

THE KENYA 2008-2009 POST-ELECTION CONFLICT

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This paper explicates the 2007-2008 post-election violent conflict in Kenya and its consequences and effects on society and region. This paper also documents on the mediation process applied to solving the mentioned conflict.

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Kenya suffered its worst seen and recorded electoral violence as an aftermath of the disputed Presidential election of 27th December 2007, which was the fourth since the country's return to multiparty politics in 1992. In just a matter of weeks, Kenya was transformed from one of Africa's most stable democracies to a place of total chaos. The said elections contributed to the belief by many like Collier and Rohner that elections in African countries such as Kenya have tended to significantly increase proneness to civil war and various other manifestations of violence¹.

In the general elections of 2002, all the opposition parties for the first time united under the National Rainbow Coalition Party (NARC) and stood behind a single presidential candidate, Mwai Kibaki.

¹ Collier, P. and Dominic R. (2008). Democracy, Development, and Conflict, *Journal of the European Economic Association*. 6(2-3): 531-40.

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Kibaki won the presidential elections against KANU's presidential candidate Uhuru Kenyatta. Some like Dercon and Gutiérrez-Romero believe that it was advantageous that the two presidential candidates (of the NARC and KANU parties) were from the same ethnic group (Kikuyu). The election is thus believed to have focused on which party would bring the most prosperity to the country forgetting tribalistic agendas².

Mwai Kibaki's Presidential election success in 2002 was by international observers declared free, fair and the most peaceful election that Kenya had ever had. This was hailed at the time as a step forward for Kenyan democracy³. A power sharing Memorandum of Understanding (MOU) agreement had been created in the NARC party in the 2002 Kenya national elections. However the agreement in the MOU to share power within the cabinet was not actualized as upon acceding to power, Kibaki appointed his fellow tribesmen to government positions, thus tribal bias which led to discrimination of many people of other tribes who were more qualified⁴.

Many who were left out of power as a result of the failed power-sharing MOU in 2002 under the NARC party formed the Orange Democratic Movement (ODM) to vie in the 2007 Kenyan national elections. Well before the 2007 elections, some ODM leaders fell out with each other and thus the formation of the Orange Democratic Movement of Kenya (ODM-Kenya) which was led by Kalonzo Musyoka and which enjoyed the support of the Kamba community. The original ODM remained strong and was largely comprised of a tribal alliance between the Kalenjin, Luhyas and Luos.

² Dercon S. and Gutiérrez-Romero Roxana. Triggers and Characteristics of the 2007 Kenyan Electoral Violence. <http://www.csae.ox.ac.uk/workingpapers/pdfs/2010-12text.pdf>

³ Oyugi, W. O. (1997). Ethnicity in the electoral process: The 1992 general elections in Kenya, *African Journal of Political Science*, 2(1): 41-69.

⁴ Mutua, M. *Kenya's quest for democracy: taming the leviathan*. (London: Lynne Rienner Publishers, 2008) p 285

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Other ethnic groups that did not have a major presidential candidate contending in the election seem to have voted for one of the candidates in a block: The Luhyas and Kalenjins primarily supported Odinga, while the Merus and Embus supported Kibaki. Mwai Kibaki and the Kikuyu in power formed a coalition of other small parties and called it the Party of National Unity (PNU). There were 108 parties vying for 210 seats at the parliamentary level, with three major candidates at the presidential level: Mwai Kibaki representing PNU, Raila Odinga representing ODM, and Kalonzo Musyoka representing ODM-Kenya.

The pre-election polls conducted and published through the media showed that ODM was in the lead. However, when the presidential election results announced by the Electoral Commission of Kenya (ECK) indicated both a rapid disintegration of Odinga's large lead and a 2.5 percent margin between the two leading candidates Odinga and Kibaki, suspicions of tampering with the votes was high since ODM had won ninety-nine seats at the parliamentary level to the PNU's forty three. Finally, the ECK chairman announced that Kibaki under PNU had won the elections and not Raila Odinga. Most international observers noted that there had been definite irregularities in the tabulation of the presidential vote and in reporting it, even though the conduct of the ECK during a large portion of the electoral process had not raised serious concerns.⁵

In any event, it is questionable whether either side could have won the 51% majority needed to govern Kenya alone according to the then chairman of the electoral commission, Mr. Samuel Kivuitu. On 2 January 2009 Kivuitu openly admitted "I do not know whether Kibaki won the election"⁶. Kivuitu also revealed that he was put under pressure by "some PNU and ODM-Kenya leaders" by calling him frequently and asking

⁵ Joel D. Barkan, "Hearing on the Immediate and Underlying Causes and Consequences of Flawed Democracy in Kenya," Testimony, Prepared for the Senate Foreign Relations Committee's Subcommittee on African Affairs, February 7, 2008, p. 3.

