of globalization and the attendant intensification of identity based struggles for the control of power and resources, contradictions of simultaneous economic and political reforms., difficulties in transition, flawed democratization, declining state capacities and diminishing resources and the proliferation of small arms. Although we know the causes and nature of conflicts; they remain intractable and difficult to predict and to deal with. It is probably true that the overall state of war, crisis and instability overwhelms whatever successes may have been recorded; however there are management dimensions and intervention that are yet to be fully interrogated.

The announcement of the results of the general elections in Kenya on 30th December 2007 sparked off violence in Kenya: in Nairobi, Kisumu, Mombasa, Eldoret, Kericho Taveta, Wundanyi, Kilifi, Narok, Busia, Bungoma, Kakmega, Kuresoi and Molo.¹ Within the first three days, 164 people were killed. Within three weeks of the violent conflict over five hundred people had died.² By the third week, over six hundred people had been killed and 250,000 were internally displaced in the post election violence.³ By the end of the first month of the conflict, over eight hundred people had been killed, and another 350,000 were internally displaced.⁴ By the sixth week of the conflict, over on thousand people had been killed, and more than 300,000 people were internally displaced.⁵

The conflict was intense (widespread, violent and disruptive) and had a hallmark of a protracted confrontation. In fact it was believed that the country would breakdown into a full pledged war similar to the one in Sudan that has lasted twenty years and Somalia. However, the conflict actually was brought under control within weeks. People died, there were

¹ The Standard, 01 January. 2008. p.1,3.

² "Poll violence casualty toll at 510, say police" Daily Nation, 19 January 2008, p.2.

³ Daily Nation, 22 January, 2008, p.48

⁴ "Where is Kibaki" Nairobi Star. 29th January, 2008. p.1.

⁵ "Post-poll violence deaths hit 1,000 despite peace talks" Business Daily (Nairobi), 6 February. 2008. P.2

internally displaced persons and protagonists leaving the researchers baffled how it happened so fast.

Objective of research

The expeditious resolution of the Kenyan conflict was due to the quick entry of external mediation. The objectives of this study will be;

Firstly, examine the character of the Kenyan conflict: the way it expressed itself, what prompted it to occur; who were the protagonists and how they conducted themselves in the conflict. Secondly, to examine at what point did the external mediators get involved, who they were, their character, how they gained entry and how they conducted themselves. Lastly, to examine agenda one, two, three and four and the interpretation of the mandate and to further look at how the two principles reached the agreement that they did.

Conceptual Framework

Scholars have defined conflict differently. The Oxford English Dictionary Tenth Edition is defines conflict as a serious disagreement or argument, a prolonged armed struggle an incompatibility between opinions or principles.⁶ The word conflict therefore has more than one meaning.

John Burton argues that conflicts are struggles between opposing forces, implying that the issues are more serious than those relating to dispute possibly stimulating physical confrontation. John Galtung holds that structural theory explains conflict as one of the compatible interests, which arose from the structure of the community, whether the community is that of a nation, a region or local community. On the other hand psycho-cultural theory places great emphasis on identifying the fears and misconception arising between those conflicting that are conducive to negotiation compromise and co-operation.

⁶ The Oxford English Dictionary Tenth Edition

Buckles/Rusnak holds that conflict is an intense experience in communication and interaction with transformative potential. For marginal groups seeking to redress injustice or extreme inequalities in resource distribution, conflict is an inherent feature of their struggle for change.⁷

Gesiye Anaye (in the Niger Delta congress on April 2003, Lagos) says conflict refers to disputes disagreements, quarrels, struggles, fights and the wars between individual groups and countries. In every nation there is no complete agreement on how to share wealth, power and states among individuals and groups and how to effect necessary changes and reforms. Conflict occurs when deprived groups attempt to increase their share of power and wealth or to modify dominant values norms beliefs and ideology to increase their share of power and wealth or to modify dominant values norms beliefs and ideology.⁸

Typology of conflict

Studies in conflict have attempted to classify conflicts into predictable groups or patterns. Christopher Moore (1996) has suggested five types of conflicts. These are data conflicts, interest conflict, value conflicts, relationship conflicts and structural conflicts.

a) Data conflicts occur when people lack information necessary to make wise decisions, are misinformed, disagree on which data is relevant, interpret information differently, or have competing assessment procedures. Some data conflicts may be unnecessary as they are caused by poor communication between people in conflict. Other data conflict may be genuine incompatibilities associated with data collection, interpretation or communication. Most data conflicts will have “data solution”.

⁷ Buckles/Rusnak, Introduction: Conflict and Collaboration in Natural Resource Management. In D. Buckles (ed.), *Cultivating peace: conflict and collaboration in natural resource management*. Ottawa Canada. (IDRC-International Development Research Center/ The World Bank), 1999, p.110.

⁸ Angaye G., *Causes and Cures of Conflict in Nigeria*. Niger Delta Congress. April 2003

b) Interest conflicts are caused by competition over perceived incompatible needs. Conflicts of interest exist when one or more of the parties believe that in order to satisfy his or her needs, the needs and interests of an opponent must be sacrificed. Interest-based conflict will commonly be expressed in positional terms. A variety of interests and intentions underlie and motivate positions in negotiation and must be addressed to get maximum results. Interest based conflicts may occur over substantive issues (such as money, physical resources, time, etc.), procedural issues (the way the dispute is to be resolved); and psychological issues (perception of trust fairness, desire for participation, respect, etc.). For an interest based dispute to be resolved, parties must be assisted to define and express their individual interests so that all these interests may be jointly addressed. Interest based conflict is best resolved through the maximizing integration of the parties' respective interests, positive intentions and desired experiential outcomes.

c) Value conflicts are caused by perceived or actual incompatible belief systems. Values are beliefs that people must use to give meaning to their lives. Values explain what is "good" or "bad", "right" or "wrong", "just" or "unjust". Differing values need not cause conflict. People can live together in harmony with different value systems. Value disputes arise only when people attempt to force one set of values on others or lay claim to exclusive value systems that do not allow for divergent beliefs. It is of no use to try to change value and belief systems during relatively short and strategic mediation interventions. However it can be helpful to support each participant's expression of their values and beliefs for acknowledgement by the other party.

d) Relationship conflicts occur because of the presence of strong negative emotions, misperceptions or stereotypes, poor communication or miscommunication or repetitive negative behaviors. Relationship problems often fuel disputes and lead to an unnecessary escalating spiral of destructive conflict. Supporting the safe and balanced expression of

perspectives and emotions for acknowledgement (not agreement) is one effective approach to managing relational conflict.

e) Structural conflicts. These are caused by forces external to the people in dispute. Limited physical resources or authority, geographic constraints (distance or proximity), time (too little or too much), organizational changes, and so forth can make structural conflicts seem like a crisis. It can be helpful to assist parties in conflict to appreciate the external forces and constraints bearing upon them. Structural conflicts will often have structural solutions. Parties' appreciation that a conflict has external sources can have the effect of them coming to jointly address the imposed difficulties. The conflict that engulfed Kenya after the 2007 general elections were interest conflict as the two principles in the conflict pursued their own interests as they stood on their principles and relationship in the sense that because of the misconceptions that plagued Kenyan amongst the different ethnic groups therefore making the conflict worse. This study will concentrate on structural conflicts which result from structural inequalities in control, ownership, power authority or geographic separation as well as interest conflicts which motivate positions in negotiations that have to be addressed to get maximum results.

Different authors have different typology systems that determine the level of conflict. Conflict is always described as passing through a series of phases – beginning, development and end – with a distinct intensity scale. For example Brahm(2003) differentiates between seven phases of conflict. The phases begin with existence of a latent conflict, followed by emergence, escalation, stalemate, conflict escalation and ending with settlement and the post-conflict peace building as the last stage.⁹

The potential for conflict exists wherever people have different needs, values or interests; this is the latent conflict stage. The conflict may not become apparent until a trigger event

⁹ Eric Brahm,(2003), *Conflict Stages*, in Guy Burgess/Heidi Burgess (eds), *Beyond intractability*, Boulder http://www.beyondintractability.org/m/conflict_stages.jsp

leads to the emergence (or beginning) and the obvious conflict. Emergence may be followed quickly by settlement or resolution, or it may be followed by escalation, which can become very destructive. Escalation however cannot continue indefinitely. De-escalation can be very temporary or can be part of a broader trend toward settlement or resolution. Escalation may lead to a stalemate a situation in which neither side can win. If the pain of continuing the conflict exceeds that of maintaining the confrontation, the parties are in what Zartman calls a "hurting stalemate"¹⁰ which often represents an ideal opportunity for negotiation and a potential settlement. Finally, if when an agreement is reached, peace building efforts work to repair damaged relationships with long time goal of reconciling former opponents.

Conflict resolution

This point out strategies that could be employed to find an exit from the conflict's destroying dynamic and that aim toward achieving satisfying solution for all parties involved. Strategies such as mediation or arbitration are used. This study will take the mediation approach as this was what was used to resolve the Kenyan 2008 crisis.

Mediation

Mediation is the process whereby an independent third party assists parties in conflict to reach a collectively acceptable settlement through dialogue and negotiation. The mediator's principle function is to help disputants shift their stance from one of uncompromised to one that is more accommodating. Most importantly is the fact that parties are interdependent and their co-operation is what is required to resolve conflict. Where this is not the case parties are able to walk away from the dispute and there may be little need for mediation. The needs of all parties are therefore a requirement for durable peace and stability. There are six principles of mediation: impartiality; mutual consent to mediation and mediators; conflict is complex

¹⁰ William Zartman, *Ripe for Resolution*, (New York: Oxford, 1985/1989)

and could delay compromise; ownership of processed outcome, mediator's flexibility, avoidance of punitive measures.¹¹

a) Impartiality

Individuals and groups locked in conflict tend to regard each other with intense suspicion and animosity. Mediation creates a relatively calm and safe space to address parties concern with a mediator acting as a bridge between them. Their trust lies in the assumption that he or she will treat them fairly. Emphasis on impartiality reflects an ideal that is not fully attainable since no one is ever free of bias.

b) Mutual consent to mediation

Mediation entails talking to "the enemy" and the prospect of compromising basic principles in order to reach a settlement. The parties fear losing face in the eyes of their supporters, being outmaneuvered by their opponent's negotiating tactics, and being pressurized by the mediator to abandon their goals. In light of these circumstances mediation can only be undertaken only in the consent of disputants.

c) Conflict is complex and could delay compromise

Mediators are seldom able to resolve community conflicts swiftly. Apparently, irreconcilable interests and values, mistrust and rivalry over scarce resources, defy simple solutions. Deng (1997:28-29) warns that diplomatic intercession which seeks "quick fixes in deep-rooted identity conflicts can only complicate the crisis". He concludes that "there is a tendency on the part of diplomatic peacemakers to look for aspects of a problem that lend themselves to relatively easy solutions and to postpone more difficult ones. While this is understandable, and perhaps even practical, it is probably the more difficult ones that

¹¹ Laurie Nathan, (1998) *A case of undue pressure: International mediation in African Civil Wars*, Presented at the South African mediation Seminar, Independent Mediation Service of South Africa and centre for Conflict Resolution, Johannesburg.

eventually provoke people to violent confrontation, making them determined to kill and risk being killed." Attempts to rush the process and compel the parties to conclude a settlement prematurely are unlikely to succeed.

d) Ownership of processed outcome

Independent observers may view the stand of one or more parties as irrational or unreasonable, issues in dispute are relatively trivial or the solution of the underlying problem as fairly obvious. If parties shared these views there would be no need for mediation. Adversaries are usually motivated by an acute sense of injustice, by real or imagined threats to their security, or by unmet needs which they regard as fundamental. These not only limited to material imperatives like food and shelter but also include respect, affirmation and acknowledgement. They want to be involved in decisions that affects their lives and resent being treated as the object of some other body's plans. Mediators should therefore refrain from prescribing solutions as their job only includes facilitating problem solving by disputants

e) Mediator's flexibility

Dynamics in conflict differ from situation to situation as a result of historical developments. Chester Crocker observes with respect to intrastate and regional conflicts, each "has its own structure and should be approached with an appreciation of its uniqueness". Mediators must therefore be sufficiently flexible to adapt their style and methods to the circumstances.

f) Avoidance of punitive measures

In most cases one or more of the parties to a civil war is typically resistant to mediation and engages in conduct deemed unacceptable by the international community. In cases of oppression, abuse of human rights and other violation of international norms are features of

an intra-state conflict; external actors might seek to apply pressure on the offending party through enforcement measures. A mediating body will certainly be mistrusted by a disputant against whom it threatens to apply sanctions or military force.

Power sharing

Timothy Sisk notes that in deeply divided societies, where fear and ignorance are often the driving forces of ethnic conflict, people tend to identify themselves by their ethnic groups which is the defining characteristic of the society. Such societies can ignite violence especially where there is inequality among ethnic groups and discrimination against one or more groups, and when discrimination is reinforced in public policy. In Kenya, where it was felt that there was inequality between the Kikuyu, Meru, Embu against the rest of the other ethnic communities.

Sisk notes that to avoid violent political process it is a must to protect human rights. Rather than feel fearful, ethnic groups will feel valued in such a society. The power arrangements laid out in Sisk's book can help lead divided societies towards a stable democracy and away from violence. Power sharing appropriately structured, can encourage moderation and discourage extremisms. It can be based on politicians' self-interest: They will do whatever is needed to get elected.

Power sharing can begin a movement of the society away from ethnicity as the strongest identifier. Coalitions may form along ethnic lines at the beginning, but ideology or class may become more important. People feel more strongly about ideology and class but they are less likely to defend themselves to death than ethnic extremists. Power sharing has been successful in some societies but ineffective in others. It was successful in South Africa to end apartheid, but not so in Rwanda to prevent the genocide. In Kenya, it is characterized with periods of tension, but so far the coalition government seems to be working.

LITERATURE REVIEW

The Kenyan conflict was abrupt, violent, destructive and short lived. The conflict erupted once the results of the 2007 General elections were announced. There was violence all over the country that was characterized by brutal killings and destruction of property. However, it lasted for a relatively short time as mediators stepped into the chaos and assisted in finding solutions to the conflict. National ethnic conflicts are based on different social stage of platform. These may include; religion, race ethnicity and clan.

The Literature review of this study revolved around the following issues: origin of ethnic conflict, causes, expression of conflict and how policy makers respond to ethnicity. Ethnicity in this context is viewed as an inclusive concept that defines groupings on the basis of indicators such as color, appearance, language, race, religion, common ancestry, height complexity, body structure, level of education and the like. It is an inscriptive phenomenon largely based on the myth of common ancestry, belief systems, physical settlements, group affiliations and relationships. It is a common phenomena in plural societies like Kenya, Uganda, Rwanda, Burundi, Somalia, Ethiopia and South Africa, to mention but a few (Akinsola-Akiwowo: 1964; Burke: 1965; Barth: 1969; Mafeje: 1971; Eken: 1986; Anderson: 1991; Nyukuri: 1992)¹²

According to Mc Onyango (1995:1)¹³, African inter-ethnic conflicts are not as a result of the mere fact that the continent and national boundaries are brackets enclosing multi-ethnic groups. To him, the question of ethnicity and ethnic conflicts are issues of ethnic grudges. He asserts that the past inter-ethnic conflict management strategies in Africa have tended to concentrate on symptoms of the effects and not the root causes. He further postulates that there are numerous socio-economic and political grudges between or within the numerous ethnic communities in African states. His work augments the earlier works of other scholars like (Achebe, 1975, 83; Zangari, 1976; Nyong'o, 1987; J.B.Ojwang, 1989:3; Lunyigo, 1989:39)¹⁴

¹² Akiwowo A.,. "The Sociology of Nigerian Tribalism". Phylon 23, University of Ibadan.1964. p.162

¹³ Mc Onyango (1995:1)

¹⁴ Achebe: 1975,83; Nyong'o, 1987; J.B.Ojwang, 1989:3; Lunyigo. 1989:39

According to other critical scholars like (Baldwins, 1962:195; Markakis, 1994:261; Murungi, 1995:5 and Amutabi, 1995)¹⁵, numerous resolutions or management strategies have been attempted, but none of them seems sustainable in creating an atmosphere for peace, security and inter-ethnic as well as intra-ethnic co-existence in Africa. As Markakis put it, ethnic conflict in Africa is a many sided violent struggle waged at several levels. It involves nations, regions, ethnic groups, clans, lineages, and is fought between and within states, religious and ethnic groups. Amutabi(1995) cautions us from viewing ethnicity as a scourge only in Africa ¹⁶. To him, this is basically a Eurocentric interpretation of the African lifestyle. He adds that, "We need to move away from the state of despair and hopelessness towards more practical solutions by enhancing the existing positive ethnic structures". According to Gertzel (1994:217), it is the primary task of the leadership to integrate the many groups in society, divided though they may be on class, ethnic, regional, economic, political and religious lines into a new national entity. ¹⁷ He, like Amutabi, holds the point of view that it would be too much if politicians were to be relied upon in eradicating ethnic tensions as these underlie their survival (Amutabi, 1995:7', Nyukuri, 1992:5'; 1993, Africa Watch.)¹⁸

According to Okullu (1974) further observed: "Tribalism is a wasteful practice when the employment of all human resources for development is considered". It is inconceivable that there could be such a big concentration of talent training and experience in just one area of the nation (Okullu, 1974:48)¹⁹. According to the late Tom Mboya, (1963), ethnic conglomeration has two functions; one is positive while the other is negative. He argues that the promotion and

¹⁵ Baldwins, 1962:195; Markakis, 1994:261; Murungi, 1995:5 and Amutabi, 1995

¹⁶ M. N. Amutabi, "Challenging the Orthodoxies: The Role of Ethnicity and Regional Nationalism in Leadership and Democracy in Africa", UNESCO Seminar, 1995, 28 - 31 May.

¹⁷ C. Gertzel, Leadership and Institutional Building in Uganda, in A.Ojuka and W.R. Ochieng' (eds) *Politics and Leadership in Africa*, Nairobi, East African Literature Bureau., 1975 p.217

¹⁸ Amutabi; 1995:7; Nyukuri, 1992:5; Africa Watch, Nov. 1993

¹⁹ H. Okullu., 1974, *Church and Politics in East Africa* Uzima Press, pg. 48.

safeguarding of traditional cultural and social practices of a particular ethnic group is vitreous and extremely necessary in Africa's search for an authentic culture of it's own. He believed in unity within the diversity of the numerous ethnic groups in Africa.

According to Bienien , communal solidarities in Kenya have yet to be destroyed, and it is clear that economic development and social change seems to have given greater salience to ethnic consideration...²⁰ This partly explains why the issue of ethnicity and land ownership has remained a very sensitive and explosive aspect of Kenya's historical and contemporary political economy.²¹ Atieno Odhiambo (1976) augments Bieniens point when he observed that the formation of ethnic associations such as the Luo Thrift and Trading Corporation (LUTATCO) by Oginga Odinga and other Luo traders was aimed at challenging the Asian monopoly of retail and wholesale trade in Nyanza.²²

The ethnic inequalities within Kenya in terms of extraction and distribution of the scarce resources has been a source of negative competition between those who control power and those who perceive themselves to have been marginalized. The ethnic mobilization and sensitization of the supporters to rally behind the "have" and the "have not" elites is a threat to peace and stability since at no point there will be equal distribution of resources in a growing economy.

i) Origin of ethnicity

According to Anthony Smith an "ethnic community" is a named human population with a myth of common ancestry, shared memories, and cultural elements; a link with a historic territory or homeland; and a measure of solidarity. Six criteria must be met before a group can be called an ethnic community:

²⁰ H. Bienien, . *Kenya: The Politics of Participation and Control*. Princeton University Press, 1974, New Jersey. P.131.

²¹ C. Leo, *Land and Class in Kenya*. University of Toronto Press,1984, p225.

²² Ibid.

Firstly, the group must have a name for itself. The lack of a name indicates the lack of a sufficiently collective identity. Secondly, the people in the group must believe in a common ancestry. Thirdly, the members of the group must believe that they have shared historical experiences. Fourthly, the group must have a shared culture, which is generally based on a combination of language, religion, laws, customs, institutions, dress, music, crafts, architecture, and even food. Language and religion are especially powerful ethnic markers. Fifthly, the group must feel attachment to a specific piece of territory which it may or may not actually inhabit. Sixthly, the people in a group have to think of themselves as a group in order to constitute an ethnic community. They must have a sense of their common ethnicity. They must be self-aware.²³

An ethnic group is the basis for the idea of a nation to be created. Anthony Smith argues that, "Nationalism extends the scope from purely cultural and social to economic and political spheres; from predominantly private to public sectors. To make any headway in the modern world, ethnic movements must stake their claims in political and economic terms as well as cultural ones and evolve economic and political programs."

According to Steve Fenton, an ethnic group refers to descent and culture communities with the following specific additions; that the group is a kind of sub-set within a nation state, that the point of reference is typically culture rather than physical appearance and that the group referred to is "other" to some majority who are presumed to be ethnic.²⁴ According to Glazier and Moynihan, ethnicity is defined as a label for social groups who fell a distinct sense of difference by virtue of common culture and descent.²⁵ Max Weber classic definition is an ethnic group is a human collectivity based on an assumption of common origin real or imagined.²⁶ Fenton shows that the ideas of ancestry, common origin or descent, and more

²³ Smith A. D., *Myth and Memories of the Nation*, Oxford University Press, London, 1999. Pg. 13

²⁴ Fenton S., *Ethnicity*, Polity Press, Cambridge, 2003 p.23

²⁵ Jones J., *Prejudice and Racism*, 2nd Edition, Mc Graw-Hill, New York, 1997 p. 87

generally “peoplehood” are at the core of modern usage of the words “ethnic” and “nation” which are derived from these classical sources.²⁷ On analysing these definitions one is left wondering if ethnicity is innate or socially constructed. Primordialist believe that ethnicity is innate while Constructivism sees it not as a matter of nature but a matter of nurture.²⁸

Primordialism sees kin relations and family ties as a pre-social or Geertz’s concept “given”. “These congruities of blood, speech and custom are seen to have an ineffable or at times overpowering coerciveness in and of themselves.”²⁹ Therefore, primordialists regard ethnicity as a state of nature or innate bond of kinsmen of the same ethnic group. Some argue that primordial means non-civic which means those ties associated with citizenship and citizen like obligations in a modern state.³⁰

Constructivism as shared by Fenton the social construction of a descent and culture, the social mobilization of a descent and culture and the meanings and implications of classification systems built around them. People do not just possess cultures or share ancestry; they elaborate these into an idea of community founded upon these attributes.³¹

ii) Ethnic conflict

There are many different definitions for ethnic conflicts, particularly about that what drives these types of conflicts. Some theorists³² claim that ethnic conflicts appear, mostly in a form of

²⁶ Pettigrew T. F., *Ethnicity in American Life: A social-psychological Perspective, Race and Ethnicity in Modern America*, Washington D.C, 1974. P.180.

