

## **Chapter One: Introduction**

### **1.1 Background to study**

Close to two decades after the reemergence of multi-party democracy in Africa, it seems Przeworski et al (1995: 40 & 41) got it right when they wrote, “If democracy is not to evolve in to a de facto dictatorship, democratic institutions must furnish the losers with instruments to counteract these effects. They must ...protect the powers of the minorities. If they do not, democracy will not be stabilised...”. Even so, African political observers have agreed that Africa is charting its own unique course - creating a democracy which may only be known to the continent. In affirming this view, Wilson Ugangu, the coordinator of the Media Diversity Center, a Nairobi-based civil society group, said, “We are seeing that democracy in Africa is not based on the definition of democracy as practiced in Europe or the United States. We need to find a way of domesticating democracy, and cases in Kenya, Zimbabwe and others may just be confirming this” (CNS news, 2008).

In most parts of the world where there has been persistent violence, elections are instigated as an end to political conflict (Laakso, 2007). Sisk and Reynolds (1999:2&3) concur that elections in Africa are a vehicle through which lasting peace can be assured. Therefore, elections are seen as a path towards sustainable peace in which democratic principles are showcased and tested. As glorious as they ought to be, multi-party elections in Africa have contrarily been riddled with deadlock, reverses, failures and a mounting set of further complexities (Morgan 1997:1). The picture that emerges out of Africa and some other parts of the world portend elections as a source of conflict seeking a solution. Indeed, a snapshot across the length and breadth of Africa testifies that, at the very least, elections have been manipulated to favour incumbent governments and, at worst, have resulted in political violence and civil war, which indeed poses an unanswered question to democratic claims in Africa.

In Angola for instance, the National Union for the Total Liberation of Angola (UNITA) returned to the forests in an insurgency which lasted more than 10years in protest over

the 1992 election results (Atoubi 2008:14). In Nigeria, the 2003 elections turned violent leaving 100 people dead with a similar wave of electoral violence replicating itself in the 2007 elections after the opposition accused the incumbent party of championing electoral fraud. In Sierra Leone, the ballot box may never be forgotten for the grief it caused leading to the ten years of civil war. Here, the Revolutionary United Front (RUF) forces in an operation dubbed 'Stop Elections', decided to chop off the hands of hundreds of Sierra Leoneans as a means of preventing them from voting (TRC report 2004 in Biegon 2008: 2). In Rwanda, Burundi, and Cote d'Ivoire, widespread conflicts were preceded by disputes over the electoral process and the results thereof (Atoubi, 2008). Elections in Uganda, Ethiopia, Chad, Cameroon, Zambia, Zimbabwe and Kenya have also been disputed or marred by violence. According to Atoubi (2008:12), an analysis of elections in Africa suggest that the incidence of election-related violence is so high that even an election considered free and fair in its outcome may not have been free of violence before, during or after the election (Biegon 2008:2). Africa seems to be engulfed by a curse of election disputes and electoral violence that hangs perilously over the continent. The above therefore portray a deep need for a steady mechanism for the resolution and management of election disputes in Africa. It is for this reason that politicians, political scientists and academics have long grappled with questions related to the resolution of election disputes in particular, and civil wars in general. In this regard, Kenya and Zimbabwe present the most recent scenarios of efforts to resolve political stalemates resulting from flawed and disputed elections.

Kenya, which had long enjoyed relative peace, was thrown into a political impasse following the declaration of incumbent presidential candidate Kibaki and his party of National Unity, winners of the hotly contested 2008 presidential elections. The opposition claimed that both Kibaki and his party had fallen short of the requisite victory in the parliamentary and presidential election to be declared winners. As such the declaration of Kibaki as winner of the hotly contested election was shocking and his secret swearing-in was totally unacceptable to ODM leadership and members who resorted to virulent street protest to claim back what they considered was a stolen victory.

Their protests led to an unprecedented wave of ethnic violence in Kenyan history. This was unsurprising as both leading parties had been drawing support from opposing ethnic groups and the history of Kenyan politics bears witness to the great influence of ethnic mobilisation.

To resolve this political impasse and pull Kenya back from the verge of collapse, leading African figures and the African Union (AU) initiated negotiations between the leaders of these two political parties. It finally took Former UN secretary general, Kofi Annan, weeks of intense negotiations and mediation to broker the peace deal that was signed on the 28th February 2008 leading to the creation of a coalition government between Kibaki and Raila. This eventually brought an end to the post-election violence which, in only two months, had claimed more than 1300 lives and displaced an estimated 350,000 others (OHCHR report: 2008).