⁶ Ongiri, I. (2008). Kenya: I Acted Under Pressure, Says Kivuitu, The Standard, January 2.

him to announce the results immediately. Kivuitu agreed to take the presidential election winner's certificate to the State House after "some people threatened to collect it..." and to his surprise "the Chief Justice was already there ready to swear-in Kibaki". Kivuitu says that he agreed to announce the results because the ECK had no legal mandate to investigate complaints raised by the opposition immediately. It was a matter for the courts to investigate the irregularities'.

The Opposition leader, Raila Odinga and his supporters thus rejected the declared victory of Mwai Kibaki, alleging it was the result of rampant rigging. Barred from peacefully protesting in public, many youth allied to the ODM party violently reacted after the announcement was made of the questionable Kibaki victory⁷. They looted open shops in the city centre and also set ablaze to cars in the city. They also lit fires in on the roads in the city. Nevertheless, following the disputed ECK's declaration Kibaki was right away sworn in for his second term. Cries and doubts for a stolen election were immediately shared by the ODM party and international electoral observers⁸.

Kibaki after being sworn in went into a silence mode without being seen or heard in public. Two weeks after his swearing in, he proceeded to appoint his cabinet. It was a shock to many when he announced his Vice President to be none else but his election rival, Kalonzo Musyoka of ODM-Kenya. This move created a central-eastern alliance⁹ and further fuelled violence in the Rift Valley, which erupted again in protest at these exclusionary move. After forming his government, Kibaki returned to his silence mode. He however made his presence felt by use of control by force and

⁷ Cussac, A. (2008). "Kibaki tena?" The challenges of a campaign Lafargue, J. (Ed.). *The general elections in Kenya, 2007*. (pp. 55-104). Dar es Salaam: Mkuki na Nyota Publishers, Ltd. p 60

⁸ Dercon S. and Gutiérrez-Romero Roxana. Triggers and Characteristics of the 2007 Kenyan Electoral Violence. <http://www.csae.ox.ac.uk/workingpapers/pdfs/2010-12text.pdf>

⁹ Joel D. Barkan, "Breaking the Stalemate in Kenya," Online Africa Policy Forum, January 8, 2008, available at <http://forums.csis.org/africa/>

determination, flooding the streets with security forces, and issuing a ban on media broadcasts¹⁰.

The ordeal of the disputed election reduced trust across ethnic groups, a key element of social capital among ethnic groups and communities. Social capital means the shared trust and norms that arise from informal social networks which have a consequent effect on expectations and behaviour¹¹. International experience has shown that in situations where (ethnic) groups distrust each other and are afraid of being victimized, this fear might drive them to resort to violence first in a pre-emptive move to minimize damage¹². Judging from the escalating violence many Kenyans and International observers were afraid of possible acts of ethnic cleansing or crimes against humanity¹³.

The violence often took on the appearance of being ethnic in nature given that the government was traditionally controlled by one ethnic group (to the detriment of others) and hence poverty was often aligned with ethnicity. This was proven by the fact that much of the violence in the slums around Nairobi and other parts of the country was mainly motivated by poverty and unemployment especially among the youth or the existing large economic disparity among Kenyans. According to Coullier and Addison, poverty as a proxy of relative deprivation and grievance can motivate people to be

¹⁰ Lindenmayer E and Kaye J.L, *A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya*, (New York: International Peace Institute, August 2009) p 5

¹¹ Durlauf, S.N and Fafchamps, M. (2004). *Social capital*, NBER, working paper, 10485, Cambridge, MA, NBER, p 5.

¹² Bardhan, P. (1997). Method in the madness? A political-economy analysis of the ethnic conflicts in less developed countries, *World Development*, 25(9): 1381-98.