²⁷ Fenton S., *Ethnicity*, Polity Press, Cambridge, 2003 p.51

²⁸ Mezran K.K., *Negotiating National Identity*, Antonio Pellicani Editore, Rome 2002. P.36.

²⁹ Geertz C., *The Interpretations of Cultures*, Basic Books, New York, 1973. Pp.258

³⁰ Fenton S., *Ethnicity*, Polity Press Cambridge, UK, 2003. P.88.

³¹ Fenton S., *Ethnicity*, Polity Press Cambridge, UK, 2003. P. 3

³² J.D.Fearon, (1994), “Ethnic war as a commitment problem (Paper presented at the annual meeting of the American Political Science Association)”, New York, <http://www.stanford.edu/~jfearon/papers/ethcprob.pdf>.

separatist warfare, as a consequence of the minority's fear that cannot trust the state system governed by the majority will not be abused to disadvantage the rights of minorities.

For rationale-choice theorists (Hechter 1995;³³ Lake/Rothchild 1996;³⁴ Posen 1993³⁵) ethnic conflicts and wars are produced by the feeling of insecurity emerging when one ethnic group is unsure of the intentions of the other ethnic group and two are already mutually hostile. Other theorists argue that the very competition of the political class and the actions of 'ethnic entrepreneurs' drive ethnic conflicts,³⁶ and that the political elites create ethnic conflicts manipulating with ethnic identities in their quest for power. In general terms Gurr³⁷ defines ethnic conflict as "... consisting of groups that define themselves using ethnic criteria to make claims on behalf of their collective interests against the state or against other political actors." Intrastate conflict could also have the government power as the key issue. In these case the incompatibility between the two disputed parties, one of which is the government itself, mostly concerning the political system, concerning the composition of the government or replacement of the central government, is the core of the conflict. By some conflict scholars this conflict has been named as 'armed conflict with governmental incompatibilities'.³⁸ Of course the most important thing that characterizes these conflicts is that the main goal of the parties is on one side to retain and on the other side to capture the power over the government.

³³ M. Hechter, (1995), "Explaining nationalist violence". in *Nations and Nationalism*. 1/1, pp. 53-68

³⁴ D.A. Lake, / D. Rothchild (1996), "Containing fear: the Origins and management of ethnic conflict", in *International Security*, 21/2, pp. 41-75.

³⁵ B. Posen, (1993), "The security dilemma and ethnic conflict". in *Survival*, 35/1. pp. 27-47.

³⁶ P. Brass. (1997), "Theft of an idol: text and context in the representation of collective violence", Kalkutta 1997.

³⁷ R. T. Gurr, (1994), "Peoples against states: ethno-political conflict and the changing world system", in *International Studies Quarterly*, 38/3, pp. 347-377.

³⁸ P. Wallensteen./M. Sollenberg, (2001), "Armed conflict, 1989-2000", *Journal of Peace Research*, 38/5, pp. 629-644.

iii) Causes of Ethnic Conflict.

According to Michael E. Brown, in his book *The International Dimension of Internal Conflict* he identifies four factors as important precursors of ethnic and internal conflict: These are structural factors (weak states; intra-state security concerns; ethnic geography). Secondly, political factors (discriminatory political institutions; exclusionary national ideologies; intergroup politics; elite politics). Thirdly, Economic/Social Factors (economic problems; discriminatory economic systems; modernizations). Lastly, Cultural or Perceptual factors (patterns of cultural discrimination; problematic group histories).³⁹

a) Political Causes

Ethnic conflict have issues which include; the type and fairness of a country's political institutions: closed authoritarian systems are likely to generate considerable resentment over time especially if the interests of some ethnic groups are served. The dynamics of inter-group politics. The prospects for violence are great if groups, whether they are based on political, ideological, religious or ethnic affinities have ambitious objectives, strong senses of identity and confrontational strategies. Elite politics and specifically the tactics employed by desperate and opportunistic politicians in times of political and economic turmoil. Ethnic scapegoating may be employed in this context and the mass media may be employed in partisan and propagandist ways that further aggravate interethnic tensions.

b) Economic and or Social factors

Economic problems: unemployment, inflation and resource competition may contribute to societal frustrations and tensions. Discriminatory economic systems whether they discriminate on class basis or on an ethnic basis can generate feelings of resentment and

³⁹ M. E. Brown, *The International Dimension of Internal Conflict*

frustration prone to the generation of violence. Indicators may include unequal economic opportunities, unequal access to resources such as land and capital and vast differences in standards of living.

c) Cultural/Perceptual Factors

Cultural discrimination against minorities- inequitable educational opportunities, legal and political constraints on the use and teaching of minority languages and constraints on religious freedom. Group histories and group perceptions of themselves and others. When two groups in proximity have mutually exclusive negative perceptions of each other, the slightest provocation in either side confirms deeply held beliefs and provides justification for a retaliatory response.

According to rationale-choice theorists (Hechter 1995; ⁴⁰Lake/Rothchild1996;⁴¹ Posen 1993⁴²) ethnic conflicts and wars are produced by the feeling of insecurity emerging when one ethnic group is unsure of the intentions of the other ethnic group and two are already mutually hostile. Other theorists argue that the very competition of the political class and the actions of 'ethnic entrepreneurs' drive ethnic conflicts,⁴³ and that the political elites create ethnic conflicts manipulating with ethnic identities in their quest for power. In general terms Gurr⁴⁴ defines ethnic conflict as "... consisting of groups that define themselves using ethnic criteria to make claims on behalf of their collective interests against the state or against other political actors."

⁴⁰ M.Hechter, (1995), "Explaining nationalist violence", in Nations and Nationalism, 1/1, pp. 53-68

⁴¹ D.A. Lake, / D. Rothchild (1996), "Containing fear: the Origins and management of ethnic conflict", in International Security, 21/2, pp. 41-75.

⁴² B. Posen, (1993), "The security dilemma and ethnic conflict", in Survival, 35/1, pp. 27-47.

⁴³ P.Brass, (1997), "Theft of an idol: text and context in the representation of collective violence", Kalkutta 1997.

⁴⁴ R. T.Gurr, (1994), "Peoples against states: ethno-political conflict and the changing world system", in International Studies Quarterly, 38/3, pp. 347-377.

Intrastate conflict could also have the government power as the key issue. In these case the incompatibility between the two disputed parties, one of which is the government itself, mostly concerning the political system, concerning the composition of the government or replacement of the central government, is the core of the conflict. By some conflict scholars this conflict has been named as 'armed conflict with governmental incompatibilities'.⁴⁵ Of course the most important thing that characterizes these conflicts is that the main goal of the parties is on one side to retain and on the other side to capture the power over the government.

Different factors are responsible for the emergence and development of protracted social conflict. These factors can be economic, political, institutional, cultural, geographic, demographic, psychological, military or colonial can be broken down into two main categories, despite the eclecticism of the terminology found in the literature, as structural ('objective' conflict) and psycho-cultural ('subjective' conflict).⁴⁶ Structural conflict is essentially defined as "an outcome of incompatible interests based on competition for scarce resources; it is objective because it is defined as largely independent of the perceptions of participants and emanates from power structures and institutions."⁴⁷ On the other hand, psycho-cultural conflict theory defines conflict in terms of psychological and cultural forces that frame the beliefs about the self, others, and behaviour.

Psycho-cultural or perceptual or subjective explanation of protracted social conflict does not exclude other explanation, like structural explanation, however it may be argued that ethnic conflict as seen in Rwanda can only be understood, and ultimately resolved by addressing psychological elements. As Donald Horowitz maintains "The sources of ethnic conflict are not to

⁴⁵ P. Wallensteen, M. Sollenberg, (2001), "Armed conflict, 1989-2000". *Journal of Peace Research*, 38/5, pp. 629-644.

⁴⁶ M. Brown, 'Causes and Implications of Ethnic Conflict,' in M. Brown (ed.), *Ethnic Conflict and International Security* (Princeton University Press, 1993), pp. 3-27

⁴⁷ T. Woodhouse, 'Commentary: Negotiating a New Millenium: Prospects for African Conflict Resolution,' in *Review of African Political Economy* (N°68, 1996), pp 137.

be found solely in the psychology of group juxtaposition, but they cannot be understood without a psychology, an explanation that takes account of emotional concomitants of group traits and interactions.⁴⁸

As John Lonsdale's distinction between "political tribalism" and "moral ethnicity" reveals, ethnic mobilization is not only an instrument for the control and distribution of the state's resources; it is successful because it carries a powerful emotive appeal. Differentiation through ethnicity has always existed in Africa and humans have a universal propensity to form collective identities, to distinguish outsiders from insiders, along ethnic lines. For example, some African ethnic groups in equatorial Africa willingly cooperated with the pre-colonial slave trade, capturing individuals deemed to belong to other ethnic groups and exchanging them for goods. There were, moreover, some notable pre-colonial kingdoms and nations, such as the Kongo, Zulu or Baganda, whose members had a strong collective consciousness.⁴⁹

Nevertheless, as has been confirmed by countless studies, in much of pre-colonial Africa ethnic identity was fluid and ill-defined, and the largest collective unit conceived of by most Africans was rather parochial, for instance at the level of the lineage group or clan. Aidan Southall notes that pre-colonial African societies were characterized by "interlocking, overlapping, multiple identities" based on ethnic, cultural and geographical communities that were smaller than any "tribe". In most cases Africans had only a very weak allegiance, if at all, to what might now be classed as a "tribe" according to objective criteria of genetic, linguistic or cultural homogeneity within a geographical region. These objective criteria, in any case, were rarely clearly demarcated, as much of the African continent was marked by a gradual change in customs and ways of life from one village or community to the next, depending on local geographic, agricultural and climatic conditions. Indeed, the process of consolidation of dialects into a single

⁴⁸ D. Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985), pp. 181-182

⁴⁹ B. Berman, D. Eyoh, W. Kymlika & et al, *Ethnicity & Democracy in Africa*, James Carrey Limited, 2004. p1-13.

tribal vernacular was often not begun until the arrival of Christian missionaries intent on spreading the (printed) Word. Jean-Loup Amselle goes so far as to claim that “there was nothing that resembled a bounded ethnic group during the pre-colonial period

Wallerstein (1979) asserts that ethnic consciousness and conflict occur when groups feel threatened with loss of previously acquired privilege, or conversely feel that it is an opportune moment politically to overcome a long standing denial of privilege. He said, the mechanisms and machinations through which these groups advance their aims is what cause ethnic tensions and conflicts. To him, the present manifestation of ethnicity in Africa is an elite and class phenomenon where one community’s elites feel excluded by another from control of economic and political power. They then indoctrinate members of their ethnicity to believe that this is a conspiracy by a whole community against another, which should be violently resisted.

Nnoli (1995)⁵⁰ asserts that ethnicity hold individual together, gives them internal cohesion, encourages them to provide natural security for each other and promotes their sense of identity and direction. To him, ethnicity offers a personal solution to the problems of exploitation, oppressions, deprivation and alienation. Furthermore, he notes, in the context of an interventionist state, the ruling class use the state to build up their business enterprises. The struggle of the ethnic factions of these classes for state patronage in the process of embourgeoisement generates and promotes ethnicity.

Ibrahim (1995)⁵¹ said a major contributory factor to ethnic conflicts is the undemocratic nature of governance. He says many African regimes and rulers have repressed sections of the people,

⁵⁰ Nnoli, O.. *Ethnicity and Development in Nigeria*, Aldershot Avebury Publisher. 1995

⁵¹ Ibrahim, J.. “The Narcissism of Minor Difference and the Rise of Genocidal/ Tendencies in Africa: Lesson from Rwanda and Burundi.” *Paper presented at the 8th CODESRIA General Assembly, Dakar 1995*

and by implication, ignored their aspirations. Some have employed divide-and-rule method in governance, and created more ethno-religious divisions than the colonialist ever did. To him, once degenerated regimes find their legitimacy put in question, because they no longer care for the majority of the people, or protect the public good, and fail to protect or defend the people's rights, they tend to identify the process of repression. He believes when governance decays, the people retreat into sectarian enclaves, which are seen as providing security.

iv) Expression of ethnicity

Identity conflicts may have a variety of violent and nonviolent manifestations, all of which may be treated analytically as outcomes of the conflict at the time they are observed. The violent manifestations, ordered roughly from most to least extensive, include organized large-scale warfare; guerilla warfare; ethnic cleansing and forced migration; riots and other mass civil disturbances, either spontaneous or planned, for example, pogroms; and isolated incidents of small-scale violence, such as attacks on individuals or businesses. The variety of nonviolent manifestations of identity conflict includes protests; electoral polarization on identity-group lines; creation of civil society organizations that express political agendas on identity lines, for example, newspapers, identity-defined civic organizations; and complaints in the legal system. Other aspects of identity conflicts may also be analyzed as outcomes. These include changes in the political objectives of the parties, redefinition of the conflict by the parties, and changes in levels of hostility between identity groups.

Policy Tools

Policy tools may be used by parties to the conflict and by third parties within and outside the country where the conflict is located. Some tools are more readily used by internal parties and some by third parties; some tools benefit from the involvement of both. Several general policy

strategies and some tools that (primarily) employ each strategy have been identified. The major categories derive from the typology in Stern and Druckman (2000).

a) *Power politics strategies* are usually imposed from outside. They include arms embargoes, economic sanctions, judicial measures such as criminal tribunals, military intervention (limited or full-scale; unilateral or multilateral), threats of force, inducements to negotiate, bargaining to trade off interests, and so-called power mediation.

b) *Conflict mitigation strategies* may be initiated from outside or by the parties. These include humanitarian assistance, fact-finding missions, mediation, confidence-building measures, traditional peacekeeping operations, multifunctional peacekeeping operations, military and economic technical assistance, and unilateral conflict reduction initiatives—for example, inducements, graduated reciprocation in tension-reduction (GRIT), compromise on grievances.

c) *Conflict transformation strategies* are often initiated from outside, but always involve the parties. These include problem-solving workshops, alternative dispute resolution techniques, and attempts at reconciliation by truth commissions.

d) *Structural prevention strategies* always involve the parties and often involve support from outside. These include strategies of electoral system design, autonomy arrangements, power-sharing arrangements—for example, consociationism, ethnic set-asides, legal guarantees of free speech and association, and the development of civil institutions for expression and adjudication of grievances.

e) *Normative change strategies* involve the application of international norms, such as human rights, to conflicts that might otherwise be addressed only by local- and national-level institutions.⁵²

⁵² P. C. Stern, and D. Druckman, eds. ,International Conflict Resolution After the ColdWar. Washington, D.C.: National Academy Press. 2000.

MEDIATION

Different scholars have different take on national ethnic conflict and international mediation as a means of settling these type of conflict that occur in a process of political change. The literature on international mediation can be classified into the following themes:

i) Effectiveness of mediation in international relations

Bercovitch and other scholars assess and explain the effectiveness of mediation in international relations. For these authors, mediation outcomes are linked to various factors with specific operational criteria, each of which may influence the process of mediation and its effectiveness. There is a relationship between the context of dispute and the process of mediation which determines the mediation outcomes. The context of any mediation may be described according to three clusters of variables. These are the nature of dispute, the nature of the parties and the nature of the mediator which is actually determined by the actual mediator strategies. All these factors combines are affected by cultural differences and influence the success or failure of mediation⁵³

a) Nature of the dispute

Bercovitch, Anagnoson and Willie point out three basic elements of a dispute that can affect its course and outcome. These are intensity, duration at the time of intervention and the issues at the heart of the dispute.⁵⁴

b) The nature of the parties

⁵³ J. Bercovitch and A., Huston "The study of international mediation: Theoretical issues and Empirical evidence", op cit.

⁵⁴ J. Bercovitch, J.T. Anagnoson, D. Willie, "Some Conceptual issues and Empirical trends in the study of successful Mediation in International Relations", op cit.

The parties' characteristics may be identified in many ways; what results inevitably controversial is to determine which the characteristics more influential are and how to predict effective mediation results. Some of them are related to their level of power, their political regime or previous relationships between the disputants.⁵⁵

c) The Nature of the mediator

Mediation is a voluntary mechanism for conflict resolution. The chosen mediator is expected to play a satisfactory role in the sense that his or her personal features seem relevant to some extent. To outline and evaluate mediator's influence of the mediation process and outcomes, it is worth distinguishing two scopes. First, mediator's skills behavior and attitudes relating too the process of mediation and second the mediators cultural background.

According to Kleiboer the mediator attributes considered in the literature as the most important for the success of mediation are impartiality, leverage and status.⁵⁶ The issue for mediator's impartiality has evoked intense debate among scholars of international mediation. The heart of this debate lies on the effects of impartiality on the outcomes of mediation. Some academics consider impartiality as a crucial factor for "disputants" confidence in the mediator, which is necessary to gain acceptability which is essential for mediation success.⁵⁷

Other scholars conclude that mediators do not need to be impartial to be acceptable or effective but must be perceived as having an interest in achieving an outcome acceptable to both sides and being not so partial as to preclude such an achievement.⁵⁸

⁵⁵ J. Bercovitch, J.T. Anagnoson, D. Willie. "Some Conceptual issues and Empirical trends in the study of successful Mediation in International Relations." Op Cit., pp 10-12.

⁵⁶ Marieke. Kleiboer. "Understanding success and failure of international mediation", op. Cit p. 369.

⁵⁷ Ibid. For further analysis of this position see : Jackson 1952, 125-9; Young 1967,81; Nortedge and Donelan 1971, 299. ASSEFA 1987, 22; MIALL 1992, 67; HUME 1994.

⁵⁸ W. Zartman and S. Touval, " International Mediation in the post-Cold War Era' in managing Global Chaos. (Eds.) Crocker, Chester; Hampson, Fen and Aall, Pamela. Washington, D.C.: United States Institute of Peace P, 1996. Press 1996. p. 452.

For Bercovitch et. al, Brookmire and Sistrunk, and Frei suggest that for effective mediation in international relations is related to resources and leverage than to impartiality. They argue that mediation by super powers are more likely to be successful than medium or small powers and therefore exert greater influence on the adversaries' decision making.⁵⁹

ii) Determinants of mediation success

There is no particular formula to predict successful outcomes. The process of mediation and its outcomes is predicted by the cultural context which may be described as human part of the environment. Cultural dimensions are the core part of the context of any conflict and it encompasses many aspects thus the effectiveness of mediation may appear as a relative term. There is little literature in what constitutes successful mediation as the process of mediation may be perceived very differently by the parties involved, the mediator and or the observer. The rules to assess success after the process of mediation are not standard and sometimes failure is easier to recognize since it is usually relative to the goal that was sought but not achieved.

Bercovitch et al (1991) have understood that there is a successful international mediation when the parties have reached a ceasefire, a partial settlement or a full settlement.⁶⁰ So long as there is a slight change in the level of conflict as a result of mediation efforts. Another group of analysts (Smith 1985; Touval and Zartman 1985) has equated mediation success with the satisfaction expressed by the parties at the end of the process according to their initial objectives.⁶¹ Culture is usually viewed as a system of habits, beliefs, values and meanings property of societies, not individuals. Some claim that culture carries no or negligible

⁵⁹ J. Bercovitch, J.T. Anagnoson, J. T., D. Willie, "Some conceptual Issues and empirical trends in the study of successful mediation in international relations", op Cit., p.15.

⁶⁰ J. Bercovitch, J.T. Anagnoson, J. T., D. Willie, "Some conceptual Issues and empirical trends in the study of successful mediation in international relations", op. Cit., p.9

⁶¹ Marieke. Kleiboer, "Understanding Success and Failure of International Mediation", op. Cit pp.361 -362.

explanatory power. Others however like Carnevale and Choi give culture a prominent place in their research.

iii) *New Strategies in of intervention*

In the international conflict literature different approaches to mediator roles have been identified. The various typologies are, in some sense, different models to understand the impact of mediator upon parties, the process and results.

For Young⁶², the main role of the mediator is to make a real change in the dispute, which is the reason why the mediator interferes between the disputants. This change may be in different ways; Kaufman and Duncan cluster these possibilities as by supplying information- factual or normative; by transferring information among disputants and by altering procedures of the negotiation process, including physical environment. In which negotiation takes place.⁶³ From this perspective there is a continuous but ascending scale of mediator involvement with the parties in order to facilitate their communication to obtain a satisfactory agreement.

Along the same lines Zartman and Touval have described the three basic mediator techniques: mediator as “communicator”, “as formulator” and as “manipulator”. In early stages of negotiations mediators tend to focus on assisting communication between the parties by carrying messages and helping the parties to understand the messages conveyed. As negotiations get underway, mediators may act as formulators. Parties turn to the mediator to provide a formula for negotiation, that is, a common understanding of the problem and its solution or a shared notion of justice to govern the outcome.⁶⁴ Finally, mediators manipulate the parties by using leverage in order to bring them into agreement.

⁶² In Kaufman and Duncan. “A formal Framework for mediator mechanisms and motivation”. Op. Cit., p 690.