A few months after the Kenyan debacle, Zimbabwe found itself in a similar situation. The country was plunged into a political impasse after the opposition leader, Morgan Tsvangirai, emerged as the first round winner of the presidential elections of March 29, 2008, but failed to secure the requisite majority to take control of the country's leadership in keeping with law (Bratton & Masunungure 2008:49). Tsvangirai caused a severe blow to the run-off elections when he withdrew a few days to the elections, citing widespread violence and intimidation by the incumbent government and security forces loyal to it. This move left the incumbent Robert Mugabe as the sole run-off candidate. As a result, the Zimbabwe Electoral Commission declared him winner and he was subsequently sworn in as president on June 29, 2008. Several African countries including Liberia, Uganda, Kenya, Nigeria, Sierra Leone, Senegal and Tanzania refused to recognise Mugabe as the legitimate president of Zimbabwe. Similarly, the international community refused to recognise Mugabe's government. The route taken by Kenya was thus proposed as a way out of Zimbabwe's political crisis. Thus, former South African President, Thabo Mbeki, acting under the auspices of Southern Africa Development Community (SADC) and the African Union (AU), mediated negotiations between Mugabe and Tsvangirai aimed at striking a pact for power sharing. The negotiations sailed through on September 15, 2008

when Mugabe and Tsvangirai signed a power-sharing agreement, which was enforced in February 2009 resulting in a coalition government of the rival parties. It is important to note that these peace agreements were brokered by Africans themselves - without a third party from Europe or America, as had so often been the case. This therefore gave rise to an era of hope for some scholars of African diplomacy. However while the power-sharing deal has restored stability in both Kenya and Zimbabwe, the potential for renewed conflict remains high (Horowitz: 2008:14). In Kenya, the election period polarized and divided the nation along ethnic lines and many victims who were chased out of their homes are yet to return because of the lingering fear and distrust or simply the inability to build new homes. Finally the historical injustices that caused the violence - land distribution, inequality in wealth and ethnic marginalization - are yet to be resolved. While it remains debatable whether the method of political accommodation proposed and adopted in both crises was appropriate and is likely to lead to lasting peace and democracy, the case for studying its adoption in the two countries is compelling, more so given that the Kenya-Zimbabwe approach has since been raised by some as a possible way out of the Ivory Coast crisis. It is against this backdrop that this report is written.

## **1.2 Statement of Problem**

Although Kenya and Zimbabwe like most of Africa have had a not too long history of using democratic elections to showcase their democratic strengths, the most recent elections in both cases left political researchers wondering if historical democratic practices were to blame for the recent tragic post election occurrences. If this was to be the case, then Laakso's (2007) assumption that elections in essence are part of a democratic approach that resolves political conflict without force and violence is problematic. The picture that emerged out of last elections in Kenya and Zimbabwe was anger, bitterness, violence and vengeance. At the outcome of the elections, the question that haunted most researchers was, for how long must a country administer democratic elections to be able to hold credible elections, considered free and fair? Put differently, does the practice of democracy have some underpinning elements that if not well managed may dangerously escalate in future elections? Or what are the historical

explanation/understandings of the violent outcomes of the 2007 and 2008 election in Kenya and Zimbabwe respectively?

More disturbing and opening the window for research has been the multiple consequences the post election violence left on the two states. It is important to note that the wave of ethnic and political intolerance that ensued at the outcome of elections did not only skyrocket the death toll from brutal murders, it also led to the outbreak of new diseases resulting from the dysfunctional health system. More so, hunger gripped both states where the economy was frozen and the breakdown in diplomatic links with regional and international actors further compounded the misery.

The eruption of the above chased hundreds of thousands of people from their homes, many of whom are still uncomfortable to return home certainly due to lingering fear and distrust or simply their inability to build new homes after they were destroyed.

At this point the international community could not only content themselves with condemnation but came in to propose direct solutions at normalizing the issue. Like in Kenya, political accommodation was also proposed as a workable solution to post election violence in Zimbabwe. But did both problems have the same historical and institutional frame works to require the same solution?

### **1.3 Rationale of the Study**

At a time when a greater part of the world hails and builds hopes around elections as the hallmark of democracy the abysmal failures of previous elections in Africa have created skepticism about elections as a meaningful values of democracy; liberal peace and freedom (Lindberg 2006:139)

Elections may have regularly been held in Kenya and Zimbabwe since the dawn of the new democratic wave, but their flawed organization and inability to effect change leaves one with the conclusion that they are organized simply in the intention of distancing the

governments from strong international criticism. However, electoral flaws may be considered a global threat to democracy, but the sort of post electoral violence which the world witnessed in post 2007 and 2008 Kenyan and Zimbabwean elections respectively is particularly scary. This therefore has raised more issues to Africa's reputation as a democratically fragile society. Makinda (1996: 558) advances four reasons why elections and democracy in Africa have not been able to work. Firstly, democracy was denied Africa for about a century during colonialism, secondly, the continent has always been at the periphery of world politics, thirdly, Africa's lack of economic, scientific and technological infrastructure impedes democracy and finally poverty, underdevelopment, injustice and authoritarianism which have all become a culture are great contributors at impeding democracy. The above may offer an insight in to understanding why African rulers like president Mugabe who had ruled for over 30 years continues to contemplate that he is the lone competent ruler for Zimbabwe even with his rapidly declining popularity and a devastated economy.