¹³ Lindenmayer E and Kaye J.L, *A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya*, (New York: International Peace Institute, August 2009) p 1

violent. There is international evidence that grievances in terms of resource deprivation, and poverty can lead to rebellion, protest and civil conflict¹⁴.

There is indeed a well-established association between poverty (measured by such indicators as GNP per capita, life expectancy and literacy, for instance) and political violence¹⁵. Because of poverty, less serious disputes, like those concerning electoral procedures, can lead to open violence. People who have little to lose are easily mobilised to violent actions¹⁶. Severe poverty and thus vast disparities in wealth was and still is engrained in most Kenyan societies hence it would be expected that the people most affected by violence were either the poor or those living in poorer areas.

It is evident that some of the actors in this violence were easily manipulated young people and criminal groups that had nothing to lose from engaging in and sustaining the violence. The latter persisted in the violence because of their many looting sprees of shops and supermarkets. The police retaliated by engulfing the city with tear gas to disorient them but this did not seem to be very effective as they continued with the violence.

January 2008 was dominated by demonstrations with the slogan ‘No Raila, no peace!’ as the ODM called several times for nationwide demonstrations aimed at forcing the already sworn in president to resign¹⁷. In the Rift Valley, revenge attacks which began in Nakuru in late January rose in intensity and spread along the main highway to affect the towns of Naivasha, Limuru and Kikuyu in the Central province. In

¹⁴ Addison, T. (1998). *Rebuilding post-conflict Africa: Reconstruction and reform*. Helsinki: Wider/United Nations University, Collier, P. (2000). Rebellion as quasi-criminal activity, *Journal of Conflict Resolution*, 44(6): 839-53

¹⁵ Gurr, T.R. and R. Duvall (1973), ‘Civil Conflict in the 1960s’, *Comparative Political Studies* 6, pp.135–170. and Collier, P. and A. Hoeffler (1998), *On Economic Causes of Civil War*. Washington: World Bank.

¹⁶ Basedau M., Erdmann G. and Mehler A. (eds) *Votes, Money and Violence: Political parties and Elections in Sub-saharan Africa*. Nordiska Afrikainstitutet, Sweden, University of Kwazulu-Natal:South Africa 2007 pg 227

¹⁷ De Smedt, J. (2009). ‘No Raila, no peace!’ Big man politics and elections violence at the Kibera grassroots, *African Affairs*, 108/433, 581-98.

Nairobi, the police tried to stop demonstrations with water cannon, teargas, arrests and barricades between slums and wealthier suburbs resulting in more clashes¹⁸ and more alleged cases of people killed by police bullets. Police shot a number of demonstrators, including a few in front of TV news cameras, causing more violence and protests from human rights activists who claimed that the police killing demonstrators were pure acts of excessive abuse of power and impunity.¹⁹ The violence continued until early February 2008, by which time 1,000 people were thought to have died²⁰

While this was not the first time in Kenya's history that elections had been accompanied by violence, but it was certainly the first time that the violence had been so severe, widespread, and with such devastating consequences. Kenyans turned against their fellow Kenyans in cold blood. In all, more than More than 1,000 people are thought to have died and at least 600,000 were displaced²¹ and around 42,000 houses and many businesses were looted or destroyed. A significant number of cases of sexual violence were also reported.²² These were disastrous consequences for the economy, especially due to the hard-hit tourist industry.²³

Many Kenyans had earlier believed that those from Kibaki's Kikuyu ethnic group living in Rift Valley province as well as those living in town of Kisumu, which is thought to be Raila's home turf, were the main targets of the violence. However, this belief was challenged since a great number of recorded victims came from at least four other ethnic groups which include the Luo (in Nairobi), the Kalenjin (in Nakuru and Naivasha), the Luhya and the Kisii in less concentrated groups across the country.

¹⁸ Ibid De Smedt, J. (2009). 'No Raila, no peace!' Big man politics and elections violence at the Kibera grassroots, *African Affairs*, 108/433, 581-98.

¹⁹ Interview with Wafula Nabutola, former chairman of the Nairobi Central Business Association

²⁰ Ibid BBC News, "Kenya to Probe Hate Speech."