⁶³ Ibid.

⁶⁴ W. Zartman and S. Touval. “ International Mediation in the Post Cold war Era”, op. Cit., p. 454.

Cohen's cross cultural model of mediation adds three distinctive functions to the conventional range of third party tasks. This includes; the interpreter, decoding and explaining parties culturally encoded messages and enabling them to communicate intelligibly the buffer, helping to protect high face salient disputants from painful unwelcome confrontation; and the coordinator synchronizing the discordant negotiating conventions of the rivals and enabling coordinated solutions to emerge at each of the various stages of talks. From this view the identity of the mediator performs a relevant role in the mediation process charged with bridging the gap between cultures.⁶⁵ Cohen argues that the disputes across cultures and regions are compounded by both communication and negotiating dissonances. Hence the mediator should perform specific cross cultural roles in those cases.

Willie concludes that more active strategies are the most effective in international mediation and that active mediation strategies can affect and be responsive to a wider variety of dispute situations than less active strategies. For these scholars, active strategies are emphasized because they can prod the adversaries allowing mediators introduce new issues, suggest new ways of approaching the conflict or alter the motivational structure of these parties.⁶⁶

Psychologists have also identified variables that have implications for international mediation. "Caucus", saving face and the role of incentives are some of the most common tactics.⁶⁷ Caucus consists of separating the parties during negotiations as a way of avoiding hostile outbreaks and polemical speeches. Psychologists and mediators conclude that the elimination of nonverbal interaction between negotiators who are in hostile conflict increases the likelihood that they

⁶⁵ R. Cohen. "Cultural Aspects of international Mediation" in *Resolving Conflicts: the theory and practice of mediation*, (Ed) J. Bercovitch Lynne Reinner Publishers. US, 1996. pp., 107-128.

⁶⁶ J. Bercovitch, J.T. Anagnoson, J. T., D. Willie. "Some conceptual Issues and empirical trends in the study of successful mediation in international relations", op. Cit., p.16.

⁶⁷ Carnevale and Choi. 'Culture in the mediation of international disputes', op. cit., p. 107

would reach an agreement.⁶⁸ Saving face can be done by making suggestions for concessions and taking responsibility for the same. With this tactic an agreement is likely to be reached because parties make concessions while preserving their own sense of personal strength. There exists a gap in what is known in regard to the roles that two conflicting leaders hold in order to ensure success in the mediation process as it were in the case of President Kibaki of PNU and Raila Odinga of ODM in Kenya after the 2007 General elections.

HYPOTHESIS

The hypothesis of this study is that the expeditious conclusion of the post election conflict in Kenya in 2008 was because the reason for the conflict was superficial and therefore once the contentious issues were resolved there was no real need to extend the duration of the conflict.

METHODOLGY

I intend to use mainly secondary data analysis as well as observation method as I was present at the events of the post election violence after the 2007 General elections unfolded in Kenya. I observed keenly and collected data would be essential for this study. The main advantage would be directness; this would enable me to study behavior as it occurred. I would not have to ask people about their own behavior and the actions of others; I can simply watch as individuals act and speak. This in turn would enable me to collect data firsthand, thereby preventing contamination of the factors standing between me and the object of research. For example, when people are asked to report their past behavior distortions in memory may significantly contaminate the data, whereas memory has no effect at all on behavioral data collected through observational methods.

⁶⁸ Ibid.

Moreover, whereas other data collection methods introduce elements of artificiality into the research environment, data collected by observation describes the observed phenomena as they occur in their natural settings. Researchers can also use observational methods when people are unwilling to express themselves verbally. Observations, compared to verbal reports, demands less active involvement on the part of those being studied. Furthermore, through observation, researchers can validate verbal reports by comparing them with actual behavior. Finally, because the relationship between a person and his or her environment is not altered in observational studies, the researcher can observe the impact of the environment on researched individuals. This facilitates analysis of the contextual background of behavior.

Observation takes many forms. It includes casual experiences as well as sophisticated laboratory devices such as one way vision screens and video cameras. Such multiplicity makes observation a suitable method for a variety of research purposes. Researchers employ observational methods in exploratory research in order to gain insights that will subsequently be tested as hypotheses.

They can also employ such methods when collecting up supplementary data for use in interpreting or qualifying findings obtained by other methods, or as the primary methods of data collection in descriptive studies. Observation therefore ranges in veracity. It may take place in natural settings or in the laboratory, thereby enabling the investigator to study the phenomena such as patterns of learning, as they occur in real life situations or in a controlled environmental setting. At the same time observational procedures are highly flexible. Some are guided by the progress of research on a general problem. Others can be totally specific with structured instruments designed in advance for unique contexts. Researchers may themselves participate in activities of the group they are observing (participant observation); they may be viewed as

members of the group but minimize their participation; they may assume the role of an observer without being part of the group; or their presence may be concealed entirely from the people they are observing.

Nevertheless, whatever the purpose of the study or the observational procedures used, researchers must deal with three major considerations to ensure that the data obtained are systematic and meaningful- what to observe, when to observe and how to record , and how much interference is required.⁶⁹

The second type of data collected will mainly be a critical review of secondary data which includes professional literature, newspapers, reports from organizations such as the Kenya Human Rights Commission, Parliamentary Hansar and internet sources using authoritarian mode. The literature will be obtained from the Jomo Kenyatta Memorial Library (JKLM) and I.D.I.S Library at University of Nairobi campus.

Secondary data analysis has a rich intellectual tradition in the social sciences. From the conceptual - substantive point of view secondary data is the most accessible data available for the study of this particular research problem. On more contemporary issues as Herbert Hyman⁷⁰ points out, the investigator searches through a wide range of materials covering different areas and eras, which may result in greater scope and depth than is possible when using a single primary data research project. With the aid of such secondary sources, we can better understand the historical context; by analyzing data collected in different times on similar issues, we can also describe and explain change. Secondary data can also be used for comparative purposes.

⁶⁹ Nachmias C. F& Nachmias D., *Research Methods in the Social Sciences*, Fifth edition, St. Martins press Inc., 1996. Pp 206-7.

⁷⁰ H.H. Hyman., *Secondary Analysis of Samples Surveys* (Middletown, Conn: Wesleyan University Press, 1987) Chapter 1.

Comparisons within and between nations and societies may enlarge the scope of generalizations and provide additional insights.

There are several methodological advantages to secondary analysis. If secondary data is reliable and accurate, it provides opportunities for replication. A research finding gains more credibility if it appears in a number of studies. Rather than conduct several studies personally, a researcher can employ longitudinal research design. Indeed, when researchers compare their primary data with those collected in earlier studies, a follow-up is essentially conducted to the original research. Secondary analysis may improve measurement by expanding the scope of independent variables employed by the operationalization of concepts. This expansiveness enables the researchers to gain new insights. By using secondary data the sample size, its representativeness, and the number of observations that could lead to more encompassing generalizations. Finally, secondary data can be used for triangulation, increasing the validity of research findings obtained with primary data.

Primary research is a costly undertaking. This is a prohibitive sum for university professors, independent researchers and graduate students, particularly with retrenchment in research support and funding opportunities. It is therefore cheaper to use existing data rather than to collect new data.⁷¹

The third method is personal interview which is a face-to-face, interpersonal role situation in which an interviewer asks respondent questions designed to elicit answers pertinent to research hypotheses. There are three types: the schedule structured interview, focused interview and the non directive interview. I will use the focused interview as it has these four characteristics. It takes place with respondents known to have been involved in a particular experience; it refers to situations that have been analyzed prior to the interview; it proceeds on

⁷¹ C.F.Nachmias & D. Nachmais., *Research Methods in the Social Sciences*, London: St. Martins Press Inc, 1996. pp 305-308

the basis of an interview guide specifying topics related to the research hypotheses; it is focused on the subjects' experiences regarding the situations under study.⁷²

LIMITATIONS OF METHODOLOGY

Observation method has limitations such as when we observe behavior as it occurs (direct observation), we may miss the reason for its occurrence. By observation the researcher may be able to capture one dimension at a time as an observer may not be able to split himself in order to capture all that may be happening at the same time. This therefore limits observation method to the researcher's individual perspective as opposed to a holistic perspective of the conflict in totality.

Secondary data analysis has certain inherent limitations. Secondary data often only approximate the kinds of data that the investigator would like to employ for testing hypotheses. There is inevitably a gap between primary data the investigator would like to employ for testing hypotheses. There is an inevitable gap between primary data and the investigator collects personally with specific research purposes and intentions in mind and data others collect for other purposes. Differences are likely to appear in sample size and design, question wording and sequence, the detail of the interview schedule and technique and the setup of the laboratory experiments.

The second limitation in using secondary data is access to such data. Although thousands of studies are available in data archives, it may be difficult to find the ones with the variable interest. Sometimes the relevant may be difficult to find the ones with the variables of interest.

⁷² C.F.Nachmias & D. Nachmais., *Research Methods in the Social Sciences*, London: St. Martins Press Inc, 1996. pp 232-235

Sometimes the relevant data may be inaccessible because the original investigator will not release them. Researchers are not, after all, required to make their data available for secondary analysis. This problem often prods researchers into a creative use of their skills in locating relevant secondary data and measuring variables.

The third problem with secondary data analysis may emerge if that researcher has insufficient information about how the data was collected. This information is important for determining potential sources of potential sources of bias, errors or problems with internal or external validity. As for the personal interview its limitations are its costs are higher, there is interviewer bias that is there are no standardization of data collection and finally lack of anonymity especially if the respondent is sensitive to the topic or some of the questions.⁷³

SCOPE AND LIMITATIONS OF RESEARCH

The scope of this study will be on the subjective perspective and will try as much as possible to cover all aspects .The constraints faced will be limited time as I have a full time job that is also quite demanding. There is also a wealth of information which I would not have enough time to review and the greatest challenge would be to limit the research the area of study.

⁷³ C.F.Nachmias & D. Nachmais., *Research Methods in the Social Sciences*, London: St. Martins Press Inc, 1996. Pp 237- 238

CHAPTER OUTLINE:

Chapter one: The proposal

Introduces the topic of the research study by first setting the broad context of the research study, the statement of the problem, justification, theoretical frame work, literature review, hypotheses and the methodology of study.

Chapter two: Characteristics of the Kenyan Conflict

This is an investigation to examine the character of the Kenyan conflict: the way it expressed itself, what prompted it, who were the protagonists and how they conducted themselves in the conflict and at what point of the conflict was there was external mediation.

Chapter three: External Mediation

A look at how the international community through the United Nations and the Africa Union intervened in order to restore calm and order to Kenya. Character of external mediation, who were they and how they gained entry into Kenya and how they conducted themselves.

Chapter four: The Agreement

The process taken to reach Agenda I, II, III, IV; the mediation process and interpretation of the mandate.

Chapter five: The conclusion

The conclusion recommendations and suggestions on further areas of study

CHAPTER 2: CHARACTERISTICS OF THE KENYAN CONFLICT

Introduction

Conflict and its processes are extremely complex phenomena. As conflicts are complex and in the context of the actors and processes involved in their management. In order to adequately understand the challenges of management of the electoral conflict in Kenya we have to look at the characteristics of the Kenyan conflict

The electoral conflict in Kenya was not peculiar as it had features displayed in all other conflicts in the world. The Kenyan electoral conflict, both in its non-violent and violent conflict stages, had features that are readily identified in all conflicts. The conflict had issues and interests that led to it changing from a structural to a violent conflict, there was no one cause for the conflict hence no mono-causes of conflict. The conflict had many issues that fuelled it. The conflict had a life cycle and thus organic and dynamic. The conflict had causes that drove it through the various stages. These causes interacted with the parties, and all interacted with their past history, to an extent where there was a clear memory of the conflict. And since this conflict had a memory, it interacted with the historicity of the conflict. Since the Kenya conflict had a memory, it interacted with the historicity of the conflict, in which the past merged with the present to define the future.

The Kenyan conflict and the historicity of the conflict ties up with consideration of ideology which is a general feature of all conflicts. This is important because all groups engaged in conflict must have certain goals that define the aims of the parties involved in conflict. It was evident in the Kenyan conflict that the ideologies of the parties defined the tactics that each of them used, and were themselves dynamic, reflecting the dynamic character of this and other conflicts.

Political and especially electoral conflict are meant to be institutionalized. They take place against a background of rules which all parties involved accept, and whose regulation they pledge to abide by. In the Kenyan electoral conflict there were structures of institutionalization such as the Electoral Commission of Kenya and the laws guiding it. The developments that led to the non-institutionalization of the electoral conflict in Kenya. It made it violent and dysfunctional.⁷⁴

History of the election process in Kenya

In 1963 elections were the pre-independence elections. These were the last elections in pre-independent Kenya and the key players were two political parties, KANU and KADU. KADU drew its support from smaller less urbanized communities hence advocated majimboism (regionalism) as a means of protecting them. KANU had been forced to accept KADU'S proposal to incorporate a majimbo system of government after being pressured by the British government. Though KANU agreed to majimbo, it vowed to undo after gaining political power. The majimbo constitution that was introduced in 1962 provided for a two chamber national legislature consisting of an upper (Senate) and a lower (House of Representatives). In the campaign KADU allied with the African People's Party (APP) in the campaign. KANU and APP agreed not to field candidates in seats where the other stood a better chance.

Elections were marked by high voter turnout and were held in three phases. They were widely boycotted in the North Eastern Province and violence was reported in various parts of the country. Four people were killed in Isiolo, tear gas was used in Nyanza and Nakuru and clashes between supporters in Machakos, Mombasa, Nairobi and Kitale. In the House of Representatives

⁷⁴ Makumi Mwangi, "The water's edge: Mediation of violent electoral conflicts in Kenya", Nairobi; Institute of Diplomacy and International Studies, July 2008, p 1- 2.

KANU won 66 seats out of 112 and gained working majority from 4 independents and 3 from NPUA. KADU took 47 seats and APP won 8. In the Senate KANU won 19 out of 38 seats while KADU won 16 seats, APP won 2 and NPUA only 1.⁷⁵

In 1966 the elections were meant to neutralize Vice-President Odinga since President Jomo Kenyatta felt that Odinga and powerful government Minister Tom Mboya, both hoped to succeed him and yet Kenyatta, himself, still wanted to consolidate power. In his view Odinga had to go first so he made an alliance with Mboya. This political contests saw the use of constitutional amendments to win political battles. Mboya and Attorney General Charles Njonjo moved them through parliament to increase presidential authority. The first amendment in 1964 transformed Kenya into a Republic headed by a president who had both head of state and head of government powers. KADU then joined KANU, reinforcing it against Odinga's wing. The final result of the 1964 amendments was to re-establish a centralized bureaucracy controlled by the presidency. This reduced powers of regional leader like Odinga. Mboya laid out coups against Odinga's allies and replaced his deputy party president post with eight provincial vice-presidents posts. Odinga resigned from KANU and the government on April 14, 1966 and formed the Kenya Peoples Union (KPU). KANU then passed a constitutional amendment requiring MPs who defected from their party to seek re-election which necessitated the mass by elections.

KANU'S plan was to confine Odinga's influence in his home and prevent KPU from growing. hold rallies. The sole national broadcaster, Voice of Kenya gave them a news blackout and their supporters were harassed. Voting took place in three rounds over a period of two weeks. KANU

⁷⁵ *National Elections Data Book* by Institute for Education in Democracy (published in 1997).

won 21 out of the 28 contested seats in the House of Representative and KPU won 7. In the Senate won 8 out of the 10 contested seats while KPU won 2.⁷⁶

In 1969 elections were held in 1968 but the 1966 Constitution amendment which abolished the senate increased the life of parliament by a year. Four new constitutional laws consolidated more power in KANU. Every KPU candidate was disqualified due to few technical mistakes in the 1968 civic elections. Mboya was assassinated in July 1969 and the presidential convoy was stoned by crowds in Kisumu protesting the killing. KPU was banned on October 30, 1969 so it made it impossible for any candidate or presidential candidate opposing KANU was now a de facto one-party state.

Campaigns were free of violence apart from isolated incidents. The main differences between the parliament elected in 1963 and the one in 1969 was a single republican legislature serving under a head of state with immense powers. Kanu primary elections were followed by general elections on January 3, 1970. Out of the 158 incumbents, 77 lost their seats including 5 cabinet ministers and 14 assistant ministers. Seven women stood for elections but only one was elected Grace Onyango in Kisumu Town.⁷⁷

The second post independence elections were held 1974 in a setting of a slowing economy. KANU remained the only political party. To assure exclusive control, for one to be eligible to run, he/she had to be a life member of KANU and special regulations were introduced to hinder KPU detainees from easy life membership process. During voting, secret ballot was introduced for the first time in Kenyan elections. Previously a presiding officer was present during vote casting. Voting age was reduced from 21 to 18. Out of the 158 incumbents, 88

⁷⁶ *National Elections Data Book* by Institute for Education in Democracy (published in 1997

⁷⁷ *National Elections Data Book* by Institute for Education in Democracy (published in 1997 p.3.

lost their seats including 4 cabinet ministers and 13 assistant ministers. There were 13 women candidates and four were elected.⁷⁸

The third elections were held in 1979 as Kenyatta's health deteriorated in the 1970s there was an inside struggle between vice president Daniel arap Moi and a group opposed to him and his allies. This brought the change-the constitution movement of 1976 which advocated for the renunciation of the Vice-President to automatically assume the presidency once the President dies. However, when Kenyatta died on August 22, 1978, Moi took over without much tension. The campaign period was restricted to three weeks. Campaign spending was raised to curb vote buying. It was stated that candidates had to be loyal and popular to be eligible with KANU. This came with much hassle. Many ex-KPU members were declared security risk. An attempt by one of them to sue saw the president intervene. Moi also proclaimed that five KPU leaders including Odinga would not be cleared. The president was conspicuously involved in his allies campaigns. He wanted them to hold key positions in government and said he had a right to recommend development-aware leaders. The outcome was seven hundred candidates stood for the elections and about half of the incumbents did not return. Out of 15 women candidates 4 were elected

In 1983 the fourth post general elections were held. Moi continued to strengthen his position. He began free milk scheme, declared a 10% increase in minimum wage, and banned all ethnically based associations and disjoined civil society formations. In reaction, Odinga and former Kanu secretary general George Anyona attempted to register a new party. To prevent this, the constitution was amended to make KANU the sole political party. Two events occurred attempted coup of August 1, 1982 staged by some units of the Kenya Air force. The second was the Njonjo affair in which the minister for Constitutional was accuses for planning to hire South African and Israeli mercenaries to overthrow the government. Following poor terms of trade

⁷⁸ *National Elections Data Book* by Institute for Education in Democracy (published in 1997 p.4-

such as high borrowing rate, the economy continues to deteriorate.

The contestants had to get clearance from Kanu and Odinga with some of his ex-KPU members were denied. The campaign lasted a month and candidates had to prove their loyalty to President Moi. Only 48% of registered voters turned out on Election Day, the lowest figure since independence. 40% of incumbents were voted out. Out of seven women candidates 2 were elected.⁷⁹

In 1988 the fifth post independence elections were held. The peak of the regime consolidation under president Moi was marked in these elections. Local Opposition was weakened and constitutional amendments saw control of the presidency rise and manipulation of legal system possible. A new system of queue voting called Mlolongo was introduced where a separate queue was formed for each candidate and voters joined according to their preference. People in each queue were counted and the results announced by the presiding officer. KANU argued that the system promoted honesty but it enabled candidates to intimidate voters. Any candidate who got more than 30% of the vote or finished in the top 3 in the queue voting round was issued with a nomination certificate and cleared to proceed to stand in the final round where the secret ballot was used. KANU also introduced a stipulation that any candidate who got more than 70% vote in the queue voting round was declared elected.

KANU used a huge recruitment drive to maximize membership during the campaign which had incidences of violence. Several candidates complained that they had been rigged out by the queue –voting system. Out of 188 seats 123 were decided by secret ballot while 51 were declared elected under the 70% rule. 14 candidates went in unopposed. Out of 6 women candidates 2 were elected.⁸⁰

⁷⁹ *National Elections Data Book* by Institute for Education in Democracy (published in 1997) p.6.

⁸⁰ *National Elections Data Book* by Institute for Education in Democracy (published in 1997) p.7.

In 1992 the sixth post independence elections were held. The introduction of queue voting with the 70% rule and claims of rigging in the 1988 elections tainted the one party system in the first quarter of the year 1990. Public anger exploded in the saba saba uprising of July 1990 which broke out after anti- Moi forces tried to organize a pro-democracy rally and several people were killed. International and local pressure culminated upon this hence KANU amended the constitution in 1991 restoring the right to form alternative political parties. This paved way for the multiparty election of December 1992. President Moi made minimal reforms to accommodate multi-party politics. The government amended the constitution requiring the winning presidential candidate to get at least 25% of the vote in five out of the eight provinces. There was unprecedented violence in various parts of the country. Thousands were killed and this greatly affected the 1992 elections. An NCKK task force and a parliamentary select committee investigated the clashes. Despite government assurances of security restoration the clashes escalated throughout the year.

None parties had been registered by the time of nominations and the newly appointed electoral commission was filled with controversy as all members were appointed by the president without consultation with the opposition. This undermined its credibility. The commission was afflicted with administrative problems. It was accused of incompetence, bias in management and registering non-Kenyan and underage voters. Nominations were marked by violence and a possibility acknowledged by the Electoral Commission. Opposition candidates were prevented from registering their nomination in some 16 constituencies.

KANU had organizational superiority, huge national resources and unlimited access to administrative machinery. It controlled Kenya Broadcasting Corporation (KBC), Kenya Television Network, (KTN) and made effective its newspaper, The Kenya Times. Alternative

media gave coverage to the opposition but its circulation was limited and KANU used official intimidation against opposing candidates.