The fact that power sharing is once more introduced as a solution to the above, opens a debate as to their effectiveness having being tried in other African countries with mixed results. This report seeks to give more clarity on the debate around political accommodation by offering an in-depth analysis of both power-sharing deals exposing the loopholes that if not corrected offers a potential for future violence as Horowitz (2008:1) fears. Kenya and Zimbabwe are important to this study because they offer the most recent scenario of power-sharing to researchers. This therefore, opens an exciting comparison between the two case studies, which is going to add to the existing knowledge and literature.

## **1.4 Aims of the Study**

The aim of this study is to investigate through a comparative analysis of Zimbabwe and Kenya, the conditions that facilitate electoral violence and post election political accommodation in Africa.

## **1.5 Research Questions**

When one looks at the post election violence in Kenya and Zimbabwe of 2007 and 2008 and their outcome, the following questions on which this study is hinged arise: Why did violence occur despite earlier experiments in democracy building? To what extent was the violence a legacy of historical ethnic cleavages? What are the institutional arrangements that arose out of the negotiated settlements? Finally what constituted the similarities and differences of the two case studies?

## **1.6 Provisional Argument**

This study suggests that flawed democratic experiments (marred by poor election organization, legal injustices, corruption etc) are the immediate cause of electoral violence. It also holds that the Kenyan and Zimbabwe post election violence were not solely a consequence of flawed elections but a fall-out of a history of accumulated political injustices. It further suggests that power-sharing does not lead to the requisite political stability it seeks to achieve.

## **1.7 Research Methodology**

The report is a descriptive plus analytic exercise in comparing and contrasting Kenya and Zimbabwe in order to clarify the conditions that facilitate electoral violence and post election reconciliation.

It will draw extensive primary information from reports of inquiries set up after the violent elections as well as on speeches presented by various stake holders on both sides of the divide. It will also make use of both power sharing agreements linking both to an examination of constitutions.

On to secondary data, the research will analyze the ever growing literature on post election power sharing in both countries. A special issue of the *Journal of Elections* volume 7 (2) with focus on Kenyan 2007 stands out as a key source for analyzing Kenya.

Research material has also been gathered from the websites of the Electoral Institute for the Sustainability of Democracy in Africa (EISA), Institute for Democracy in Africa (IDASA), South African Institute of International Affairs (SAIIA), Movement for Democratic Change (MDC), Zimbabwe African National Union Patriotic Front (ZANU-PF) and the Chr Michelsen Institute (CMI), just to name a few institutional sources.

## **1.8 Limitations of the Study**

This study focuses on electoral violence and political accommodation. In this study, the extensive and complex phenomenon is examined from a rather narrow empirical perspective. The selection and comparison of just two case studies naturally pose limitations as far as generalization of research is concerned. Furthermore, the study in the selected case study is still at an emerging state which makes it difficult to ascertain how effective and efficient the proposed solutions have worked and also how the governments intend to forge ahead with nation building despite the grief that still haunts relatives and friends of the thousands who lost their lives in such brutal circumstances. This therefore opens a window for future research. Furthermore, due to financial constraints, I was not able to visit case study areas to gather first hand information.



## 1.9 Literature Review

Academic literature in relation to power sharing, is more or less shaped by Arend Lijphart's consociational theory which is contained in his 1977 publication; *Democracy in Plural Societies*. Spears (2003) like many others have focused on consociational democracy describing it as a form of government involving guaranteed group representation that should often be suggested in managing conflicts in deeply divided societies. Furthermore, Mehler (2009) argues that although classical consociational theory provides us with all key concepts ideas underline the power-sharing discourse, in developing this theory Lijphart did not have African states in mind as he hinged his explanations on Switzerland, Belgium, and Lebanon which were his classical examples. Apart from that, Spears (2000:107) further suggests that Lijphart's use of consociationalism to promote democracy in ethnically divided societies is more or less a European solution and if should be applied in Africa, it should be done with caution as Lijphart didn't have African countries in mind at the time of developing the theory and therefore should naturally have lapses. However, Sisk (2003) in confirming this, posits that consociationalism is just one of what is in fact a very broad range of political options for settling ethnic conflicts.