²¹ Sheila Mwiandi, "Moving Beyond Relief: The Challenges of Settling Kenya's Internally Displaced," USIP Peace Briefing (Washington, DC: USIP, August 2008)p 15

²² Report from OHCHR Fact-finding Mission to Kenya, 6-28 February 2008

²³ Mwiandi, S, "Moving Beyond Relief: The Challenges of Settling Kenya's Internally Displaced," *USIP Peace Briefing* (Washington, DC: USIP, August 2008)

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Protestors in Mombasa town took to the streets to protest the electoral manipulations and aired their own grievances, though ethnic tensions played much less of a role in these protests. Looters took advantage of these protests to strike a number of stores in Mombasa. The slums of Nairobi saw some of the worst violence as some of these ethnically-motivated attacks were fuelled by simple outrage at extreme poverty and some the actions of criminal gangs. The violence continued sporadically for several months particularly in the Rift

When the election results were announced, live broadcasts of the inconsistencies between the numbers announced at the central level and those at the local level, accompanied by hate speech on vernacular radio²⁴ targeting various ethnic groups, helped spread the message of hate and mistrust among Kenyans and the violence. By January 15th, over 500 people were dead and more than 250,000 displaced.

The seemingly organized pattern of violence consisted of what seemed to be organised attacks in the Rift Valley which appeared to have targeted non-Kalenjin communities and those perceived as opponents of the opposition ODM party, including the Kikuyu, Kisii and Luyha communities. Inquiries undertaken by human-rights bodies such as Human Rights Watch revealed that much of the violence was organized in nature²⁵.

Well-known gangs that had been financed and organized by businesses and political groups in previous elections, such as the Mungiki, were apparently being armed with machetes and other weapons before the elections and later, even as negotiations began²⁶. The Mungiki, drawn from a Kikuyu base, which has a reputation

²⁴ BBC News, "Kenya to Probe Hate Speech," February 14, 2008, available at <http://news.bbc.co.uk/2/hi/africa/7245319.stm>.

²⁵ Human Rights Watch, "Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance," (New York, March 2008).

²⁶ IRIN News, "Kenya: Armed and Dangerous," February 22, 2008, available at www.irinnews.org/Report.aspx?ReportId=76896

for using brutal methods of instilling terror and a long history of violence dating back to the 1980s, appeared to have received support from elite members of Kenyan society and to have been prepared for the violence ahead of time.

Non- Kikuyu gangs such as the so-called “Taliban” and “Baghdad Boys” largely Luo-based and the Saboat Land Defence Force of generally Kisii origin were also responsible for some of the more organized violence drawing on the large numbers of unemployed and disenfranchised youths²⁷.

In Retaliation violence, gangs of Kikuyu youths subsequently attacked non-Kikuyu groups in Naivasha, Nakuru and Mathare in an effort to retaliate the violence faced on their fellow tribesmen in the Rift Valley²⁸. In fact, a great majority of displaced people moved within the same constituency to areas where they had relatives or to neighbourhoods where there were more clusters of people from their ethnicity²⁹

A majority of Kenyans felt betrayed since they had voted peacefully and yet the result was such magnitude of violence and yet the politicians were not willing to resolve the conflict. The hardest hit sectors during the violence, according to Nabutola, included communication since phone credit was not available in the shops and some shops were closed down due to the lootings and destruction of property. This affected everyone, both those within the city centre of Nairobi as well as those without³⁰. It also created a lot of panic since people could not communicate to each other so as find out of each others well being.

The economy was greatly affected since both foreign and domestic investment hit an all time low and the main foreign exchange earner which was tourism suffered a major blow especially when foreign countries issued travel advisories to their nationals

²⁷ Ibid Human Rights Watch March 2008

²⁸ Report from OHCHR Fact-finding Mission to Kenya, 6-28 February 2008

²⁹ Dercon S. and Gutiérrez-Romero Roxana. Triggers and Characteristics of the 2007 Kenyan Electoral Violence. <http://www.csae.ox.ac.uk/workingpapers/pdfs/2010-12text.pdf>

³⁰ Interview with Wafula Nabutola, former chairman of the Nairobi Central Business Association

against coming to Kenya. Small businesses in the city centre were also adversely affected since many were shut down because many people including customers opted to stay at home during the violence and the few small businesses open faced the threat of being looted or burnt down³¹.