On December 29, 1992, voter turnout was about 65% and the process was carried forward to the next day. Late opening of polling stations delayed voting and counting of ballot papers was affected by numerous problems. The electoral commission failed to provide mobile polling stations as it had pledged. Moi won 36.8% of total votes in Kenya's first ever contested Presidential elections which attracted seven other candidates. He won presidential elections in one ballot. He failed to secure 25% of the KANU vote in Nairobi, Central and Nyanza provinces. KANU won 94 out of 210 seats followed by FORD –Asili with 21 and FORD-Kenya with 23. DP, KNC, PICK and KSC each won 1 seat. Out of 18 women candidates 6 were elected, being the highest number in any election. There were mixed opinions whether the elections were free and fair.⁸¹

Kenya's second multiparty General Elections since independence were held in December, 1997 amid a worsening economic climate. Despite repeal of section 2(A) of the constitution in 1991 the divided opposition could not prevent Daniel Torotich arap Moi and KANU from winning the 1992 General Election. In Early 1997, President Moi appointed ten more election commissioners from lists provided by the opposition parties under the Inter-parties Parliamentary Group (IPPG) talks that were meant to create a level playing field in the run up to the 1997 General Election. In 1996, the electoral commission of Kenya reviewed constituencies thus bring the number to a maximum 210 allowed by the constitution. At about the same time President Moi created 24 more Districts, a development clearly related to the creation of the new constituencies. Out of the 22 constituencies, 8 were granted to the new districts.

⁸¹ *National Elections Data Book* by Institute for Education in Democracy (published in 1997) p8-9.

Before 1997, there were 16 registered political parties but an additional 9 were registered, but only 22 took part in the elections. IPPG talks allowed political parties to hold campaign rallies without first obtaining licenses, but only to inform the local police stations, but there were cases of opposition candidates being blocked from holding rallies and landing on some airstrips. There were several cases of violence, but not as serious as the one in 1992. The presidential nominations took place on 3rd and 4th December while the parliamentary and civic nominations took place on 8th and 9th December. There was a record 15 Presidential candidates including 2 women for the first time. A total 880 candidates were cleared for parliamentary elections and 8 were nominated unopposed. KANU was the only party to field candidates in all 210 constituencies.

Elections were held on 29th December, but were extended to 30th December due to logistical problems and flooding mainly in North-Eastern and Coast province. The election had a large voter turnout of 65.7% compared to 58.9% in 1992. President Moi of Kanu won the election by 40% of the national vote followed by Mwai Kibaki of DP with 30%, Raila Odinga of NDP with 10.81%, Christopher Wamalwa of Ford-K with 8.19%, Charity Ngilu of SDP with 7.9%. The other candidate only managed 1.73%. Moi was the only presidential candidate to attain 25% vote in 5 of 8 Provinces but despite being elected for his final term as president. He obtained only 40.51% compared to the combined opposition vote of 59.40%.

In parliamentary elections KANU won 107 seats including 11 unopposed followed by DP with 39, NDP with 21, FORD-K with 17, SDP with 15, Safina with 5, FORD-P with 3. KSC, SPK and FORD-A each won 1 seat. Out of a record 47 women candidates standing, only 4 were

elected including Charity Ngilu, one of two women candidate vying for presidency. This compares poorly with 1992 when out 19 women candidates 6 were elected.⁸²

In 2002 Elections were awaited with great anticipation as the incumbent president Daniel arap Moi was barred from standing for a third term by the constitution although he had already served five terms since 1979. The run up to the election was marked by several significant events among them the ECK asserting its independence and authority including rebuking political parties and candidates who broke the election code of conduct. This allowed for a free and fair election process. Another change in this process was that votes were to be counted at the actual polling station and the results announced hence eliminating the possibility of ballot boxes going missing or being stuffed with new ballots on the way to the counting center. A private FM radio station announced provisional results before the ECK. The most significant event was the fall out in the ruling party KANU after president Moi chose Uhuru Kenyatta as his successor thus triggering a rebellion within party ranks. A group of cabinet Ministers opposed to Moi choice and calling itself the National Rainbow Coalition (NARC) that finally ended KANU's 40 year reign.

With KANU facing a united opposition for the first time the mood for change was in the air. The campaign period was relative peaceful with non-partisan security by the police. Kenyan s flocked to NARC rallies in droves with a new anthem, "Yote yawezekana bila Moi". (All is possible without Moi). This made NARC to be seen as the perceived savior of the people from want, corruption, misrule and mismanagement of public resources. In an unusual move, one of the opposition parties in the NARC coalition, the National Party of Kenya (NPK) transformed itself in the National Rainbow Coalition (NARC), a political party to enable candidates in the

⁸² *National Elections Data Book* by Institute for Education in Democracy (published in 1997 pp.10-11)

various opposition parties to stand under a single party. Most democracies and coalitions are formed after elections; Kenya's was unique in forming a coalition of 14 opposition parties before the elections and then using one of the parties to sponsor candidates without dissolving the original parties. The NARC presidential candidate, Mwai Kibaki was involved in a road accident just before the elections hence could not take part in campaign rallies but a group of credible and well tried politicians called the Summit campaigned on his behalf.⁸³ Nomination for presidential elections was carried out on 18th and 19th November, 2002 while those for parliamentary and civic candidates took place on 25th and 26th November, 2002. 5 presidential; 1035 parliamentary; and 7009 civic candidates were cleared to stand.

Polling took place on 27th December, 2002 which was part of the long Christmas holiday, hence the voter turn-out was marginally lower than 1997. A total of 5,969, 181 voted in the 2002 elections, a voter turn-out of 57%, down by 7.2% from 1997. An estimated 4,482,506 did not vote. Although turn-out was lower, the overall turn-out was up in every province except in the Rift Valley and Nyanza. The combined opposition turn-out was up in every province except Rift valley and North Eastern. The ethnic presidential bloc voting of 1992 and 1997 did not take place except in Kisii Nyanza as both the two main contenders. Uhuru Kenyatta and Mwai Kibaki were both from the same ethnic group.

Mwai Kibaki of NARC won the presidential elections to become Kenya's third president. He had 62% of the national vote Uhuru of KANU had come in second with 30% while Simeon Nyachae of FORD-P came third with only 7%. Two other candidates did poorly and failed to

⁸³ *National Elections Data Book* by Institute for Education in Democracy (published in 1997 p. 13

win their parliamentary seats. Out of 44 women candidates, only 9 managed to be elected which was an improvement of 3 compared to 1997.⁸⁴

Historical and political dimensions

Recent political problems that threaten to tear Kenya apart require analysis that goes beyond ethnicity as portrayed in the media and current analyses that attempt to explain the situation.

More correctly, emphasis and focus should be placed on the interpenetration of historical and current political developments whose origins can be traced in the early stages of state formation in Kenya. In 19th century the area that became Kenya could be described as stateless, but was made up of various nationalities (currently considered sub-nationalities if seen from the eye of British Historians and ethnographers). It's those peoples' civility and ethnicity was shaped by their subsistence farming or herding, or some mixture of both".

However what ethnographers and Eurocentric commentators ignore is that there was clear territorial ownership of space by each "nation" even though at times there were conflicts over pasture and adventurer expeditions into the regions occupied by other groups. In the late 19th century most of the people of Kenya resisted British conquest, and land grabbing when white settlements began in the fertile highlands of Rift Valley and central province. Administrative structures were designed and to-date, have been effectively used as part of state machinery to impose illegitimate authority on the people. Besides land, there were conflicts over forced "labour" (basically Africans and latter Indians) and hut tax. These conflicts led to the 1923 Devonshire White paper, which stated that 'Kenya is an African country and the interest of the

⁸⁴ Enhancing the electoral process in Kenya- A report on the transition General Elections 2002, by the institute for Education in Democracy (published in 2003) p.13

natives must be paramount'. The Africans especially the Kikuyu in Central province, Masaai and Kalenjin in the Rift Valley, lost much of their best land to the white settlers and the growing population meant increasing land hunger and discontent. A new land redistribution scheme was introduced under Lyttleton constitution of 1954 followed by other constitutional changes however these schemes did not adequately address the land question.

Nationalism in Kenya begun as early as 1922. Violence and armed struggle was led by the Mau Mau and by 1955, 13,000 Africans had lost their lives.⁸⁵ In the early 1960s, Moi, Muliro and Ngala of KADU supported regionalism against Kenyatta, Odinga and Mboya and KANU's nationalism (associated with the centralised system). By 1960, two national parties were formed (what could be described as the first multi party era in Kenya). These two parties were already divided over the type of system that would serve the African interests. Alliance by leadings lights from various groups which made up KADU and KANU respectively, also played out in the struggles for release of those in detention and efforts to form the first government. The British were forced to retreat from Kenya and subsequently, release Jomo Kenyatta from detention at Kapenguria.

When Kenya gained "independence" from Britain in 1963, it inherited non-democratic institutions and cultures, which later fell into the hands of corrupted politicians and governments. This exemplifies the de-colonization programme that retained the colonial apparatuses of security forces and political repression in the post-colony⁸⁶ and compromise over the land question. Post-colonial "officials" lavished themselves with political and economic favours in a

⁸⁵ see Anderson, 2007

⁸⁶ see Anderson, 1998

pattern that has extended into the post-post-colonial era (Moi who was a member of KADU and later KANU, Kibaki who was technocrat in KANU from 1963, Michuki the Internal Security Minister, Njenga Karume, the Defence Minister among others). This process has been captured by some analysts who have pointed out that these developments mirrors what was a distinctly colonial view of the rule of law, which saw the British leave behind legal systems that facilitated tyranny, oppression and poverty rather than open, accountable government⁸⁷

Ethnic composition and competitive politics

While national level political competition in Kenya is often misunderstood and shallowly interpreted in terms of a competition between the Kikuyu and the Luo, most commentators on Kenya's politics do ignore the position and role of the Kalenjin, Luhya, Kamba, Kisii, Coastal peoples (Mijikenda), Swahili, Arabs, Indians and Europeans who live in large farms/ranches and important urban areas in Kenya. Each of these groups subsumes a number of smaller ethnic units that become relevant bases of social identity in more localized settings. The groups hardly mentioned are the Ogieks, and the Jemps who are the original occupants of some parts of present Rift valley but have since been displaced or evicted to create room for current occupants. What is however neglected in the debate about Kenyan politics is the reality that all groups have a stake in the running of the Kenyan polity, but due to systematic exclusion of some groups from the national leadership, competitive politics in Kenya is bound to have an ethnic dimension

When Kenya became a one-party state in 1969 Kenyatta ruled the country with a clique around him mainly from his ethnic Kikuyu, who eventually alienated other groups in Kenya from the political and economic order for his entire reign (1963-1978). Although Kenyatta did not instigate ethnic clashes, he targeted eminent persons from ethnic groups that he felt were a threat

⁸⁷ Elkins, 2007/8

to his leadership. Many people were assassinated including Pio Gama Pinto (Kenyan Indian), JM Kariuki (Kikuyu) Tom Mboya, D.O Makasembo, Arwings Kodhek (all Luo) Ronald Ngala (Mijikenda of Coast), Seroney (Kalenjin) among others. This was a strategy that Moi also adopted at the height of his reign when prominent persons were assassinated or died in mysterious circumstances. They include, Robert Ouko, Owiti Ongili, Otieno Ambala, Hezekiah Oyugi (all Luo) Bishop Kipsang Muge, (Kalenjin), Adungosi and Muliro (all Luhya,). Many students, journalists, lecturers, and politicians like Raila Odinga, Charles Rubia, Keneth Matiba, Martin Shikuku, among others were also detained and tortured. What is also missing in most analyses is the role of other communities during the struggle for independence, while the Mau Mau has been presented as the epicenter of everything around independence struggle, but historical facts point to other contributions but because this ignorance has been presented as the truth, coupled with arrogance and superiority complex, Kenyan liberation history has been constantly distorted.

The struggles for political ascendancy begun immediately after the postcolonial government were formed. While the first cabinet was quite representative of the face of Kenya, soon ideological difference, impact of cold war and betrayal on key issues cropped in, thus dividing the original personalities in the independence struggle; the Mau Mau veterans were sidelined and politics of exclusion and elimination begun with earnest, sometimes combined with assassinations. Electoral politics never took shape in a democratic sense since Kenyatta who ruled mainly through the provincial administration, outside the KANU framework, rendered the party system that could have rallied the people around issues and programs meaningless. Fears of ethnic ascendancies, power-hungry ethnic political elites, undemocratic processes and institution,

which are all hallmarks of today's Kenya, begun to play out; a confirmation of the undemocratic historical trajectory that Kenya has been moving along. The 2007 election fiasco has exposed the deliberate stoking of ethnic tension by power-hungry elites, feeble democratic traditions and institutions in Kenya, one that threatens to consume it if not adequately addressed.

Electoral politics

Electoral politics in Kenya can also be understood best by looking at the role of the process and institutions charged with overseeing such a process. The electoral system in Kenya is based on constituencies whose boundaries are congruent with the boundaries of tribal areas. These boundaries have been used to manipulate democratic outcomes. The constituencies are represented by a member of parliament and a number of local authority representatives at ward, town and urban council levels. Their election takes place at the same time as that of presidential and parliamentary ones. The boundaries are determined by the electoral commission if there is evidence that populations have outgrown the current demarcations. This decision is however made by the electoral commission without consulting the local communities and in most cases at the directive of the president. The president without parliamentary approval appoints the Commission. However the problem with numbers in Kenyan politics is that they are never correct or close to truth. This originates from history of manipulation of constituency population numbers during the single party era, but also lack of regular census and update of births and deaths records. It is therefore not surprising to see "ghost names" in voter registers (not deleted even after a whole five year preparation and multibillion investment in the process) or to see number of registered voters increase during presidential vote tallying contrary to the actual number at constituency level or previous attempt to create extra constituencies in the incumbent friendly regions in order to meet the 25% constitutional requirement for presidential eligibility.

eligibility.

The problem with the electoral process did not start in recent years; the political competition that followed immediately after independence gave birth to the mechanizations, manipulation of the institutions responsible for electoral process and the blatant rape of the constitution to suit those in power. This begun with the erosion of the party system, when immediately after independence in 1963, the political alliances begun to fall apart with KADU joining KANU and internal struggles within KANU leading to the formation of KPU. Although the fall out between Kenyatta and Odinga has been described as ideological, the actual cause was the feeling that Kenyatta had betrayed his colleagues and the entire nation on three crucial promises at independence, namely eradication of poverty, illiteracy and disease. Kenyatta betrayed this cause by allocating huge parcels of land left by white settlers to him and cronies, including large tracts in the present Rift Valley province.

Upon Kenyatta's death in 1978, Daniel arap Moi, a member of the Kalenjin, assumed power in 1978. During his 24 year reign, Moi exploited the Kenyan diversity and politicized ethnicity to levels where he could instigate clashes in districts and provinces with mixed groups, a practice he perfected in the 90's in order to discredit the onset of multiparty democracy in Kenya.

Politically motivated ethnic clashes were used to disrupt and displace populations and groups that supported the opposition (mainly the Kikuyu in Rift Valley, Luo in the slums of Nairobi and Mombasa). He also used divide and rule tactics, pitting on group against another and at times bought politician through patronage in order to have more support in parliament. These tactics ensured that that the opposition lost the elections of 1992 and 1997. It was not until 2002, when

his constitutional terms in office expired that he had no options, but also due to the unity of the opposition through NARC (Rainbow coalition of Kijana Wamalwa FORD- Kenya, Raila Odinga of LDP, Charity Ngilu and Kibaki of NAK/DP) got together and managed to defeated Moi's preferred choice of successor, Uhuru Kenyatta (the son of Jomo Kenyatta). Moi was voted out of office in 2002, and Kibaki became president.

Anger against Kibaki's leadership is real and genuine and it stems from the fact that Kibaki was elected on a platform of reform, in the sphere of constitutional change, end to corruption, tribalism and establishment of an equitable system that could uplift the living conditions of all Kenyans regardless of their ethnicity and other background factors. Kibaki's failure to grasp these genuine concerns, self imprisonment from reasoning and lack of desire to leave a legacy in Kenya, caused a great anger in the majority of Kenyans whose hopes had been dashed by Kibaki's conduct, corruption and arrogance of people around him. For instance People's disgust with Kibaki's regime was expressed at the 2005 referendum in which the Wako Draft (a diluted version of the Bomas draft, which was a constitutional product of a people, led process) was defeated. Seven provinces made up of diverse ethnic groups voted for "NO" while the Yes vote was only represented by central province. This outcome reflected the wishes of the majority and cannot be seen as a vote against the Kikuyu since the vote was for a devolved system or a unitary system. But then, one cannot lose sight to the ethnic dimension the vote took during the campaigns, when people of central province were told to vote for "Yes" because it meant protecting "their presidency". This anger and frustration was captured in the 2007 elections in which Kibaki lost his close allies from his own backyard (central province) and high profile lieutenants from other regions who were rejected at grassroots level. The 2007 elections also saw a new trend of ethnic alliances, which were formed for political expediency, even though hidden

behind critical issues. Some groups could however identify with each other in terms of political and economic marginalization than others, thus the divide that has been reflected in the post ethnic conflict even if some analysis attempt to reduce it to the work of political leaders as the ones behind the ethnic divide. In the current situation, old wounds have been revived but the degree of suffering under previous regimes differ from group to group, while frustration also exists within the groups themselves, whereby, Kalenjin rejected their own, in Moi and his sons, while the Kikuyu rejected the cabal that have surrounded Kibaki since 2002. The same was witnessed in Nyanza where Luo and Kisii Nyanza voted out MPs that they thought did not deserve another parliamentary mandate.⁸⁸

Causes of the conflict

The issues in the conflict were that the Orange Democratic Movement (ODM) believed that president Kibaki stole the election, that the president was illegally in office, and that his rule had no legal or moral basis, and that they wanted to use mass action to get the anger of their supporters. This last view of the ODM underlined their whole strategy to the conflict and its management. They engaged in serious resource mobilization, and in time had stroked their supporters anger about their issues. The Party of National Unity (PNU) believed on the other hand that president Kibaki was constitutionally declared the winner by a constitutional organization, that he was the commander-in-chief of the armed forces having been sworn in

⁸⁸ Enhancing the electoral process in Kenya- A report on the transition General Elections 2002, by the institute for Education in Democracy (published in 2003)

by the chief justice, and mass action was not authorized by the law.⁸⁹

ODM chose to deal with the conflict politically whereas PNU adopted a more legalistic approach. PNU believed that the electoral conflict was institutionalized, and that the law had laid down the rules and regulations for regulating the electoral contest during the 2007 general elections. The ODM believed that those laws, rules, and regulations were unable to regulate the electoral conflicts. ODM believed that the electoral conflict in Kenya was non-institutionalized, which also explained why conflict moved quickly and changed from structural to violent conflict.

Protagonists in the conflict

There is no simple conflict, even when the visible parties are few they all have constituents and allies and all of them have interests in the conflict and its outcome. The visible parties, The Orange Democratic Party (ODM), Party of National Unity (PNU) and the Orange Democratic Party of Kenya (PNU) were the political parties under whose platforms the elections were fought. Outside the political arena individuals in each party had non-political relationships: professional, academic, business and others.

Each of the political parties had their constituents of each political party were more complex. A strategic map of actors in the electoral conflict in Kenya illustrates these complexities well. At the centre were the core constituents, who had voted in large numbers, and who were victims the violent conflict that ensued. They were divided geographically, with parties having specific

⁸⁹ Cabral Pinto, "Kenya needs to nurture culture of non-violent mass action" Saturday Standard, 19 January, 2008, p.5.

strongholds. Outside this was another layer of constituents also voters – who did not necessarily vote, who publicised the political parties.⁹⁰

Actors in the conflict

There is no simple conflict even when visible parties are few; they all had constituents and allies, and all have constituents and allies, and all of them have interests in the conflict and its outcome. The visible parties were the political parties under whose platforms the elections were fought. Outside these parties the individuals in both parties had non political relationships.

The actors included core constituents, who voted in large numbers and who were the victims of the violent conflict that ensued. There were other constituents, also voters- who class people, who by their attitudes to their own and different political parties entrenched the electoral political mood especially in the public service. The same group had organization such as churches and other groups. The other group was the youth whose numbers made them an important focus of the campaigns of the different parties.

Allies to the political parties were national, regional and international. National allies include business actors and individuals that funded the parties or gave them material support. Depending on the nature of the business they had allies regionally and internationally. The international allies were composed of states or governments some, these included United States, the European Union. Britain- former coloniser- being the most outspoken and China and Japan who were muted on their pronouncements. The United Nations and African Union also fell in this group. All of whom were represented locally by their diplomatic components in Kenya who appeared to

⁹⁰ Makumi Mwangi, "The water's edge: Mediation of violent electoral conflicts in Kenya", Nairobi; Institute of Diplomacy and international Studies, July 2008, p 7.

operate as different actors. Some of the diplomatic missions almost transformed themselves into local constituents of the different political parties. Finally there was the media, who were constituents of individual political parties' supporters, and also allies. The media shaped the events that unfolded by interpreting them in a way that suited the fortunes of the political parties that they supported.⁹¹

Third party Mediation

This involves third parties from outside the conflict and the conflict system. The Kenyan conflict has become fully internationalized and many states, international and regional institutions and organizations the expressed views about a peaceful solution to the conflict. Many of these groups gave suggestions not only about the method that would be used to resolve the conflict, but also parties they considered the most suitable mediators for the conflict.

There were calls by the international community for third parties to be allowed "to reconcile" the Kenyan parties. There were three notable calls by the international community. The first call was by the United Nations Secretary General Ki-moon for the Kenyan leaders and political parties to "resolve their differences peacefully through dialogue and making full use of the existing legal mechanisms and procedures."⁹² The second was by the African Union (AU) which "appealed for calm and asked the leaders to embrace dialogue and process"⁹³ The third was by the prime minister of the United Kingdom, which was heavy loaded. Prime Minister Gordon

⁹¹ Makumi Mwangi, "The water's edge: Mediation of violent electoral conflicts in Kenya", Nairobi: Institute of Diplomacy and international Studies, July 2008, p 7-9.