The transport sector was also greatly hampered since those participating in the violence put blockades on the roads and burnt any cars on the roads. Transportation of food and people suffered a halt during the violence which translated to shortage of food in the shops and thus many people were facing hunger. This Kenyan political crisis had exposed the East African region's "over reliance" on Kenya's transport infrastructure, especially the Mombasa port³². The numerous blocked roads and vandalized rail lines in Kenya affected significantly the economy of the region. Fuel prices rose throughout East Africa.

The UN's Office for the Coordination of Humanitarian Affairs (OCHA) estimates that fuel costs in Uganda, Eastern Democratic Republic of Congo and Burundi rose by up to 50% as a consequence of the Kenyan crises. Fuel costs more than double in Rwanda causing shortages and prompting the government to institute fuel rationing. Trade networks were also disrupted especially for the landlocked economies of Uganda, Rwanda and Burundi, South Sudan and the Eastern Democratic Republic of Congo which rely on trade through the Kenyan port of Mombasa. More than 80% of Uganda's imports pass through the port of Mombasa, as do almost all of Rwanda's exports. According to the Uganda Manufacturers Association, manufacturers had lost \$43 USD

³¹ Interview with Elijah Agevi, Governor of Kenya Private Sector Alliance (KEPSA) and Head of the Safer Nairobi Initiative (a joint collaboration between UN-HABITAT and the City Council of Nairobi)

³² Kimani, M. (2008). East Africa feels blows of Kenyan crisis, *Africa Renewal*, 22(1): 3.

million because of the delays, destruction of goods and slowed production caused by the Kenyan crisis³³.

Agricultural activity in Kenya was also seriously hampered as farmers moved away from their fields, posing long-term risks for the country's food security which was already threatened by drought and soaring fertiliser prices. In addition, the tea and flowers exports industries, in which Kenya is a main leader in the world market, were severely hit because their workers were displaced far from the fields. Ksoll et al estimate that flowers exports were reduced by 38% during the first quarter of 2008 because of electoral violence directly³⁴. The FAO reported less than 10% of land had been prepared for planting season by January 2008. Normally, at least 80% would have been planted by that time³⁵. The education and health sectors were also compromised by the large-scale displacement of professionals.

The tourism industry, the second highest foreign exchange earner after horticulture, was also affected as the violence occurred during what is typically the Kenyan peak holiday season³⁶. A European diplomat recounts his experience during the Kenya 2007-2008 post election crisis by noting that the main concerns for the entire European diplomatic representations in Kenya were the stability of the country as well as the lives of Kenyans. According to him, insecurity was a major concern to their citizens who were tourists or business people in Kenya. The European countries' embassies as well as other diplomatic representations of other countries resorted to short term measures which included temporarily ceasing from any 'business as usual'

³³ Ibid Kimani, M. (2008). East Africa feels blows of Kenyan crisis, *Africa Renewal*, 22(1): 3.

³⁴ Ksoll, C. Macchiavello, R., and Morjaria. A. (2009). *Guns and Roses: The Impact of the Kenyan Post-Election Violence on Flower Exporting Firms*. Working Paper 2009-06. Center for the Study of African Economies, Oxford University.

³⁵ Opcit Kimani, M. (2008). East Africa feels blows of Kenyan crisis, *Africa Renewal*, 22(1): 3

³⁶ Dercon S. and Gutiérrez-Romero Roxana. Triggers and Characteristics of the 2007 Kenyan Electoral Violence. <http://www.csae.ox.ac.uk/workingpapers/pdfs/2010-12text.pdf>

activities for security reasons. This meant closing the embassies so that the locals would not have to risk their lives on the streets when reporting for work.

The primary concerns of the foreign representations at this moment were to make sure all their nationals in Kenya were safe and well protected. The said diplomat reveals that he and other diplomats even seriously considered contingency plans of evacuating their nationals from Kenya but later thought against the idea seeing that the transport system was already compromised by raging youth on the street who were burning almost everything they came in contact with³⁷. However, foreign offices advised against travelling to Kenya unless absolutely essential, leading to a steep fall in number of tourists visiting the country.

Taking into account that 78% of Kenyans are Christian, the Church can and does play a key role in politics³⁸. However, during the post-election violence, one Kenyan notes that there was a great amount of polarization where the church was involved. According to him, the church was openly divided on political lines. The church clergy did not preach peace and neutrality but rather unfortunately led the 'flock' along political lines. This caused confusion amongst the flock which even led to hatred and mistrust amongst the followers of the two conflicting political parties³⁹.

It is important to note that this was not a simple election result dispute which erupted to active violence. The flawed elections may have been a trigger but not necessarily the cause of the violence. The election dispute was only a catalyst for an explosion of discontent and resentment due to the politics of dispossession which left the majority of the youth unemployed, 60 percent of the population living on less than

³⁷ Interview with a Senior European diplomat from one of the European Union Member states

³⁸ Maupeu, H. (2008). Revisiting post-election violence. Lafargue, J. (Ed.). *The general elections in Kenya, 2007*. (pp. 187-223). Dar es Salaam: Mkuki na Nyota Publishers, Ltd.

³⁹ Interview with Wafula Nabutola, former chairman of the Nairobi Central Business Association (NCBDA) and member of the Rotarian Association, 5-5-2011

\$1 a day, and the majority of the country's most fertile land in the hands of the families of the political and business elite⁴⁰.

There had been several issues which contributed to a long existing structural conflict in Kenya and it only took the election dispute to ignite violence to erupt. One of these issues was the constitution which was amended 28 times from 1963 to 1992, each time limiting the freedom of its citizens and expanding the power of the executive and political elite. For instance, too much power was vested on the president. The system of the day saw many injustices including tribalism, nepotism, a culture of corruption and youth that had no legal recourse due to a weak judicial system.

Another underlying issue of the conflict was that of land. Over the years, there existed long and complex histories of land dealings among tribes whereby the members of the tribe in power were often unethically given or allowed to use land, frequently at the expense of other tribes. It all began with Jomo Kenyatta, Kenya's first president, who hailed from the Kikuyu tribe and who gave land to his tribesmen in the Rift Valley during his tenure (1963-1978). His successor Daniel Toroitich Arap Moi, Kenya's second president and who hailed from the Kalenjin community, also gave his tribesmen the Mau Forest land which is the lushest part of the Rift Valley during his tenure (1978-2002).

When Kibaki took over the presidency after Moi, he used his executive power to expel the Kalenjins from the Mau Forest in 2003, with most returning and arguing that they had a right to the land that "Moi gave them"⁴¹. This expulsion, along with the promise of future expulsion attempts played a large part in the Kalenjin bands militantly

⁴⁰ Lindenmayer E and Kaye J.L. *A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya*, (New York: International Peace Institute, August 2009) p 4

⁴¹ Cussac, A. (2008). "Kibaki tena?" The challenges of a campaign Lafargue, J. (Ed.). *The general elections in Kenya, 2007*. (pp. 55-104). Dar es Salaam: Mkuki na Nyota Publishers, Ltd. p 78

evicting the Kikuyu from their homes in the Rift Valley, destroying their dwellings, and occasionally murdering those resisting these actions after the election results were announced in December 2007 declaring Kibaki as the winner⁴².

Unemployment amongst the youth is another underlying issue of the conflict. Most youth suffered lack of employment within the previous Kibaki government and had even less hope for the future. The ODM claimed to understand this and harnessed the youth vote by organizing them to largely vote for ODM.⁴³ ODM pledged that upon victory, they would create jobs for these youth and thus eradicate the problem of unemployment. Those who voted for ODM, especially the many unemployed youth did so with change in mind and were thus very bitter with the outcome of the elections. They believed that with PNU out and ODM in power, their lives would change for the better.

Since the two conflicting parties Kibaki and Odinga, continued to refuse to engage in dialogue with the former insisting upon his rightful place as President of Kenya who would manage the crisis internally, while the latter stating that the election had been rigged and his win stolen away, a crisis was looming. Odinga and his allies added that they lacked confidence in the Kenyan judicial system and thus called for outsiders to solve the current predicament. They seemed to be quoting Bratton when they claimed that the failure to solve the looming election crisis was largely caused by having a weak electoral Commission susceptible to manipulation, incompetent judiciary

⁴² Ibid Cussac 2008 “Kibaki tena?” The challenges of a campaign Lafargue, J. (Ed.). *The general elections in Kenya, 2007*. p 88

⁴³ Cussac, A. (2008). “Kibaki tena?” The challenges of a campaign Lafargue, J. (Ed.). *The general elections in Kenya, 2007*. (pp. 55-104). Dar es Salaam: Mkuki na Nyota Publishers, Ltd. p 92 and Mutua, M. (2008). *Kenya’s quest for democracy: taming the leviathan*. London: Lynne Rienner Publishers.p 288

and other institutions to sustain democracy⁴⁴. It became evident that this stalemate could not be ignored since violence had already erupted and was quickly spreading to many parts of the country and thus a mediation process was seen as the only timely solution to this crisis.