⁹² The Standard, 01 January, 2008, p.5

⁹³ Note that the Secretary General of the East African Community Juma Mwapachu distanced himself from the report . He said that the "EAC is not a signatory to the report... We are only public servants and are not supposed to take political positions." See The East African, January 21-27, 2008, p.8.

Brown called on the African Union and the Commonwealth to reconcile Mr. Kibaki and Mr. Odinga, since the European Union Observer Mission had declared that the Kenyan electoral process had fallen short of international standards. Brown wanted to see Kibaki and Raila Odinga come together for talks, reconciliation and unity; and the possibility explored where they could come together in government.⁹⁴ At the lower but influential level of foreign ministers, UK foreign secretary David Miliband and the US secretary of state Condoleezza Rice issued a joint statement pledging both diplomatic and political assistance to end the crisis in Kenya.⁹⁵

The African Union (AU) and the United Nations (UN) advocated for peaceful settlement of the conflict as mandated by their charter. This was not directive and did not claim to reach any conclusions about the sort of outcome that the parties should reach. The Charter of the United Nations provides for the use of regional arrangement such as the African Union for the maintenance of international peace and security. The regional arrangements must however first use the peaceful settlement for local disputes before raising them to the security council of the UN.⁹⁶ On the other hand, the situation in Kenya after the 2007 elections gave rise to violence and a humanitarian crisis, including internal displacement of people. These issues fell under the philosophy, objectives and principles of the African Union. The intervention by the AU and the UN were thus clearly prescribed by their charters.

Prime minister Brown was not only directive and his tone was paternalistic and was not one of a sovereign state referring to another and its problems. The statements of the international organizations recognized the existence of the rule of law and its mechanisms for dispute

⁹⁴ Daily Nation, 02 January, 2008, p.2.

⁹⁵ Bernard Namunane, "US and UK call for end to election chaos" daily Nation, 03/01/2008, p.32.

⁹⁶ See article 52(1) and 52(2) of the Charter of the United Nations.

settlement, the one by Brown took the view that either such mechanisms did not exist in Kenya, or that they could not help to resolve the problems at hand.

Third party entry into Kenyan Post- Election Conflict

Third parties can be endogenous, exogenous or heterogeneous. Endogenous third parties are the various individuals and groups the countries that offered that offered various types of conflict management activities. Such groups included Concerned Citizens for Peace, spearhead by a retired ambassador Kiplagat and two retired army generals, General Opande and General Sumbeiywo. This was dismissed by Raila Odinga of ODM. There was also the Central Organization of Trade Unions (COTU) which volunteered to initiate talks between Mwai Kibaki and Raila Odinga to dialogue over the disputed poll result as to stem violence that had gripped parts of the country.⁹⁷ This was an offer to facilitate rather than an offer to mediate although the content of facilitation resembled that of mediation, they differed in regard to mode of entry. A facilitator offers to facilitate in the conflict because having an interest in the conflict and its outcome s(he) prefers to be proactive in offering third party services. A mediator on the other hand enters the conflict on the invitation of the parties. The Kenyan conflict soon became internationalized as the west exerted unprecedented pressure from the west to reach an outcome that would leave the westerners interests intact. An example is that the American through the secretary of state had expressed that they preferred President Kufuor as a mediator. This would mean imposition of a mediator therefore denying the conflicting parties from having their own preference.

⁹⁷ "Atwoli to initiate talks over poll dispute" Kenya Times (Nairobi), 17 January, 2008, p.4

Exogenous third parties are those outside the conflict, and the conflict system. Since the Kenyan conflict had become internationalized, there many states, international and regional institutions and organizations that expressed views about a peaceful solution to the conflict. Suggestions were made about the methods that should be used to settle or resolve the conflict, but also about parties they considered to be the most suitable mediators for the conflict.

There were calls by the international community for third parties to be allowed to reconcile the Kenyan differing parties. There were three notable calls. The first was by United Nations Secretary General Ki-moon for the Kenyan leaders and political leaders and political parties to resolve their differences peacefully through dialogue and the existing legal mechanisms and procedures. The second was by the African Union (AU) which “appealed for calm and asked the leaders to embrace dialogue and consultation to deal with the problems (and indicated) its availability to assist.. in this process.”⁹⁸ The third was by the prime minister of the United Kingdom, Gordon Brown who called for African Union and common wealth to reconcile Mr. Kibaki and Mr. Odinga as the European Observer Commission had declared the Kenyan electoral process had fallen short of international standards.

Heterogeneous third parties have the dual characteristics of endogenous and exogenous parties. The main heterogeneous conflict management effort was that of Kalonzo Musyoka, the presidential candidate for ODM-Kenya. On 31 December 2007, Musyoka met with Raila Odinga, the presidential candidate for ODM,⁹⁹ who narrowly lost the election to president would also try and meet president Kibaki. On January, 8, 2008 Kalonzo Musyoka was appointed the vice president of Kenya. The media however, saw Kalonzo Musyoka’s efforts or at peace and

⁹⁸ Daily Nation, 02 January, 2008, p.2

⁹⁹ The Standard(Nairobi) 01 January, 2008, p.5.

reconciliation as apart of his political ambition in post – election Kenyan politics.¹⁰⁰ Kalonzo Musyoka was rejected as a mediator as he was an actor and had interests in the Kenyan conflict.

The exogenous third party with the entry of the former Secretary General Koffi Annan that peace was expeditiously restored in Kenya. One is left to wonder if this was the real reason or was it that there was no “real” ball of contention just that everyone and their respective parties wanted away to get into government and this was the only way that they could achieve this.

¹⁰⁰ Oscar Obonyo, “Kalonzo’s arbitration efforts betray his ambitions in a post- election coalition” The Sunday Standard, 06 January, 2008, p.10.

CHAPTER 3: EXTERNAL MEDIATORS

Introduction

In any conflict there is often more than willing hands offering to mediate. These may be endogenous, exogenous or heterogeneous. Whichever type of third party intervenes, the important question is about the kinds of entry these third parties make into the conflict who can be official or unofficial. It is also important to know which form of entry into conflict is best suited to which type of third party and also useful to consider what character of third party, (that is endogenous, exogenous and heterogeneous) is best suited to which type of conflict

Character of external mediators

The mediators can be individuals, states, international organizations, or nongovernmental organizations such as religious groups like churches. Individuals may try to facilitate communications between the parties in the conflict. Individuals offer to mediate because they wish to change the course of a conflict, influence it, gain access to especially political leaders, impose their ideas on conflict management, or enhance their status. This makes it clear that no individuals, states or international organizations mediate for altruistic reasons. They expend reasons in conflict management; they expect to gain something from the process.¹⁰¹

Intervention by mediators may also be formal, where they act as representatives of governments or international organizations. Formal individual mediation is less flexible than informal and usually takes place within formal structures of diplomacy, which emphasize procedures. States do a lot of mediations as they are regarded as the most significant actors in the

¹⁰¹ C.R Mitchell, "The motives for mediation" in C.R. Mitchell & Keith Webb(eds) *New Approaches to International Mediation* (Westport, CT: Greenwood Press, 1988) pp.29 -51.

international system and they do so through individuals. The outcome of such mediation depends upon the leeway that is given, and the resources available to the mediating state.¹⁰²

International organizations have become actors in international relations, and provide services that sometimes states cannot provide. Different types of organizations can be involved in conflict management activities. Universal organizations include the United Nations (AU), regional organizations are such as African Union(AU) and sub-regional organizations such as the East African Community and the Inter-Governmental Authority on Development. All these constitute states that try to fulfill their obligations set out in their charters.¹⁰³ This is a way these states do something about conflict in the member states which might affect their political interests, to preserve a structure of which they are part of, or so to enhance their influence.

Mediation in itself changes the very structure of conflict because it transforms dyadic into a triadic relationship. Mediators enter into a conflict in order to affect, change or resolve it. They bring into the conflict different ideas, knowledge, resources and interests which can be theirs or for those whom they represent.

Mediators in the Kenyan post election conflict

Third parties in the Kenyan conflict included Archbishop Desmond Tutu of South Africa, who had flown in hoping to mediate in the conflict,¹⁰⁴ and whom some media commentators claimed

¹⁰² Jacob Bercovitch & Allison Houston, "The Study of International Mediation: Theoretical Issues and Empirical Evidence" in Jacob Bercovitch(ed) *Resolving International conflicts: The Theory and Practice of Mediation*(Boulder, CO: Lynne Rienner,1996) pp.11- 35

¹⁰³ For the role of international of international organizations in international relations, see Paul Diehl (ed) *The Politics of Global Governance: International organisations in an Independent World*. (Boulder, CO: Lynne Rienner, 1996).

¹⁰⁴ " Onestep back from the brink of anarchy" Nairobi Star, 04 January, 2008, p.2.

had been sidelined by the ODM.¹⁰⁵ Others include former presidents Forum(FPF), consisting of former heads of state in the continent, including, Ketumile Masire (Botswana), Joachim Chissano (Mozambique), Benjamin Mkapa (Tanzania) and Kenneth Kaunda (Zambia). The team met with president Kibaki and ODM members, and former president Moi of Kenya.¹⁰⁶ The Former president as Forum represented by retired presidents Benjamin Mkapa (Tanzania), Joachim Chissano (Mozambique), and Quett Masire (Botswana) did some unofficial facilitation, and hoped to lay the ground for the Annan mediation. In this case they facilitated "secret" discussion with some moderate members of parliament from both PNU and ODM parties.

The facilitation efforts tried to design a common ground for the mediation, and to convince the hardliners on both sides to move away from their hardline stance.¹⁰⁷ Their framework was that the only way out of the conflict was to have a coalition government of president Kibaki and Raila Odinga that president Kibaki was unlikely to step down or allow a repeat of the presidential election, and thus the only way out was to have a power sharing arrangement, in which either Raila Odinga would be offered the prime minister's post which would be created once the current constitution was changed; or that president Kibaki and Raila Odinga would take turns sharing out the five year term, with each serving for two and a half years each or that president Kibaki serve as president for two years during which period the constitution would be reviewed to strengthen the country's institutions, and establish an independent electoral commission, which would supervise a fresh general election.¹⁰⁸

¹⁰⁵ Francis Mureithi, "ODM settle for Ghana President Kufour for talks" *Nairobi Star*, 04 January, 2008, p.4.

¹⁰⁶ "Ex-presidents call for talks to end violence" *Daily Nation*, 10 January, 2008, p.8.

¹⁰⁷ Francis Mureithi, "Moderates in Secret Peace Bid" *Nairobi Star*, 23 January, 2008, p.1

¹⁰⁸ "Moderate MPs in secret peace bid" *Nairobi Star*, 23 January, 2008, p.3

The conflict was eventually mediated by former UN secretary general Kofi Annan, and a team of eminent African persons, namely Graca Machel and Benjamin Mkapa (Tanzania). Ugandan president Museveni as the chairman of the Summit of the East African Community and of the commonwealth, was also in Nairobi to mediate in the conflict.¹⁰⁹ The Ugandan minister for foreign affairs, Sam Kuteesa, was reported as having said that “president Museveni, who has been in regular contact with president Kibaki and Mr. Raila Odinga, the leader of the Orange Democratic Movement Party (ODM) will come out with a position in the near future.”¹¹⁰

Many observers immediately took sides. The EU report on the report of the elections detailed the anomalies and inconsistencies in the election, particularly in the tallying of the results, and concluded that “the uncharacteristically high voter turnout in Central and Nyanza also raised queries that needed further investigation”¹¹¹

Mediator’s entry to the Kenyan post election conflict

On January 23, 2008, saw the arrival of former South African First lady Mrs Graca Machel and Uganda’s President Yoweri Museveni in the afternoon. President Kibaki, Vice president Kalonzo Musyoka, Foreign Affairs minister Moses Wetangula and Internal Security Minister Professor George Saitoti were at hand to receive the dignitaries. Kofi Annan’s chartered flight from Doha was expected to touch down at Jomo Kenyatta International Airport shortly after 7 p.m on January 23, 2008.¹¹² Ghana’s president Mr. John Kufuor arrived in Kenya on the evening of January, 8, 2008 to mediate in talks between President Kibaki and ODM leader Mr. Raila Odinga. He arrived at Jomo Kenyatta Airport at precisely 5.27 p.m accompanied by Head of

¹⁰⁹ “There’s a glimmer of hope” *The people* (Nairobi), 21 January, 2008, p.2.

¹¹⁰ Hussein Bogere, “Uganda maintains it has not deployed troops in Kenya” *Sunday Nation*, 20 January, 2008, p.38

¹¹¹ Jeff Otieno, “Poll results doctored, say EU observers” *Daily Nation*, 02/01/08, p.3.

¹¹² *The Standard Newspaper*(Nairobi).

Civil Service Mr. Francis Muthaura, Chief of General Staff Jeremiah Kianga, Foreign Affairs minister Moses Wetangula, Mr. Chris Kirubi, Businessman and the Managing Director of Kenya Airports Authority, Mr. George Muhoho met Mr. Kufuor who had travelled in a Nigerian Air force jet

The intervention by the African Union consisted of the use of chairman Kufuor's good offices, and the support of the mediation that was conducted by Kofi Annan. Good offices are a way in which a third party intervenes in order to try and avoid a conflict escalating, facilitating the parties' movement towards negotiations, or use of other peaceful means to manage the conflict.¹¹³ Good offices can be undertaken the task without such an invitation, or the third party can undertake the task without such an invitation. The person using good offices should be accepted by the parties in conflict, otherwise it would be impossible for the good offices to yield positive results.

The Constitutive Act of the African Union regulates matters of intervention by the AU. The preamble of the Act rehearses the AU's determination to promote peace, security and stability to consolidate democratic institutions and ensure good governance and the rule of law. Two of the objectives of the AU which are directly related to its intervention in the Kenyan electoral conflict are promoting peace, security and stability on the continent,¹¹⁴ and promoting democratic principles and institutions, popular participation and good governance.¹¹⁵ Some of the principles of the AU directly related to its intervention are the right of member states to request for intervention from the Union in order to restore peace and security; the respect for democratic

¹¹³ See handbook on the peaceful settlement of disputes between States (New York; United Nations, 1992)

¹¹⁴ Article 3(f) of the constitutive act of the African Union.

¹¹⁵ Article 3(g) of the constitutive act of the African Union

principles, human rights, the rule of law and good governance, and condemnation and rejection of unconstitutional changes of governments.¹¹⁶

Although the principle of non interference in the internal affairs of a member state is enshrined in article 4(g) of the constitutive act, grave violation of human rights as manifested in Kenya after the 2007 general elections cannot be over looked. Thus the good offices role of the AU was in order and was justified on the grounds of international law. ODM picked a team that consisted of party leader Raila Odinga, Mr. Musalia Mudavadi, Mr. William Ruto, Mr. Najib Balala, Mrs. Charity Ngilu and Joe Nyaga, Party chairman Henry Kosgei, Secretary General Professor Anyang Nyong'o and treasurer Omingo Magara, members of parliament elect Kenneth Marende, Mr. Farah Maalim and Dr. Sally Kosgey. Raila had talked to President Kufuor on 7th Monday 2008 evening and told him that he was coming to Kenya as a neutral mediator.

Mediation opened on 9th January 2008, between president Kibaki and ODM leader Raila Odinga thus raising the hope for a political solution to the election dispute. John Kufuor held separate meetings with President Kibaki and Raila Odinga, setting the stage for an exchange of demands by either side in the crisis sparked by disagreement over the election results which gave president Kibaki victory. Talks came in the shadow of protests from United States government after president Kibaki named part of his cabinet. Throughout the day there had been indications that a face to face meeting between Kibaki and Raila would take place chaired by President Kufuor. It was to be the climax of the three days shuttle diplomacy that took place between state house and Hotel Intercontinental by Mr. Kufuor but which ended with dashed hopes for a coalition government. Following the deadlock, president Kufuor left the country in that afternoon.

¹¹⁶ Article 4(j), (m) and (p) of the constitutive act of the African Union

President Kufuor's facilitation ended after three days on 10 January, 2008. President Kufuor's good offices were meant to facilitate negotiation between ODM and PNU. At the end of Kufuor's facilitation the parties had not agreed on a framework for negotiation. PNU blamed ODM for being unresponsive while ODM accused the president for failing to honor the mediation.¹¹⁷ The issues led to a deadlock are the same ones that each party had provided as conditions, and although they both professed a wish to see Kufuor's mission succeed. The issues for Kibaki were he wanted the ODM to recognize him as being legitimately elected, to accept that there was a government in place, bring an end to violence, and consider the possible creation of the position of non executive prime minister.¹¹⁸ ODM demands were that president Kibaki should accept that he was illegitimately in office, that ODM had won the elections, that there should be a re-tallying of the presidential votes, and a re-run of the presidential elections featuring Kibaki and Raila only, and a coalition government with ODM getting an executive prime minister's position.¹¹⁹

The idea of power-sharing is one that Raila Odinga hinted at during the whole process. In an interview with Germany's ARD television Raila hinted that president Kibaki could remain in power as the opposition could put up a prime minister and all the pentagon members were willing to take up cabinet position once the deal was sealed.¹²⁰ However he insisted that Kibaki first implement constitutional reforms to enhance the independence of the judiciary, and give stronger roles to parliament, and the executive.¹²¹

¹¹⁷ "Peace talks deadlock" *Daily Nation*, 11 January 2008, p.1.

¹¹⁸ "Kibaki and Raila blame each other in deadlock on polls impasse talks" *Daily Nation*, 11 January 2008, p.2

¹¹⁹ Ibid p.2

¹²⁰ "Raila may serve as PM" *Kenya Times*, 24 January, 2008, p.1

¹²¹ "Mediation efforts rage on" *The People's Daily* (Nairobi), 24 January, 2008 p.2

Kibaki named part of the cabinet before Kufuor's good offices began and this raised protests especially from the United States, whose assistant secretary of state for African affairs, Jendayi Frazer called on Kibaki at state house on 9 January 2008. Kibaki's response was that the country needed to function as required by the constitution. By appointing a partial cabinet Kibaki did not rule out that process.¹²² The US and Western communities complained about the naming of the partial cabinet the saw the only solution was to include ODM in government.

President Kufuor announced that mediation would be carried out by former UN secretary general Kofi Annan, as head of a team of eminent persons. Kufuor summed up his achievements as being that the parties had agreed that there should be an end to violence, that there should be dialogue, which should be about peace, the parties had agreed to work together with a panel of eminent African personalities headed by Kofi Annan, and all outstanding issues including constitutional and electoral reforms would be addressed.¹²³ President Kufuor was not a mediator. He had played a classic role of good offices in conflict management diplomacy.

On the last day of Kufuor's good offices in Nairobi, an agreement ("The World Bank Agreement") surfaced that was supposed to have been signed by President Kibaki and Raila Odinga. This agreement was to be witnessed by president Kufuor, British High commissioner Adam Wood, US ambassador Michael Ranneberger, French ambassador Elisabeth Barbier, and head of European Union in Nairobi.¹²⁴ The reactions to this document were controversial. The "agreement" was reportedly done under the auspices of Colin Bruce, the World Bank's country director for Kenya.¹²⁵ The ODM had attended the drafting of the document, and claimed that Kibaki had representatives to the negotiation and drafting of the document. On presenting the

¹²² "Hope as Kufuor discusses crisis with Kibaki and Raila" Daily nation, 10 January, 2008, p.2.

¹²³ Daily Nation, 11 January, 2008, p.2.

¹²⁴ Daily Nation, 11 January, 2008, p.3

¹²⁵ "World Bank boss in a row over Kibaki" Daily Nation, 11 January, 2008, p.6.

document to Kibaki by Kufuor, Kibaki disassociated himself from it. ODM announced that mediation led by AU chairman had failed.¹²⁶ On this aspect the ODM was wrong because Kufuor had not conducted any mediation in Kenya. His good offices role was to get the parties to agree to a full-scale negotiation, conducted by another. With the exit of president Kufuor came Kofi Annan with team of eminent persons which included Graca Machel, Benajamin Mkapa, ex-president of Tanzania. This move was welcomed by US and UK. They were to work towards: the cessation of violence, address the irregularities detected in tallying of voted and bring together leaders on both sides.¹²⁷

Former United Nations Secretary General Kofi Annan arrived in Kenya on the night of 22nd January, 2008. Yoweri Museveni had arrived earlier that day and went straight to State house where he held talks with President Kibaki. Annan was welcomed at at Jomo Kenyatta International Airport by the Attorney General Amos Wako, Foreign Affairs Minister Moses Wetangula, Najib Balala and head of United Nations Nairobi Office Anna Tibaijuka. Mr. Annan wanted to have at his fingertips the details of Kenya's History before meeting with the two sides of the political dispute. Mr. Annan's schedule for the day had to be pushed back as they waited for the arrival of the former Mozambique President Joaquim Chissano to give more detail in regard to the election dispute. Mr. Chissano arrived at Serena Hotel at 4.55pm and joined the panel session. Meanwhile president Benjamin Mkapa had provided Kofi Annan with details from disagreement over tallying, to subsequent violence and efforts of former presidents to strike a deal between the two sides.¹²⁸

¹²⁶ "Raila: We'll use other means to stop Kibaki" *Daily Nation*, 11 January, 2008, p.6.

¹²⁷ "Kofi Annan: The man who could save Kenya" *Saturday Nation*, 12 January, 2008, p.2.

¹²⁸ *The Daily Nation*, 24 January.