The Kenya 2008 Post election Mediation Process

Both formal and informal diplomacy were carried out simultaneously in response to the conflict which resorted to Violence after the 2007 Kenya Presidential elections. While the formal mediation process took place in a single location which was the Serena hotel in Nairobi, many informal groups held meetings countrywide and some including the same venue as the formal mediation.

Various political and influential people around the world including former presidents visited Kenya aiming to be potential mediators in the post election conflict in

⁴⁴ Bratton, M. (2008). Vote buying and violence in Nigerian election campaigns, *Electoral Studies*, 27(4): 621-32.

Kenya. Several diplomats came together and resolved to push for a debate between the principals of the conflicting parties. These diplomats even used third parties to talk to the principals in an effort to convince them to hold dialogues among themselves but were not successful⁴⁵. The diplomats at times used the media to call for the principals to talk to each other. They largely supported the leader of the mediation team, Kofi Annan, and were ready to provide him with any assistance that he may have needed in terms of leverage. A number of ambassadors gave EU statements which basically called for a speedy resolution of the conflict⁴⁶.

A mediation process then began in Kenya on 22nd January 2008 which was three weeks after the post election violence erupted across Kenya. The mentioned mediation process consisted of former Tanzanian President Benjamin Mkapa, former South African First Lady Graça Machel, and former UN Secretary-General Kofi Annan as Chairperson. The Panel was charged with helping the parties to the conflict ensure that an escalation of the crisis was avoided and that the opportunity to bring about a sustainable peace was seized as soon as possible. The unique team was mandated by the African Union (AU) and relied on worldwide diplomatic support as well as the technical support of the United Nations, including the Department of Political Affairs (DPA), the United Nations Development Programme (UNDP), and United Nations Office in Nairobi (UNON), as well as the Geneva-based Centre for Humanitarian Dialogue (HD Centre).⁴⁷

The informal mediation process started well before the formal process led by the Panel of Eminent African Personalities, since violence following the 2007 elections saw

⁴⁵ Interview with a Senior European diplomat from one of the European Union Member states

⁴⁶ Interview with a Senior European diplomat from one of the European Union Member states

⁴⁷ Lindenmayer E and Kaye J.L, *A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya*, (New York: International Peace Institute, August 2009).

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a very concerned group of individual Kenyans come together. They were all greatly concerned by the lack of willingness of the principals (both PNU and ODM) to reach an agreement which would see a ceasefire yet the country was `burning`. These concerned individuals were mainly from the middleclass and included business people, professionals, a few civil servants, religious figures, some government officials both retired and those still in practice and other individuals from various walks of life. They all came together and held meetings which served as an avenue of expressing their views and coming up with a united voice and demand for a speedy resolution of the violent conflict which threatened the livelihood of Kenyans.

The Civil society as a whole was pivotal in creating an environment that was favourable for negotiations by preaching calm in the grassroots. They were active in improving relations and restoring trust among the different people in the society. This role would then stretch on after the formal mediation, where they would offer peace building and reconciliatory activities in the grassroots so as to bring about healing and forgiveness amongst Kenyans.

The formal mediation process adopted the use of “outsiders” as part of the dual diplomacy strategy in the mediating room. The outsiders input was given by organizations such as Kenya Red Cross Society (KRC) Research and the United Nations Development Programme (UNDP) representatives who gave a briefing on the situation on the ground reporting that 923 people had been killed and more than 250,000 displaced, with genuine protests rapidly shifting to activities by gangs and criminal groups that predated the election violence and across the country, people were still being forced to leave their homes. Kofi Annan seemed to reciprocate by actively

involving the media to disseminate flowing positive information to Kenyans on the formal mediation process.

End of the conflict

Many argued that the option of fresh elections was murky and that the political and security climate in Kenya at that time did not support it. To put an immediate end to the violent conflict, a government of power sharing was arrived at, which would see a creation of the post of a prime minister. A prime-ministerial position which was non-executive with substantial powers and special responsibility delegated from the powers of the president was a midway, creative solution which satisfied both parties as it was at that particular time the most opportune option so as to satisfy both parties when Kenya was literally burning. The PNU principal was named the president while the ODM principal was named the prime-minister.