Conduct of external mediators in the Kenyan Conflict

The mandate of the mediation team was to urge the political leaders to overcome the divisions and disputes over the election outcome, engage without pre-conditions in a genuine process of reconciliation, address the disputed issues, agree on a way to share power so as to reflect the clear democratic will of the Kenyan people, in a composition of government that partners.¹²⁹

In the course of mediation over the electoral conflict in Kenya, there was in evidence an often heavy handed application of leverage, designed to force the parties to reach outcomes that were favorable to the allies, and some extent some of the constituents. Leverage in this case means the application of diverse resources in order to exercise control of the mediation process and its outcome. In negotiation (including mediation), resources are the ingredient for exercising leverage. Hence mediators and their constituents must use their resources in order to induce the change in the behavior motivation and perception of the parties. This means that the choice of resources, and hence of the strategies of mediation are not random, but are carefully calculated to yield to the interest of the parties and their constituents.

Once parties agree on negotiations, and on the mediator, the preoccupation becomes one of the strategies to be adopted. The strategies chosen are used to change, modify or affect aspects of the conflict, or even affect aspects of the conflict, or even the character of the interaction of the parties. The choice of strategy itself depends on the character of the conflict, and on the resources available to the mediator. Choice of strategy depends on the interactions in the mediation environment, which includes the parties, the mediators, the relationship between them, the constituents of both, and the relationship with the conflict itself. Resources not only financial,

¹²⁹ Ibid.

but status, expertise or knowledge, access to leaders and even prestige. This affects the strategy chosen and hence the strategies chosen.

In third party intervention, and the strategies or even the tactics used recognizes three ranges of possible strategies: light, moderate and heavy.¹³⁰ In the mediation of the electoral conflict in Kenya, all these strategies were used by third parties and their constituents. During the good offices of president Kufuor, light strategies such as enhancing communication between parties, arranging meetings, and transmitting messages, were used. In the early parts of Annan's mediation, formulation strategies such as structuring the agenda, suggesting how parties should view the issues, and suggesting possible solutions were used. Later, in the Annan mediation both Annan and his constituents used heavy handed strategies, which include manipulation of the parties, threats, the exertion of pressure on the parties for them to make concessions, and seek compromises.

The third party mediator in the Kenyan conflict also used leverage which is the ability to portray an alternative future as better than the continuing conflict; the ability to produce an alternative position from each party's needs; and the availability of resources that the mediator can add to the outcome. The essence of leverage is to worsen the dilemma of the parties rejecting mediation, and to keep them searching for a solution. In the Kenyan conflict and its mediation, the mediator had serious sources of leverage and this explains why the mediator was active as opposed to being passive mediator. In his public statements, he addressed the constituencies of both parties. He also took this further by addressing Kenya's parliament. He also tried to worsen the dilemma particularly of the government party whose stake in the successful outcome of the process was very high.

¹³⁰ See D. Priuitt, "The Tactics of Third party Intervention" *Orbis*, vol. 44, (2000) pp.245-254.

The mediator also resulted to use of threats more against the government side than the ODM. These threats had a similar effect to the aggressive use of leverage. Indeed, in the mediation, the mediator increasingly used threats as a means of trying to break the deadlock that crept in during the negotiations, and to instill a sense of urgency on the parties, especially the government side, which had more to lose in the negotiation breaking down, and for himself, since his reputation as a mediator was on the line. This was only effective as each party's perception of the seriousness of the threats.¹³¹

On the day the mediation phase was launched in Nairobi, the US warned that foreign countries may impose a solution in Kenya to end the post-election crisis if Kenyan leaders did not do so themselves. In a hard hitting statement in Addis Ababa, Jendayi Frazer threatened that they would find an international mechanism if Kenya could not find it internally. This created fears in Kenya that the US and its allies were planning a forceful intervention in Kenya. Frazer also noted that, there was clear evidence of ethnic cleansing in the Rift Valley which did not amount to genocide, that the US was keen to see investigation into the violence, and was advocating some kind of power sharing and coalition government, and that Kenya needed constitutional and land reform to address the deep-seated grievances between various groups.¹³² Ms Frazer's comments were not fully supported by the Department of State whose spokesman Sean McCormick, said only that "there is evidence that there are individuals the were forced to move out of various areas for a variety of different reasons some based on ethnicity."¹³³

¹³¹ Makumi Mwangi, "The water's edge: Mediation of violent electoral conflicts in Kenya", Nairobi; Institute of Diplomacy and international Studies, July 2008, p 75-77.

¹³² "US threatens action over post-election violence." Daily Nation, 31 January, 2008, p.2.

¹³³ "US disowns *cleansing* charge" Daily Nation, 1 February, 2008, p.4.

Other states which had not spoken openly about the situation in Kenya also weighed in at this stage, perhaps in the effort to create an environment in which the mediation was to take place. The Australian government officials in Kenya would restrict their contact with cabinet ministers in Kenya, in “seeking to encourage all the political leaders in Kenya is trying to effect.”¹³⁴ The donors also suspended funding to some government programs, particularly the governance, justice, law and order sector reform program. This program affected the police, Kenya National commission on human rights, national registration bureau, national youth service, the anti-corruption commission and the law reform commission. The Swedish ambassador stated that no new contract would be entered into with the government because of the political crisis obtaining in the country.¹³⁵ At the same time, a consignment of British Army military equipment that had arrived in Mombasa was shipped back because the British government felt that it was not proper for them to replace their fleet at this time when there was violence in different parts of the country.

All these were strategies aimed at making the leaders of the conflicting parties come together under the auspices of former United Nations Secretary General for mediation in order to stop the violent conflict and find a solution to the problem.

¹³⁴ “Solve your problems or risk solution from outside, Kenya told” Daily Nation, 31 January, 2008, p.1.

¹³⁵ “Donors suspend key funding” Daily Nation, 31 January, 2008.

CHAPTER 4: THE AGREEMENT

The objective of this chapter is to show the path that the mediation process took in order for the conflicting parties reach an agreement. It continues to examine the mediation in terms of the agenda I, II, III, IV and how far they have been implemented to date. The Coalition Agreement which is the outcome of the mediation process will include the Preamble, the National Accord and Reconciliation Act and the constitutionalization of the agreement.

The Road to the agreement

Mediation was formally launched on 29th January, 2008 through the second face to face meeting between president Kibaki and ODM's Raila Odinga at the County Hall in Nairobi. The tension between the parties was reflected by the fact the at the meeting had delayed because of the sitting arrangements that had placed Kibaki between Kofi Annan and Raila signifying that Kibaki was the chairman. This was however sorted out by re-arranging so that Kofi Annan sat in the middle and declared that the time frame of this phase of the process would be four weeks.¹³⁶

During the first day of negotiations, on the disputed presidential elections, both sides laid out their claims. ODM argued that, PNU had rigged the elections before and after the voting day, and that voter turnout was higher in pro-president Kibaki's areas of Central Province. They also took issue with the use of provincial administration and the manipulation of the presidential poll results at the Kenyatta Conference Centre (KICC) where the electoral commission was based, glaring discrepancies between the original Form 16As sent by returning officers and the ones ECK was holding, and argued that that all Form 16As were taken to industrial area in Nairobi and destroyed, after which the officer were called to fill in new forms. ODM maintained that Odinga won in six provinces compared to Kibaki's two therefore making ODM the winner. ODM said that this why they had ruled out re-tallying the votes, and were pushing for

¹³⁶ Leaders pledge to unite Kenyans' Daily Nation, 30, 2008, p.2.

either the option of re-run of the presidential election, or formation of an interim government to prepare fresh elections.¹³⁷

In the mediator's view, the first item on the agenda could be obtained by ending the violence, investigating and prosecuting those behind the killings, lifting the ban on live coverage by the media to avoid rumours, and banning vernacular radio station from broadcasting hate messages. The second item on the agenda was required wide scale humanitarian assistance, joint visits by members of Parliament across the political divide to affected areas, bringing in religious leaders, and setting up a fund to alleviate the suffering of the victims.¹³⁸ On these prescriptions the government had already moved ahead by setting up a "National Humanitarian a Fund for Mitigation of Effects and Resettlement of Victims of Post-2007 Election Violence" on 30th January 2008.

On the third item of the agenda, Annan stated that it could be resolved by some form of power sharing as a solution to the disputed presidential election, and a review of the constitution and reforms of electoral legislation to avoid similar occurrences. Annan prescribed for the fourth item on the agenda as being land reforms, tackling poverty and widespread inequality, regional imbalances, unemployment and national cohesion.¹³⁹ Issues relating to the procedural aspects of the mediation came up at the beginning of the mediation.

The negotiations held on 1st February, 2008, the parties reached an agreement on the agenda for the mediation. They also agreement on the agenda for the mediation on the first two items on the agenda, namely stopping the violence and measures to address the humanitarian crisis. The agreed agenda was as follows;

¹³⁷ Alex Ndegwa, 'state and ODM talks begin at long last' *The standard*,30 January,2008,p.5

¹³⁸ Bernard Namunane, 'Rival teams retreat to fine -tune positions ahead of crucial talks' *Daily Nation*,31 January.2008,p.5

¹³⁹ 'President Launches Sh 1bn fund for Clash Victims' *Daily Nation*,31 January, 2008, p.2

Agenda 1

It was agreed immediate action to stop violence, and restore fundamental rights and liberties. The parties agreed to discuss stopping the violence in Kenya, enhancing the security and protection of the population and their property, restoring respect for human life and ensuring the freedom of expression, press freedom and the right to peaceful assembly were upheld.¹⁴⁰ The baseline survey and field data are based on people's perceptions about implementation of the KNDR agenda points. The following are some of the highlights on findings.

a) Demobilisation and disbandment of the militia: From the beginning of the crisis, in February 2008, the mediation process emphasised the need to demobilise and disband illegal armed groups and militias. From March 2008, the police and the military began an operation to stop the activities of the Sabot Land Defence Force (SLDF) and later the Mungiki and other groups that had been armed and mobilised for violence. Although the operation largely restored calm in the affected areas, sporadic activities by illegal armed groups have been noted. Ongoing acts of violence notwithstanding, results from a December 2008 national baseline survey show 60% of Kenyans feel that violence from local armed groups has decreased and 57% believe that this violence will decrease further in the next one year. However, there are grave concerns about the manner in which the police dealt with these groups. Human rights abuses in the course of police operations undermined the confidence of Kenyans in the security apparatus. More importantly, no formal process to demobilise and disband illegal armed groups had been put in place. The national baseline survey shows that 67% of Kenyans believed illegal armed groups have not been completely disbanded or demobilised. Although the various militia had not been active, they are alive and well in different parts of the country. Local militia, therefore, remain a security threat as dormant groups can be reactivated with ease should political circumstances so require.¹⁴¹

¹⁴⁰ James Ratemo, "UN boss roots for truth commission" The Standard, 5 February, 2008, p.3

¹⁴¹ *Supported by a grant from Foundation Open Society Institute (Zug)

b) *Enhancing security and protection of the population*: Although police claim a six percentage reduction in the rate of crime from the previous year¹, insecurity persists in the flashpoints of violence. The government has established extra police stations, posts and patrol bases in areas prone to violence and in particular in areas from which the current internally displaced persons were evicted. This notwithstanding, attacks and threats against IDPs living close by continue. This suggests that 'policing' communities is not enough to guarantee their security. Other reforms that address the fundamental causes of the post-election violence must be undertaken to lay the basis for the security of the population. The baseline survey reveals that only 28% of the respondents feel safer now than just after the 2007 elections.

c) *Restoring fundamental rights and liberties of peaceful assembly*: In January 2009, the international NGO, Freedom House, reported Kenya's democracy rating to have deteriorated from "free" to "partly free." The fundamental rights, freedoms and liberties of Kenyans especially with regard to peaceful assembly continued to be curtailed throughout the year. The police violently dispersed public gatherings and demonstrations, including those of IDPs protesting over insecurity, citizens campaigning to have Members of Parliament pay tax on their allowances, and the media demanding a review of the Kenya Communications Amendment Act. Over 60% of the respondents in the baseline survey felt that the government did not respect basic human rights. On the whole, fundamental rights and freedoms are constrained; democracy is on recession compared to the period between 2003 and 2007.

d). *Implementation of the CIPEV report*: The coalition Government has made some progress in initiating implementation of the report by the Commission of Inquiry into Post-Election Violence. The coalition partners signed the agreement to set up the Special Tribunal for Kenya. Although the Cabinet and Parliament have adopted the report, Parliament failed to meet the deadline for passing laws to set up the Special Tribunal that would try those suspected to bear the greatest

responsibility for the post-election violence. Commitment to the implementation of the report and to deal with impunity will depend on the political environment at the time that suspects are charged.

There are several challenges around implementation of the CIPEV recommendations. Firstly, both parties did not have internal consensus on how to implement the recommendations in the commission's report. Divisions and disagreements on different aspects of the recommendations are likely to negatively affect implementation. Secondly, some of the prosecution witnesses have reportedly received threats to dissuade them from giving evidence at the Special Tribunal. It is likely that some witnesses may decline to give evidence if their protection is not guaranteed.¹⁴²

Agenda 2

These were immediate measures to address the humanitarian crisis, promote reconciliation, healing and restoration. The parties agreed to discuss ensuring the assistance to the affected communities and individuals would be delivered effectively; ensuring impartial, effective and expeditious investigation of gross and systematic violations of human rights, and those found guilty were brought to justice, and ensuring that the processes of Over 1,300 people were killed in the violence that followed the 2007 disputed presidential election results in Kenya, and over 500,000 are estimated to have been displaced. According to Kenya Red Cross Society and United Nations Office for the Coordination of Humanitarian Affairs in Kenya, approximately 301,000 moved into 296 camps and the rest were absorbed in the community by friends and family.¹⁴³ In response, the UN system, NGOs, Kenya Government and the Kenya Red Cross Society launched the Emergency Humanitarian Response Plan. In February 2008, the

¹⁴² Kenya Police, December 2008

¹⁴³ OCHA Kenya, Humanitarian Update Vol. 6, 2008; see map of camps and regional 'Hubs' at http://www.depha.org/Unhcr/Maps/KEN_IDP_Situationmap

Government created the Department of Mitigation and Resettlement in the Ministry of Special Programmes to manage the National Humanitarian Fund for Mitigation of Effects and Resettlement of Victims of Post-2007 Election Violence.

In May 2008, the Government launched Operation Rudi Nyumbani (Operation Return Home) to facilitate the return of IDPs to pre-displacement areas. In line with this development, the Government launched a fundraising effort for over US\$460 million to meet the full costs of resettlement of IDPs, including reconstruction of basic housing, replacement of household effects and rehabilitation of infrastructure, such as community utilities and institutions destroyed during the post-election violence. The Government also outlined measures to build 32 new police stations in the areas most affected and enlisted the military to reconstruct 22 schools destroyed in Molo and Uasin Gishu districts of Rift Valley Province.

Progress in ending the humanitarian crisis

This section examines progress made in relation to facilitating durable solutions for IDPs, providing humanitarian assistance and protecting IDPs as they return. More specifically, it discusses the following: Resettlement programme, the nature of humanitarian assistance, measures to promote reconciliation and healing.

a) Resettlement Programme

In January 2008, an estimated 301,000 people moved into 296 camps managed by UNHCR and the Kenya Red Cross Society. From May 2008, the Government began a resettlement programme with support from humanitarian agencies. Through the Resettlement Programme, Operation Rudi Nyumbani, the Ministry of Special Programmes facilitated the return of

155,094 persons to pre-displacement areas or new locations.¹⁴⁴ In June, the Government began the disbursement of Ksh10,000 to each household for families that were willing to return to their farms. This was called 'start-up funds' and was meant to support IDPs in buying basic items to restart their lives in return areas. The Government also promised to reconstruct 40,000 houses destroyed in the postelection violence. The number of IDPs and camps has steadily reduced since the start of Operation Rudi Nyumbani. Figures on the Resettlement Programme in December showed that only 5,021 people remained in four camps, including one in Mt Elgon. The tables below illustrate this trend.

ij Number of IDPs, number of camps:

By end of 2008, two other camps were closed in Molo and Naivasha, but there are no official statistics on remaining IDPs and camps. The steady decline in official statistics of IDPs in camps indicates an apparent success in closing camps. In November, for instance, the Government said IDPs remaining in closed camps were only 'a few hawkers, squatters and landless people waiting for land allocation'.¹⁴⁵ Even though the number of camps has declined, there are still IDPs in different places. This suggests that the problem of IDPs is far from over and that success in addressing the issue cannot be tied to the number of IDPs in official camps, or even the number of official camps closed down. Furthermore, the actual number of IDPs is yet to be obtained. Tentative results from profiling in conjunction with UNHCR and the Kenya National Bureau of Statistics in June showed that there were 663,921 post-election violence-affected IDPs across the country. This is almost double the estimate that has been used for the most part to plan and

¹⁴⁴ Interview with Director, Department of Resettlement and Mitigation at the Ministry of Special Programmes, January, 16, 2009.

¹⁴⁵ The Ministry of Special Programmes said no land was available; full Press Statement 'Daily Nation', Wednesday Nov19, 2008.

report on interventions.

ii) Challenges to the Resettlement Programme

The Resettlement Programme encountered significant challenges, which human rights NGOs have consistently raised at various cluster meetings. The Humanitarian Forum and the media have also pointed these challenges out. They include: Proliferation of transit camps: While most official and UNHCR/Kenya Red Cross managed camps had been emptied and closed, IDPs moved into over 160 transit site areas because of fear and threats of violence in return areas. Others lacked resources to reconstruct their destroyed houses while others are waiting for start-up and shelter reconstruction funds. They were afraid the money will not be disbursed if they move out of the camps. The creation of transit sites means that the fundamental issues underlying displacement remain unaddressed. Allegations of use of force and threats: The voluntary nature of IDP movement out of camps has reportedly been compromised by the use of force. In May 2008, OCHA reported such use of force in Trans Nzoia.¹⁴⁶ Human rights organizations such as the Kenya National Commission on Human Rights¹⁴⁷ and the Kenya Human Rights Commission¹⁴⁸ also noted the use of force and threats in closing down camps. Our field survey findings show that some camps were closed by force. For instance, Kedong Camp in Naivasha was forcibly closed and razed in the middle of the night, and some IDPs were injured in the process. Allegations of embezzlement and corrupt diversion of IDPs Funds: On May 31, 2008, the Government began a pilot project to issue Ksh10,000 cash grants to resettling and registered IDPs who had returned to their farms in Kipkelion District, where successful reconciliation is

¹⁴⁶ OCHA Kenya, *Humanitarian Update* Vol. 20, May 2008, p. 7

¹⁴⁷ Press statement read to the press by the KNCHR Vice Chair, Hassan Omar

¹⁴⁸ Kenya Human Rights Commission, *Tale of Force, Lies and Threats: Operation Rudi Nyumbani in Perspective* (Nairobi: KHRC,

seen to have occurred. IDPs, the media and human rights NGOs made repeated claims of misappropriation evident in missing names, 'fake' lists of beneficiaries and demands for bribes.¹⁴⁹ In September, for instance, the National Humanitarian Fund Advisory Board blocked Ksh330 million required to procure building materials in the Rift Valley due to the absence of authentic registers or accountability systems.¹⁴ The Advisory Board observed that provincial administration and procurement officials had drawn up the fictitious lists and claims.

IDPs with nowhere to go: Operation Rudi Nyumbani began by targeting land-owning displaced persons who were willing to return to their farms. Consequently, other livelihood groups and landless people had to wait for assistance sometimes in closed camps without humanitarian assistance. Many such IDPs used to rent land or business premises, but trading centres had been destroyed and savings exhausted. Some of these IDPs have no other 'ancestral home' and failure to access Government assistance compels them to remain in camps without prospects for durable solutions.²² In addition, some property owners have lost access to their homes and livelihoods in urban areas due to illegal occupation of their premises.²³ This implies that while all land-owning IDPs may eventually return to their farms, pockets of IDPs will remain, albeit scattered and invisible in urban areas or in communities.

The search for durable solutions therefore needs to be anchored in reconciliation: "...

Reconciliation has not been done, security is not the policemen... it is me and my neighbor. If he is refusing that I go back, I cannot go back. Others have defied the warnings and gone back but came back to the camps."¹⁵⁰ *Seeking Other Durable Solutions*

¹⁴⁹ South Consulting Survey Reports for Naivasha/Nakuru, Uasin Gishu, Baringo, Nairobi, Nyeri, Kiambu and Molo 10

¹⁵⁰ Interview with displaced person in Naivasha, Dec 2008

b). Relocation: Individual households and groups of IDPs moved away from predisplacement areas to new locations they considered safe. The movement pattern indicated IDPs were unwilling or unable to return. Some accessed their farms during the day from transit camps (where security allows), while many have established other homes in urban and 'ancestral' districts.¹⁵¹ Self-help groups comprising over 10,000 displaced households relocated to new farms in Nyandarua, Nakuru, Naivasha and Nyeri²⁶ in Central Province and the Kikuyu dominated South Rift. An unknown number of Luo and Luhya IDPs have also returned to Nyanza and Western provinces where they have integrated into their kinship and other social support networks. Some of the available statistics are as follows:¹⁵²

Nakuru Ngata 441	Nakuru Nyahururu 2,125
Nakuru Pipeline 1 600	Nyandarua Mawingo 3,389
Nakuru Pipeline 2 400	Naivasha Mai Mahiu C 15
Nakuru Elementaita 39	Naivasha Mai Mahiu B 60
Eldoret Mai Mahiu 240	Naivasha Mai Mahiu A 150

c). Integration: An unknown number of IDPs have integrated into host communities and urban areas. However, there is compassion fatigue in host families and increased competition for resources, jobs and social facilities in host areas, leading to xenophobic attitudes towards IDPs, such as association with increased crime. These could escalate to violence in host areas. The IDPs and host communities adopt symbolic names denoting war and devastation (Bosnia, Rwanda, IDP, etc) or new hope and promise of peace or abundance (New Canaan, Jerusalem, etc.).