The civil society was actively involved in explaining the concept of power sharing to many Kenyans who did not understand. They assured Kenyans that it was workable and a good solution for all.

The power sharing agreement reached on February 28, 2008 was not sufficient but was a step in the right direction. The remaining task which was labelled Agenda 4 of the Kenya National Dialogue and Reconciliation which was essentially the long-term issues that included:

- Constitutional reform; institution reform of the judiciary, the police, the civil service and the parliament
- Land reform; poverty, inequality and regional imbalances
- Sound economic policies especially on poverty and unemployment particularly among the youth, consolidating National Cohesion and Unity

- Transparency, accountability and abolishment of impunity.

Conclusion

The powersharing government which ended in 2013 left a lot to be desired. Both principals wanted to have their own set of ministers in the government which was very costly. The government bulged up to 40 ministries where the participants literally divided government position into two i.e, each minister had a vice minister. A lot of politicking was done during this power-sharing government where both parties would engage in public blame games and insults to each other. It was evident that only an overall solution had been reached to stop the immediate violent conflict but only a few interests of the parties were considered.

As had been stipulated in one of the agenda 4 resolutions, Kenya finally adopted a new constitution in 2010 through a referendum. This new constitution contains a stringent bill of rights, various freedoms to the people, reduced powers to the president, a national government as well as a devolved government. The devolved government now operates through counties who have their own government. However, there exists some conflict between the national government and the devolved government over their powers and authority, duties, responsibilities. Needless to say, Kenya is still experiencing teething issues in the entire implementation of the mentioned constitution.

Institutional reform is another agenda 4 item that is still being worked on. Corruption ails many institutions in Kenya today, especially in the public sector. Despite talk of efforts from the government of combating it, it still seems to thrive. Reform both in the judiciary, the police department and the land department has been embarked on. Public interviews of competent leaders in the mentioned departments

have been conducted. Reform has been gradual and is sadly raided by entrenched corruption.

The devolved government was envisioned to grapple with inequality and regional imbalances. It operates through counties who have their own government. However, there exists some conflict between the national government and the devolved government over their powers and authority, duties, responsibilities. Inequality and regional imbalance is still felt by many Kenyans. Needless to say, Kenya is still experiencing teething issues in the entire implementation of the mentioned constitution.

As far as consolidating National Cohesion and unity is concerned, at first there was ethnic rivalry erupting from the post election violence but over the years, peaceful coexistence has been evidenced among the ethnic communities. The civil society has organised many peace building and reconciliatory activities in the grassroots so as to enable the people to understand and live in harmony. Many workshops and seminars have been organized in the grassroots and the societies countrywide so as to consolidate national cohesion and eradicate distrust. Also messages of unity disseminated through the media and other influential social personalities to all Kenyans in all age groups. The message of forgiveness and moving on from the post-election violence or any other conflict has been preached all around the country. Creation of a National Cohesion and Reconciliation Commission aimed to facilitate and promote a Kenyan society whose values are harmonious and non-discriminatory for peaceful co-existence and integration.

Sound economic policies on poverty and unemployment particularly among the youth, has been seen through a youth fund. A women's fund for small-scale business women has also been created.

Efforts to ensure transparency and accountability have been thwarted on different fronts. Creation of the Ethics and Anti-Corruption Commission has been

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fought by various stake holders. The mentioned body is in charge of prosecuting those guilty of corruption and unethical issues. Unfortunately, the body does not have any prosecutory powers thus cannot single handedly punish any guilty persons. The guilty are often referred to the judiciary who are believed to harbour scandals of corruption and sadly manipulate the system so as to go unpunished.

The crimes against humanity had to be addressed and since Kenya is a signatory to the International Criminal Court (ICC) in The Hague. A total of 6 persons, 3 from each conflicting political party during the post-election violence were charged in the ICC. All of the ones in PNU have had their charges dropped. The two remaining from ODM continue to battle it out in the ICC. It would be interesting to note that one of the then ODM political party who charged by the ICC is currently the Deputy President of Kenya while the current president who was his co-accused from the PNU political party has since had the ICC charges against him dropped.

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