¹⁵¹ UNICEF

¹⁵² Source: 'Humanitarian Update Vol 41', IDP Network, Nov 2008

d) Nature of Humanitarian Assistance

In January 2008, humanitarian agencies launched the Emergency Humanitarian Response Plan (EHRP) and adopted the Cluster Approach. Over 50 UN agencies, Kenya Red Cross Society and NGOs established a coordinated strategy to address priority areas. By April 2008, humanitarian actors strengthened coordination with the Government, which eventually took the lead in some clusters/sectors, including Water and Sanitation, Health and Shelter. The following types of assistance had been provided to IDPs: Food: From the outset, the Government, WFP and Kenya Red Cross provided food assistance to all IDPs, including those integrated in communities. This obtained up to the end of March 2008 when the focus shifted to those in IDP camps. Funding constraints, closure of camps beginning May 2008 and relocation of IDPs to dispersed locations, however, meant reduced assistance and logistical challenges for humanitarian agencies. Some organizations have been providing food aid on an ad hoc basis and IDPs in transit camps have been passed over or not attended to altogether. Food aid by Government is not provided in transit camps as focus has shifted to early recovery interventions and peace-building. Shelter: There are three main shelter initiatives, coordinated through the Shelter Cluster: the Government shelter reconstruction project, UNHCR-led shelter cluster initiatives,¹⁵³ and the private sector shelter support programme.¹⁵⁴ The Government project aims to construct 40,000 shelters for IDPs by the end of March 2009 through a Kshs 25,000 voucher scheme. By October 2008, the Government had disbursed a total of Kshs 438,900,000 to 7,556 households or 18.89% of the intended beneficiaries.¹⁵⁵ However, not everyone has constructed shelter using these funds. Some still fear returning to their former homes while others have used the money to meet other needs.

¹⁵³ Interview with Director, Department of Resettlement and Mitigation, op cit

¹⁵⁴ UNOCHA *Humanitarian Update*, Vol. 40, November 2008, p. 7

¹⁵⁵ Interview with Director, Department of Resettlement and Mitigation, op cit

The UNHCR-led programme seeks to construct 3,000 houses, while the private sector is assisting in constructing houses for about 120 households and assisting in building schools and Chiefs' camps. IOM has constructed 700 houses in 12 return areas, and NGOs have supported over 1,200 housing units, which have been completed and handed to beneficiaries in secure areas such as Kipkelion.¹⁵⁶

e) Others forms of support

Psycho-social support: Counseling support for IDPs has been provided by volunteer counselors and religious institutions. UNICEF observed that there is only a small number of trained counselors in Kenya. Legal Aid: The Law Society of Kenya and NGOs such as the Refugee Consortium of Kenya, Kituo cha Sheria and Legal Resources Foundation offer *pro bono* legal services on matters related to property claims and access to compensation. Health: Local health facilities have been providing health support but clinics often lack essential medicines and some IDPs are afraid to walk through 'enemy territory' to access the facilities. Education: Displaced pupils were absorbed in host schools or camp schools, which were provided with education resources. IDP pupils were not required to wear school uniform or pay levies. In return areas such as Molo, however, some schools are ethnically segregated and teachers from 'outsider' tribes have been unable to resume duty.¹⁵⁷ The Kenya Army has completed the reconstruction of 21 out of 22 destroyed schools in Molo and Uasin Gishu. Promoting Healing and Reconciliation. The KNDR agreement required the President and Prime Minister as well as other political leaders to promote healing and reconciliation by, among other things, holding joint rallies, developing a national resettlement programme, deemphasising ethnicity in documents,

¹⁵⁶ Interview with Director, Department of Resettlement and Mitigation, op cit

¹⁵⁷ UNICEF-Kenya, Nakuru June Monthly Report, 2008; interview with Paula Retaggi, Education Cluster Coordinator, October 2008

establishing all-inclusive peace and reconciliation committees, and appointing a Truth Justice and Reconciliation Commission.

Agenda 3

It involved how to overcome the current political crisis which revolved around the issues of power and functioning of the state institutions. Its resolution may require adjustments to the current constitutional legal and institutional frameworks.¹⁵⁸ Here review the extent to which power sharing has been achieved or is being achieved within the Grand Coalition. Selected indicators for reporting on power sharing include percentage distribution of public sector positions; level of political cohesion; level of coherence in decision-making; conflict management within the Grand Coalition and level of satisfaction with the Coalition Government.

It is almost a year since President Mwai Kibaki of the Party of National Unity (PNU) and Prime Minister Raila Odinga of the Orange Democratic Movement (ODM) signed the National Accord and Reconciliation Agreement on February 28, 2008. The National Accord recognised that the crisis revolved around issues of power and the functioning of state institutions. The Constitution had to be amended to provide for a coalition government. Power sharing and the challenges the partners have been experiencing were brought about by the tendency to interpret the National Accord on the basis of their own perspectives and individual interests. This has resulted in tensions within the Coalition to the extent that the momentum for the main agenda for the Grand Coalition – implementing comprehensive reforms – is reducing.

Status of implementation

Distribution of power and sharing of public sector positions. We have already pointed out that sharing political power was crucial for ending the political crisis. Thus, power sharing was not an end in itself. It was meant to facilitate the initiation of broad-based reforms. The National Accord

¹⁵⁸ *Annotated Agenda and Timetable*, reproduced in *The People Daily* (Nairobi), 7 February, 2008, p.8.

devolved some executive powers to the new office of the Prime Minister. These powers include the authority to appoint half of the Cabinet, and to coordinate and supervise the functions of the Government, including those of ministries. Amendments to the Constitution (to provide for this structure of power) were made to address the political crisis at that moment. Therefore, the relationship of the new office to the existing institutions such as the Office of the Vice President and the Office of the Head of the Civil Service and Secretary to the Cabinet may not have received due attention and analysis.

There are several challenges facing 'effective power sharing' at this level. Some of the analysts that we have interviewed argue that despite the constitutional amendment, the President still retained more executive power and that it is difficult to tell the scope of powers vested in the Prime Minister.¹⁵⁹ Also, the National Accord created the Office of the Prime Minister without redefining the role or scope of powers of other existing institutions such as the Office the Vice-President and the Head of Civil Service. Those of this view point out that the National Accord did not translate the full spirit of the Accord into the letter of the law.¹⁶⁰ Other challenges include power struggles between the Office of the Prime Minister and Office of the Vice President¹⁶¹ and the Office of the Head of Public Service;¹⁶² and the lack of trust and good faith between political parties to work together.¹⁶³ The Principles of Partnership of the Coalition Government anticipated that the formation of the Coalition Government will at all times take into consideration the

¹⁵⁹ Interview with legal expert/analyst in January 2009

¹⁶⁰ Ibid.

¹⁶¹ The protocol wars between the two offices recently resurfaced during the debate on the proposed amendments to the Parliamentary Standing Orders. See Hansard Report on December 10, 2008. Available at: <http://www.bunge.go.ke/downloads/Tenth%20Parl%201st%20Session/Hansard/10.12.08P.pdf>

¹⁶² ODM party has constantly observed that the Head of Public Service has been "interfering in and undermining" the Prime Minister's office. In the past one month, there has been heated debate between the Coalition partners on whether or not to do away with the position of the Head of Public Service. The PNU has strongly defended Amb. Francis Muthaura's position and work even as ODM continues to protest.

¹⁶³ The baseline survey shows that 40% of Kenyans think political parties failing to work together is a stumbling block to power sharing.

principle of portfolio balance and partners' relative parliamentary strength.¹⁶⁴ In April 2008, a total of Cabinet ministers and assistant ministers was agreed upon between the Coalition partners and the positions shared equally at 50% each.¹⁶⁵ Three Cabinet positions became vacant and were filled in January.¹⁶⁶ Although it is unclear why the President and the Prime Minister took more than six months to do so, some observers read internal party politics among the two Coalition partners as being responsible for the delay.¹⁶⁷

The issue of portfolio balance in the distribution of Cabinet positions was critical at the time of the formation of the Grand Coalition. Since then, no more changes have been made in a bid to achieve portfolio balance at the Cabinet level. This could be an indication that the Coalition partners are satisfied with the situation thus far. One senior government official observes that some ministers who thought their ministries were less strategic (in terms of portfolio balance) have been able to transform them into equally significant ministries. Subsequently, this may mean that the weight of a portfolio depends on the zeal of the office holder.

In terms of sharing high-level public sector positions (other than Cabinet), there have been recurring disagreements between Coalition partners as to whether the principle of portfolio balance applies or not. What has been observed over the past months is that consultations and consensus between the two principals on any appointments is crucial for allaying internal disagreements. For example, in October and November 2008, there were reports in the media that the coalition partners were unable to agree on the appointment of new ambassadors. ODM had claimed that it did not get its rightful share of public sector positions. On January 15, 2009,

¹⁶⁴ See Principles of Partnership of the Coalition Government signed on February 28, 2008.

¹⁶⁵ See Office of the President, 2008. Presidential Circular No. 1/2008: Organization of the Government. Issued on May 30, 2008.

¹⁶⁶ ODM had two vacancies following the death of two of its members and PNU 1 following the resignation of one member

¹⁶⁷ For instance, they see ODM as being captive to the Rift Valley ethnic bloc and it is unable to satisfy one bloc and leave out the other

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President Kibaki appointed about 10 ambassadors following consultations with the Prime Minister. The names the two did not agree on were shelved for later discussions.¹⁶⁰ This latter approach indeed reflects the spirit of the National Accord.

Agenda 4

There were the long time issues and solutions. The parties agreed to discuss undertaking constitutional, legal and institutional, legal and institutional reform, tackling poverty and equality and combating regional imbalances, tackling unemployment, reform, and addressing transparency, accountability and impunity.¹⁶⁸ It was agreed that the first three items would be resolved within 7 -15 days from the date of the beginning of the negotiations, on 28th January, 2008, while item four would be resolved within one year.

Constitutional reforms are at the core of implementing some of the aspects of Agenda Item 4. Without a new constitution, some institutional reforms may not be undertaken and Kenya's Vision 2030 may not be effectively implemented. A number of steps have been undertaken to enact a new constitution: In December 2008, constitutional review statutes -- the Constitution of Kenya (Amendment) Act, 2008, and Constitution of Kenya Review Act, 2008 -- were enacted and a Parliamentary Committee on Constitution Review constituted. In January 2009, Parliament initiated the process of selecting a committee of experts to help in the review. Parliament has also independently embarked on reforms. New Standing Orders that propose far-reaching reforms have been developed and adopted.¹⁶⁹ Parliament finalized a Strategic Plan to guide its reforms. However, some of the proposals -such as the constitution of committees - may face challenges at the implementation stage owing to additional committees in the new rules that double those in the

¹⁶⁸ *Annotated Agenda and Timetable*, op. Cit.

¹⁶⁹ . Supported by a grant from Foundation Open Society Institute (ZUG)

current Standing Orders.

Four observations are pertinent. One, a new constitution is without doubt the gateway to many crucial reforms. Two, synergy between reforms in different institutions is critical for sustaining a reform momentum. What happens in one institution has an impact on other institutions. There is a need then to foster synergies in undertaking institutional reforms. Three, coordinating reforms – or reform initiatives – is important in achieving the desired impact. four, the reform agenda should be driven by the desired impact – which, in line with the goal of the National Accord, is sustainable peace, stability and justice for all through the rule of law and respect for human rights. Tackling poverty and inequality, and combating regional development imbalances

Like other long-standing issues in Agenda Item 4, this may require a new constitution and policy directions. Notably, though it may take long for any interventions aimed at tackling poverty, inequality and development imbalances to have visible impact, planning for the impact must be explicit. In this regard, policy actions must be linked to the need to demonstrate results. From the first quarter of 2008, a number of interventions have been undertaken to tackle poverty, inequality and development imbalances:

- a. The Government created the Ministry of Development of Northern Kenya and other Arid Lands in March 2008 with a view to addressing the development challenges facing northern Kenya and other arid lands.

- b. The budgetary allocation for the Constituency Development Fund increased during the 2008/2009 financial year. Constituencies are now allocated money on the basis of their poverty and development levels.

c. Kenya's Vision 2030, which is being operationalised through a five-year Medium Term Plan (2008-2012), has prioritised tackling poverty and inequality and addressing regional imbalances. The line ministries have developed their strategic plans to implement the respective strategies and projects.

Nevertheless, high poverty levels, inequality and regional development imbalances persist. Currently, Kenyans are grappling with the rising cost of essential commodities and famine threatening a third of its population. The Government's stop-gap measures to address these challenges have been riddled with allegations of corruption. They are seen as ineffective in addressing the fundamental causes of the problems. Budgetary allocation to institutions that can effectively address regional development imbalances is a critical measure of progress towards tackling the problem. A new policy imperative is required to create the necessary conditions for tackling inequalities.

Priority should be placed on continuously communicating to the public communication about efforts to reduce regional inequalities and address poverty. This will stimulate national debate on solutions adopted, promote ownership of reform initiatives and build popular momentum. Failure to address poverty and inequalities effectively cultivates feelings of exclusion, marginalisation and despair among citizens. These feelings almost certainly lead to conflict. One possibility is 'class-based' conflict, which could culminate in uncontrollable and far-reaching violence.

The Kenya National Dialogue and Reconciliation process acknowledged the urgency and importance of addressing youth unemployment. This is because it threatens social and political stability and the very foundation upon which a nation is built. Youth unemployment was identified as one of the key factors behind the post-election violence. As such, prioritising addressing youth unemployment is critical to consolidating national stability and generational

posterity. A number of efforts have been undertaken to address this problem since the constitution of the Grand Coalition Government. These include:

- a. **Youth Enterprise Fund:** The Government has significantly boosted allocation to the revolving loan facility from an initial Ksh1 billion to Ksh1.75 billion. Plans are under way to allocate a further Ksh500 million to the Fund in the 2009/10 financial year. Of the money allocated to the Fund, Ksh1.6 billion has been disbursed to over 55,000 youth enterprises, resulting in the creation of over 200,000 new jobs. The private sector has also set aside Kshs2.5 billion to boost the fund.
- b. **Youth employment programs:** The Ministry of Sports and Youth Affairs has also initiated a Youth Employment Marshall Plan, which aims to create 500,000 jobs for the youth each year, starting in January 2009.

Despite these efforts, youth unemployment persists. Job creation has not kept pace with the number of youth entering the market from schools and other training institutions every year. Further, efforts that seek to address unemployment among the youth narrowly focus on entrepreneurship without regard to the fact that not all youth are well organized to access the funds for entrepreneurship.

The mediation process

On the first day Kofi Annan suggested that he should take the role of chief mediator. Although he was not sure how long he would have to be in Kenya and it was reported that another mediator was to sit in for Annan. Annan suggested Cyril Ramaphosa, but the Kenyan government rejected him on the grounds that Mr. Ramaphosa had business links with Raila Odinga, making it difficult for him to mediate in the conflict. The Kenyan government protested that protocol was not followed in appointing Ramaphosa to the mediation team, and it was unhappy because Ramaphosa's appointment was announced in Addis Ababa by the

Tanzanian foreign affairs minister without consulting the government of Kenya.¹⁷⁰

Some preliminary issues that could have delayed the beginning of the mediation was the identity of some of the representatives. The ODM had objected to the inclusion of Mutula Kilonzo on the government side on the basis that Kilonzo belonged to ODM-K, whereas the negotiation was between PNU and ODM. After lengthy discussions it was agreed that he could remain. Secondly, was whether it made sense to have officer designated as 'liaison officers' in the mediation. After some discussions liaison officers were re-designated as secretaries. The Third issue discussed, and dispensed with was whether the process was a mediation, or a national dialogue.¹⁷¹ The fourth issue was whether the disputed presidential elections should not be discussed earlier in the agenda. In Annan's proposed agenda for the mediation, the agenda item was disputed presidential elections came low on the agenda as the third item. Although the ODM were at first sceptical that Annan had 'swallowed Kibaki's bait'¹⁷²

During the first meeting, both parties restated their negotiating positions. The ODM called for a forensic audit into the prevailing circumstance before and after the elections with a view to finding out whether a free and fair poll was possible. They also wanted president Kibaki to accept that he had lost the elections to Odinga, and to promptly resign from office to pave way for a re-run of the presidential elections. They further wanted the formation of an interim government including both PNU and ODM as the country prepared for fresh elections.¹⁷³ The government side also re-stated their position that president Kibaki validly won the elections and was constitutionally sworn in, and formed a legitimate government. They questioned ODM failure to move to court to challenge his re-election. They dismissed the possibility of being in

¹⁷⁰ 'Annan team agrees on steps to end polls crisis' *Daily Nation*, 5 February, 2008, p.4

¹⁷¹ 'South Africa reacts to the rejection of negotiator' *The Standard*, 6 February, 2008, p.5.

¹⁷² 'Jaindi Kiseru, Annan's rapid diplomacy confounds sceptics' *The East African*, February, 4-10, 2008, p.4.

¹⁷³ 'Team agrees to end violence in 7 days as National Dialogue meeting gets underway' *Daily Nation*, 1 February, 2008, p.2

government with ODM who they felt were responsible for the killings that were going on.¹⁷⁴ In a press briefing after the first day, spokesmen for both teams said most of the items on the agenda had been agreed. Mutula Kilonzo, for the government side stated that 'the solution to the problem is in this room and we should be given an opportunity to work on peace'.

The ODM side sought formation of a transition government where they would share executive authority equally with the PNU. Such a government would be in power for between 3-6 months during which it would make reforms in preparation for an election. The reforms required were reconstitution of an electoral commission of Kenya, cleaning up of voters registers and making effective constitutional and other laws that would support the transitional government's quest for new elections. At this stage of the negotiations, a lot of pressure was again exerted by the international community for the parties to reach an agreement swiftly. A US congressional sub-committee on Africa sitting in Washington, said "Kenya was too important in the region and in the world to be allowed to go the way of Rwanda and Somalia," and warned that time was running out for a Kenyan solution to the political crisis, failing which the international community should move in and help.¹⁷⁵ At the same time, the European Union warned that anybody attempting to derail the mediation would face the wrath of the international community.¹⁷⁶

By the end of the week it seemed that parties would reach a deadlock and Kofi Annan needed to remove the possibility of this happening. The periodic briefing to president Kibaki and Raila Odinga took place on 8 February 2008. At the end of the briefing the mediators announced that an informal session of members of parliament would be convened to brief the parliamentarians on the progress of the negotiations.¹⁷⁷ The mediator further announced to the

¹⁷⁴ 'Teams agree to end violence in 7 days...' *Daily Nation*, 1 February 2008, p.2.

¹⁷⁵ 'Agree or else...' *The Standard*, 8 February, 2008, p.1

¹⁷⁶ 'EU confident Annan talks will succeed' *Daily Nation*, 8 February, 2008, p.8

press that both sides had agreed that “ a political settlement is necessary and we are discussing the details which will be made public early next week.”¹⁷⁸

Vice president Kalonzo Musyoka reiterated that the government side was committed to negotiations, however warned against rushing into power sharing agreement, since it may not necessarily deal with the underlying, causes of the conflict, the violence and the IDPs in Kenya.¹⁷⁹ Musyoka also stated that ‘the form that such an agreement would take, and its possible impact on the current crisis will have to be reviewed before a settlement is reached.’ Raila on the other hand said ODM had to seek consent of their supporters countrywide before committing their party to resolutions of the national dialogue and reconciliation committee and that he would not accept a solution that did not address past injustices, including the stolen elections.¹⁸⁰

The ODM had two tiered structure: the pentagon, and the negotiating team. The Pentagon was the power behind the party and its decision making arm. While the pentagon members were part of the ODM negotiating team, the other two were parliamentary members of the party whereas the government side had fewer in number. On this side was the interests of the principal who was fully briefed on the processes and progress of the negotiations and similarly had constituencies to consider that were also wider, and internationalized, hence the possibility of a deadlock.

On 11th February 2008, both sides presented their proposals on how conflict in Kenya could be resolved and the way forward. The government proposed a situation where the president retained the roles of head of state and head of government, in which he could decide who, from any party would join a government of national unity. It also suggested that ODM should formally take the role of official opposition, creation of a truth, justice and reconciliation commission, and a non judicial committee of inquiry into the election results and processes. The ODM on the other hand

¹⁷⁷ Bernard Namunane, ‘Ray of hope’ *Saturday Nation*, 9 February, 2008, p. 1

¹⁷⁸ ‘Renewed hope for peace deal’ *Saturday Nation*, 9 February, 2008, p.2

¹⁷⁹ Oliver Mathenge, ‘VP warns against blindly rushing into power sharing’ *Sunday Nation*, 10 February 2008, p.9

¹⁸⁰ ‘ODM to seek consent’ *Sunday Nation*, 10 February 2008, p.9.

proposed a post of an executive Prime Minister be created, in which the president would be head of state and the prime minister head of government, that the president and prime minister share executive authority, and that each party be represented in government proportionally depending on the number of seats they had in parliament. That the president should not be able to dismiss ODM ministers. They further proposed a truth, justice and reconciliation commission be established and the fresh elections be held in two years.

Negotiations were moved to a secret location outside Nairobi away from the media. The mediator also gave another deadline for the negotiations by stating that he hoped a deal would be struck within 48-72 hours. The meeting broke up after 48 hours with some progress made for the accommodation of the ODM in the government. At those negotiations, the government argued for the post of a non-executive prime minister to serve at the pleasure of the president; that the president would decide who from ODM should join the cabinet, a comprehensive constitutional review would be undertaken within twelve months, and that president Kibaki would serve the full five year term of the 10th parliament.¹⁸¹ The ODM side on the other hand proposed that the roles of head of state and head of government be separated, creation of the post of prime minister to serve as head of government, and a two year transition period for fresh elections to be held.¹⁸²

The chief mediation briefed the press on the results of the negotiations, and said he had requested for a face to face meeting with president Kibaki and Raila Odinga on 18th February, 2008 to get their approval on the government structure that had been proposed at the secret location. Annan also made it clear in his briefing that a new government bringing together PNU and ODM was necessary. As were constitutional legal and other reforms to heal the country. Annan gave his assurance that he was determined to see the process through no matter what. At the same time, the European Union warned that it could sever trade and bilateral links with

¹⁸¹ 'Annan's team strikes half-way deal in talks' *Daily Nation*, 15 February, 2008, p.1,2.

¹⁸² 'Annan to announce deal today' *Daily Nation*, 15, 15 February, 2008, p. 2

Kenya if political leaders did not move fast to resolve the political crisis.¹⁸³

The British foreign secretary David Miliband came out in defence of the British High Commissioner to Kenya, who had stated in an earlier interview that while Britain recognises states and not governments, it did not recognise the 2007 presidential election, and that the current government did not reflect the will of the Kenyan people.¹⁸⁴

Other countries weighed in too. Japan, which had by large been on the issue, said through its embassy in Nairobi that “ We cannot afford to let Kenya be a failed state. That should not be an option”¹⁸⁵ French Ambassador Elizabeth Barbier warned that, ‘those who frustrate the talks will be punished and sanctions is one of the options that might be taken.’¹⁸⁶ On 18th February, 2008 the US secretary of state made a one day visit to Nairobi. This was an attempt by the international community to nudge the negotiations forward. Ms Rice had three messages to Kenyan parties; that instability in Kenya would affect the whole region of eastern, central, southern and the Horn of Africa; that the two sides needed to take steps to ensure that the violence did not engulf the whole country because if it happened it would be difficult to stop; and that the US believed that should political instability take hold of Kenya, terrorism would have found a new home. Rice advised that Kenya should not rush into another election, and that a grand coalition was necessary and that it should last five years to enable those carrying out the necessary reforms do so and comprehensive constitutional reform should be given priority.

During this stage of the mediation, several agreements were reached by both sides. These were that a truth and reconciliation commission would be set up, that there should be efforts to encourage and help internally displaced people to settle back in their homes or other areas and have security throughout, that the UN high commissioner for human rights should send

¹⁸³ Robert Nyasato & Morton Saulo, ‘ EU warns of sanctions if talks fail’ *The Standard*, 15 February 2008 p.4

¹⁸⁴ ‘ Bush send Rice to Kenya’ *Daily Nation*, 15 February, 2008,p.3

¹⁸⁵ Jeff Orieno , ‘Foreign missions in dilemma over crisis’ *Saturday Nation*, 16 February, 2008 p. 3.

¹⁸⁶ Jeff Orieno , ‘Foreign missions in dilemma over crisis’ *Saturday Nation*, 16 February, 2008 p. 3.

an investigation team, that freedom of expression press and peaceful assembly should be ensured, and that there would be the promotion of peace, healing and reconciliation through peace rallies convened by leaders of all political parties.¹⁸⁷ It is after these agreements on the first two items on the agenda that the government withdrew the ban on live coverage that had been imposed on the media the beginning of the conflict.¹⁸⁸

The US and Canada issued a threat to ban Kenya leaders considered to be 'subverting democracy' from travelling to their countries. The United Nations also threatened to move its office from Nairobi unless the conflict was resolved.¹⁸⁹ The American ambassador stated that those perpetrators or supporters instigating violence and their families would not be issued visas to travel to the US.¹⁹⁰ At the same time, the UN director general Anna Tibaijuka made the comment on the sidelines of the mediation that only a truth and justice commission could heal Kenya's political crisis.¹⁹¹

The agreement after the negotiation

The thrust of those negotiations was about the creation of a grand coalition government in Kenya, through which a power sharing framework would be effected. The grand coalition government was created in order to oversee the completion of all the other aspects of the conflict. A document of all that was agreed upon is compiled as a document this included a new electoral system and a framework for elections and an new constitution. The mediation over the electoral conflict in Kenya ended in the conclusion of two agreements. These two agreements addressed the issues raised in the third item on the agenda, namely the disputed presidential election results. The two agreements were: Agreement on the Principles of

¹⁸⁷ 'Teams agree to end violence in 7 days...' *Daily Nation*, 1 February 2008, p.2.

¹⁸⁸ 'Annan team agrees on steps to end polls crisis' *Daily Nation*, 5 February, 2008, p.1

¹⁸⁹ Ross Hynes, 'Canada won't allow leaders who subvert democracy' - letter to the editor, *The Standard*, 5 February, 2008, p.14.

¹⁹⁰ 'US, Canada ban threat as talks register gains' *The standard*, 5 February, 2008, p.3.

¹⁹¹ 'Rannenberger explains US stance on crisis' *The Standard*, 5 February, 2008, p.6.

partnership of the coalition government (The Coalition Agreement); and The National Accord and Reconciliation Act, 2008.

The Coalition Agreement

The Coalition contained three parts; the preamble, the summary of the key points of the National Accord and Reconciliation Act, and the constitutionalisation of the agreements. The agreement was signed on 28th February, 2008 by Raila Odinga of O.D.M and president Mwai Kibaki of P.N.U. It was witnessed by Koffi Annan, the chief mediator and the chairman of the Panel of Eminent African Personalities, and president Jakaya Kikwete, president of the United Republic of Tanzania, and chairman of the African Union.

The Preamble

This contains political statements about the philosophy under which the mediation took place. The first part of the preamble reiterates the source of the conflict in Kenya, and the consequences of that conflict (wrongly identified as “crisis”) as being the disputed presidential elections in Kenya in 2007. It also states that the conflict unearthed deep-seated and long-standing divisions in Kenyan society, which if remained unaddressed would threaten Kenya’s existence as a unified country. It supposedly speaks on behalf of the Kenyan people by stating that they look forward to their leaders to ensure that the country would not be lost.

The second part of the preamble specifies the aims of the agreement and the national accord. It reiterates what the western countries had been urging all along during the conflict: that in the current situation, neither of the two parties could alone realistically govern the country, and that “there must be real power-sharing to move the country forward and beginning the healing and reconciliation process.”

The third part of the preamble specifies the agreement understands of the principles

of a coalition government . These are that the leaders of the two parties are through the agreement jointly overcoming the current crisis with the aim of setting the country on a new path, that they act as partners in a coalition government and that they commit themselves “to work together in good faith as partners, through constant consultation and willingness to compromise.”

The fourth part of the preamble to the agreement states its objectives as being to create an environment conducive to a partnership(coalition), and to build a mutual trust and confidence. It also states that the agreement is “not about creating positions that reward individuals, but to enable Kenya’s political leaders to look beyond partisan considerations to promote the greater interests of the country as a whole,” to provide the means to implement a coherent and far-reaching reform agenda, to address the fundamental root causes of the conflict, and to create a better more secure , more prosperous Kenya.

The fifth part of the preamble to the agreement ties the agreement to the National Accord and Reconciliation Act, 2008. It specifically states that the provisions of the National Accord and Reconciliation Act “have been agreed upon in their entirety by the parties” , and the text is appended to the agreement.

The second part of the act restates the eight key points of the National Accord and reconciliation Act. These are that there will be a prime minister in Kenya who has authority to coordinate and supervise the execution of the functions and the affairs of the government of Kenya; the prime minister will be an elected member of parliament , and shall be the parliamentary leader of the largest party in parliament, or of a coalition if the largest party does not have a majority, that each party of the coalition shall nominate one person from parliament as deputy prime minister, that the cabinet shall consist of the president, vice president, the prime minister, the deputy prime ministers and ministers; and that the removal of any minister of the coalition would be subject to consultation and concurrence in writing by the leaders. The other

key points are that , the prime minister and deputy prime ministers can only be removed if parliament passes a vote of no- confidence with a majority vote, that the composition of the coalition government will at all times take into account the principle of portfolio balance, and reflect their relative parliamentary strength; that the coalition will be dissolved if the tenth parliament is dissolved, or if one coalition partner withdraws from the coalition, and that the National Accord and Reconciliation Act shall be entrenched in the constitution.

The third part is concerned with the constitutionalization of the agreement and the act. It provides that (after signing of the agreement and the Act), the parties the parties would take the process to parliament. It states that parliament must be convened that the earliest moment to enact the agreement and the Act. It requires that parliament will enact the agreement and the act through an Act of parliament, and through making the necessary amendments to the constitution. The agreement concludes with what can be termed as a prayer and a hope, by expressing the belief that “by these steps we can together in the spirit of partnership bring peace and prosperity back to the people of Kenya who deserve it.”

The National Accord and Reconciliation Act

The Act consists of the preamble, the description of the Act, and the substantive provisions. The Agreement was initiated on same day the agreement was signed on 28th February, 2008. It was signed by the leaders of ODM and PNU and the witnesses who witnessed the agreement.

a) The preamble

The preamble initially repeats some of the statements contained in the agreement. It recognises that there was a crisis in the country, in recognition of which the parties came together and agreed on a political solution. The preamble further asserts that given the

disputed elections and the divisions in parliament and the country, neither side could govern without the other and there really needs to be power sharing to move the country forward. The third part of the preamble states that a coalition “must be a partnership with commitment on both sides to govern and push through a reform agenda for the benefit of all Kenyans.

b) Description of the Act

It provides for its objectives. These are to create an Act of parliament to provide for the settlement of disputes arising from the presidential elections of 2007, the formation of a coalition government, the establishment of offices of prime minister, deputy prime ministers and ministers of the government of Kenya, to provide for the functions of the prime minister, deputy prime ministers and ministers, and to provide for any other matter connected or incidental to these objectives.

c) Provisions of the Act

The first two sections of the Act deal with its name and entry into force. The name of the Statute is *The National Accord and reconciliation Act 2008*.¹⁹² The Act entered into force on its publication in the Kenya Gazette, although this had a temporal limit because it was required to be done within fourteen days of the assent to the Act.¹⁹³ Section 3 of the Act establishes the position of the prime minister and two deputy prime ministers, whose salaries, allowances, benefit, privileges and emolument shall be approved by parliament from time to time.¹⁹⁴ Section 5 states that the cabinet shall consist of the president, the vice president, the prime minister, two deputy prime ministers, and other ministers. Section 3 further specifies who is entitled to be prime minister. The prime minister is the political party that has the

¹⁹² Section 1, The National Accord and Reconciliation Act, 2008.

¹⁹³ Section 2 of the Act.

¹⁹⁴ Section 7 of the Act

largest number of members in the National Assembly or a coalition of political parties in the event that the leader of the political party that has the largest number of members the National Assembly does not have the majority in the National Assembly. Each member of the coalition has nominate the elected member of the national Assembly to be appointed as Deputy Prime Minister.¹⁹⁵

Section 4 stipulates the Prime Minister's powers. The prime shall have authority to coordinate and supervise the execution of the functions and affairs of the Government of Kenya including those of Ministries; he may assign any of the coordination responsibilities of his office to the Deputy Prime Ministers, as well as one of them to deputise him; shall perform such other duties as may be assigned to him by the president or under any written law. Part two of the same section is about the formation of coalition government, the persons to be appointed as Ministers and Assistant Ministers from the political parties that are partners in the coalition other than the President's party, shall be nominated by the parliamentary leader of the party in the coalition. Thereafter there shall be full consultation with the president on the appointment of all Ministers. Part three of section four states that the composition of the coalition government shall at all times reflect the strengths of the respective parties and shall at all times take into account the principle of portfolio balance. Whereas part four of the same gives instances when the office of the prime minister shall become vacant only if the holder of the office dies, resigns or ceases to be a member of the National Assembly other than parliament dissolution; if the National Assembly passes a resolution supported by majority of all the members of the National Assembly excluding the ex-officio members and of which not less than seven days notice has been given declaring that the National assembly has no confidence in the Prime Minister or Deputy Prime Minister the coalition is dissolved. Part five is about the removal of a minister by a parliamentary party

¹⁹⁵ Section 3 of the Act

of the coalition shall be made only after prior consultation and concurrence in writing with leader of that party.¹⁹⁶

Section five spells out who's included in the cabinet. This includes the President, the Vice-President, the Prime Minister the two Deputy Prime Ministers and Ministers.¹⁹⁷ Section six states the circumstances that the coalition stands dissolved if the tenth Parliament is dissolved; if the parties agree in writing; if one coalition partner withdraws from the coalition by a resolution of the highest decision making organ of that party in writing.¹⁹⁸ Section seven stipulates the Prime Minister and his deputies' salaries, allowances, benefits, privileges and emoluments as may be approved by parliament fro time to time.¹⁹⁹

Section eight concludes by stating that the Act will cease to apply once the tenth parliament dissolves, a new constitution is enacted whichever comes first.²⁰⁰ With the passing of the referendum on 4th of August 2010 and the promulgation of the new constitution on 27th August 2010 the Act now ceases to apply, and the new constitution is now in force.

Ambassador Oluyemi Adeneji from Nigeris consulted shortly with chief mediator Kofi Annan before Annan jetted out of Kenya. Mr Adeneji took over from Mr Annan a chair of the mediation team that met at Nairobi's Serena Hotel. The key changes expected include the naming of ODM Members of Parliament to the expanded Cabinet and a review of the civil service and government structure.

¹⁹⁶ Section 4 of the Act

¹⁹⁷ Section 5 of the Act

¹⁹⁸ Section 6 of the Act

¹⁹⁹ Section 7 of the Act

²⁰⁰ Section 8 of the Act

CHAPTER 5: CONCLUSION OF THE NATIONAL ETHNIC CONFLICT AND INTERNATIONAL MEDIATION IN KENYA

Introduction

Conflict is inevitable in any society and it is how any particular conflict is managed that can determine the future of a country. In most cases swift intervention into a conflict may bring about quick settlement as opposed to letting a conflict go on for so long therefore, bringing in many different aspects that make the conflict more complex. The speedy entry by third party mediators in the Kenyan 2007 post election conflict saved the situation from escalating further and ruining Kenya as a country, however one has to ask if, by allowing outsiders to “interfere” in our internal matters if we exposed ourselves as a country by seeding our sovereignty to the external mediators. Impediments to mediation of election-related conflict are as follows;

a) Scarcity of nonpartisan domestic actors

The principal reason why it is difficult for domestic actors to intervene and resolve conflict around national election comes from direct accusations or perceptions of partisanship. Often, it is hard to find credible individuals with the power to convene who have not taken sides in the internal politics of the country or who are not perceived as favoring one candidate or the other. In some countries, efforts have been made to circumvent that obstacle by forming a broad representative body that may include religious and traditional authorities and civic leaders to serve as a buffer between competing political forces in advance of or during the election process. This was the case with the National Council of Churches of Kenya, and the Council of Christian Churches and the Federation of Protestant Churches in Madagascar. At the same time, it is important to avoid or limit the intervention of religious or traditional leaders if their involvement would further exacerbate the conflict by reinforcing existing fault lines among the political contestants. For example, the ongoing

political conflict in Madagascar is, arguably, rendered more difficult as the principal protagonists belong to different religious faiths, and seem to enjoy the backing of the organization formed by churches of their denomination. Similarly in Cote d'Ivoire, the election-related crisis around the 2000 elections also had a religious fervor that could easily have exacerbated the undercurrent of the southern Christian versus the northern Muslim divide in the country.

When local solutions are not possible, the ability to draw in third party support needs to be considered. A contribution of both domestic and international actors could be envisioned even if, prior to a full escalation of a crisis, it is not always possible to get support for external involvement.

b) Unwelcome regional and international actors

Most incumbent governments are reluctant to admit the existence of tensions or the prospects of failed elections in their home country, which makes it difficult for external actors to intervene in election-related disputes either in the pre-election or immediate post-election period. Despite new norms and standards of democratic governance adopted by regional bodies such as the African Union [with its charter, and the New Partnership for African Development (NEPAD) and the peer review mechanism], the Economic Community of West African States (ECOWAS), and the Southern Africa development Community (SADC), autocratic regimes in countries such as Zimbabwe and Mauritania are unwilling to accept mediation efforts by regional or international actors. Similarly, attempts at preventive diplomacy in Cote d'Ivoire prior to the 2000 elections, and in Guinea prior to the December 2008 coup d'état, were inhibited by an unwillingness of incumbent regimes to acknowledge the existence of tensions or flashpoints for conflict in those countries. Identifying means by which non-state actors can play a more discreet role in advancing mediation options in such environments should be explored. However, if many of the key factors involved in the country in the lead up to elections will be closely involved in the monitoring of the elections, extraordinary

steps would need to be taken to avoid the potential conflict of interest between serving as an observer with the obligation to share one's findings with the public, and being a mediator which may require less public declarations in order to maintain the confidence of the protagonists in the mediation efforts. In Kenya, both President Kibaki and ODM leader Raila both agreed on cessation of violence immediately, therefore restoring peace.

c) Avoiding potential conflict of interest between mediation and election monitoring

The potential for complementarities between election observation missions and mediation efforts does exist. Election observation missions – in both the pre-election period and on Election Day – gather useful data and insights on the political context and overall electoral process and thereby easily can identify flashpoints for potential conflict. On the other hand, mediation efforts are more likely to be successful in their mission in a given country if they have sufficient information on the immediate and remote causes of the conflict, and the role of various institutions or individuals in generating or mitigating tensions. Building synergies between election observers and mediators can be mutually beneficial to each set of actors and to the electoral and political processes of the country. The very sensitive nature of elections may require avoiding circumstances where the same individuals or organizations play both roles of observation and mediation in the same country during the same electoral cycle.

d) Security sector reform and conflict prevention around elections

Given that the security environment of a country is a major determinant in the ability of different actors to mediate should crises emerge during different stages of the electoral process, security sector reform is crucial in countries emerging from armed conflict or that may be undergoing major political transitions. Nevertheless, the timing of such reforms and their possible impact on the

electoral calendar needs careful consideration to ascertain whether it is feasible to disarm and demobilize all armed groups or restructure the military prior to national elections or to hold elections within a short time frame prior to total demobilization and disarmament and demobilization. While a cessation of hostilities is a prerequisite for peaceful elections, more effective security sector reform is likely to be sustained if undertaken by a government that has the legitimacy to govern and credible oversight bodies such as legislatures that are representative of a cross section of the country.

e) Pre-set objectives to mediate election-related conflict, and moving expeditiously on concrete steps to identify solutions to resolve election-related conflict

With the rapid escalation of the crisis in Kenya, third party mediation, through the African Union mandated Panel of Eminent African Personalities, led by H.E. Kofi Annan was put in place. The resulting arrangement — a power sharing agreement between the main contestants of the elections — has raised questions about the utility of power sharing in relation to electoral disputes in the region. The situation in Kenya was unique in that, unlike in Zimbabwe for example, all of the parties and many of their supporters realized that arriving at a clear victor through recounting and re-tallying the votes, or by organizing new elections would not have been possible as some of the voting materials and records had been destroyed during the violence. Nevertheless, one of the key lessons to be drawn is the experiences of both Kenya and Zimbabwe is that power sharing should not be viewed as a panacea in mediating election related conflicts. In fact, the Kenya example highlights the importance of identifying opportunities for preventive mediation in the various early stages of the elections, in order to mitigate such a crisis.

In Ghana, in the lead up to the December 2008 elections, extensive civic and voter education took place on the need for peaceful and transparent elections; the election commission was viewed as independent and credible; and the commission had established an inter-party advisory committee to foster open and regular communications with all political parties. The inter-party advisory committee

met regularly to be briefed by the election commission to resolve grievances raised by any of the parties. The committee frequently issued joint communiqués co-signed by representatives of all Ghanaian political parties calling for peaceful and transparent elections and civil conduct by their supporters. Ghanaian civil society organizations also formed a broad coalition of well trained domestic observers who monitored all aspects of the election process and conducted a quick count of election returns through a parallel vote tabulation that allowed citizens to cross check the veracity of the official results announced by the commission. The outgoing Head of State used his high offices to make repeated calls for peaceful and credible elections. In the last days of what was an extremely close election, and as a mark of confidence in the impartiality of Ghanaian courts and respect for the rule of law, the ruling party petitioned the court to forestall the announcement of official results until its grievances were heard. In other highly polarized environments, party supporters could easily have resorted to violence and street demonstrations. Significantly, the losing candidate was quick to accept defeat and to congratulate the winner who, in turn, was gracious and conciliatory in victory.

The above listed impediments have not dampened completely the interest and success in mediating election-related disputes. The continuum of various phases of the electoral process therefore provides viable entry points that could allow for early interventions to resolve, mitigate or obviate conflict.

The three objectives set out in chapter one of the study have been met. The quick settlement of the conflict that engulfed Kenya after the 2007 General elections was as a result of the entry of the external mediator Kofi Annan who brought the two disputing parties together. Kofi Annan had the backing of the entire international community who did not give the two principles an option, but to come up with a formulae to bring peace and stability to Kenya and to the region. The “aggrieved” party ODM were more open to the idea of power sharing and once this was agreed upon the conflict ended

The current trials and tribulations facing Kenya will not be resolved without the emergence of

a leadership that is truly up to the challenge, a leadership that pursue a national project of profound social transformation, that eschews narrow and shortsighted exclusionary politics and neo-liberal economic growth. Kenya, and Africa as a whole, has no historic alternative from building truly democratic developmental states if they are to chart the twentieth century more prepared and empowered than they did the disastrous twentieth century marked by colonialism and neo-colonialism and their depredations that were simultaneously economic and existential, cultural and cognitive, political and paradigmatic.

The current leadership, both the 'victors' and 'losers', seem keen to retain or gain power at all costs. The power struggle is as sinister as the differences among the leaders are small. But often it is the very narcissism of minor differences that breeds gratuitous violence and viciousness as histories of genocide demonstrate. The leading politicians engaged in combat whose followers are tearing their lovely country apart are members of the same recycled political class committed to neo-liberal growth that offer no real solutions to Kenya's enduring challenges of growth and development, without a choice democracy and transformative democracy.

Most of the major figures in the three leading parties, PNU, ODM, ODM-K, served in the Moi and Kibaki administrations at one time or another. Their politics do not differ in any significant ways. Indeed, it is a mark of the promiscuity of the political class that the three parties were formed quite recently, and politicians shop for parties with the consumer ease of well-heeled customers. In a sense, then, their collective interests of the politicians and national interests of the population are not coterminous, although converges do exist and are invoked at certain moments.

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