In an important work, - *Crafting Peace: Power-Sharing Institutions and the Negotiated Settlement of Civil Wars*, Hartzell and Hoddie (2007) approached researchers with a new theory of power-sharing which they called the dimensional approach. This new approach suggests that all power-sharing arrangements are either one or some combination of political, military, territorial and economic approaches. Political approach takes place when there has been, properly speaking, no military confrontation (like in Kenya and Zimbabwe), while military power-sharing as the name implies takes place between former belligerents. Their work explores how these institutional/dimensional approaches are useful in resolving conflicts by negotiated settlements of power-sharing. They however neglect the issue of post-election power-sharing, a gap which this study attempts to close.

Bogaards (2006) in *Democracy and Power-sharing in Multinational states* reminds us that power-sharing deals do not necessarily foster democratic consolidation but rather may lead to the monopolization of power and increased conflicts. Horowitz (2008) in a policy brief paper on Kenya supplies an exhaustive analysis of the entire deal before concurring with other literature that despite a power-sharing, potential for renewed conflict remains high.

Contrary to the above, Biningsbo (2006) in an article states that power-sharing can bring forth longer peace durations if all major actors are involved and further proposes power-sharing institutions as a serious solution for countries struggling to rebuild after civil war. Spears (2000: 105), concurs that power-sharing deals provide an alternative to intransigent conflicts perpetuated as a means of obtaining power, and further limits the effects of a high stake winner take all electoral approach.

Power-sharing and democracy are said to be closely linked. Bogaards' (2006) careful analyses of the relationship between democracy and power-sharing cites Lijphart in his consociational democracy and also in consensus democracy as having launched a breakthrough in the thinking that democracy and power-sharing are not incompatible as was often thought and claimed, because both function well in societies where power is shared instead of monopolized and above all devolved instead of centralized. Therefore no effective analyses of power-sharing can be complete without theorizing democracy. It is this in mind that Jarstad (2009) analyzes that the issues of peace, power-sharing and democracy have become inter-twined as the vast majority of contemporary peace agreements provide for both power-sharing and elections. In an attempt to give an appropriate answer to why some elections are followed by armed conflicts while others are not, Jarstad, explores and maps the prevalence of power-sharing and patterns of post-election peace in states shattered by civil war and concludes that elections preceded by an agreement of a post election power-sharing produce peace more effectively since this arrangement reduces uncertainties that preoccupy former belligerents involved in the peace agreement.

In a journal article Ojo (2007) affirms that the conceptualization of elections in the political field rests squarely on the concept of liberal democracy. Today it is almost impossible to comprehend the theory and practice of democracy without linking it to the process of elections. According to Lindberg (2003), every modern vision of representative democracy entails the notion of elections as a primary means of selecting political decision makers. As a matter of fact, earlier attempts at conceptualizing liberal democracy equated it with the phenomenon of elections. While democracy should not however be reduced to the process of elections alone, they are nevertheless hailed as the heart of a democratic order and a hallmark of democracy (Ojo, 2007: 103).

There has also been a growing literature on post election violence in Africa and power-sharing. A special edition of the *Journal of African Elections* focusing on Kenya captures and then explores the post election debacle as a result of past historic injustices over resources, identity and dignity.

On the other hand, in an introduction to an *African Spectrum Journal* with special focus on power-sharing in Africa, Mehler (2009:6) acknowledges that power-sharing has in most cases not led to sustainable peace, and further attempts to uncover what could be the simple recipe for sustainable peace after a power-sharing deal. Furthermore, he acknowledges that contributors have contextualized their articles in relation to dimensional approach to power sharing. Finally in throwing light on the power-sharing situation in Kenya and Zimbabwe, he concludes that while democracy is all about uncertainty, associated with free political competition, and uncertain electoral outcomes, political accommodation on the contrary is all about the reduction of these uncertainties.

## **1.10 Outline of Study / Overview of the Chapters**

The study is divided in to five further chapters.

Chapter two provides a theoretical framework of democracy, electoral violence and power-sharing in Africa.

Chapter three provides an in-depth analyses in to the Kenyan crises, focusing on the historical political injustices leading to the 2007 electoral violence and finally examines the power-sharing exposing its limitations

Chapter four undertakes a case study of the Zimbabwe 2008 parliamentary and presidential elections and their aftermath. It also examines the power-sharing deal exposing its limitations.

Chapter five undertakes a comparison of both case studies.

Chapter six brings the work to a conclusion and provides a catalogue of recommendations emanating from the study.

## **Chapter Two: Theoretical Framework**

“There is much that is intuitively appealing to power-sharing and it is no surprise that it is repeatedly proposed to a form of post conflict governance ...because each group is given a slice of power and access to state resources, disputants find at least in theory less to fight about.” (Spears 2002:123)

### **2.1 Introduction**

The route undertaken by democracy in Africa is interrupted by deadlocks, reversals, greed and mounting complexities, which have degenerated into violence upon the outcome of most elections. The recent electoral quagmires in Kenya and Zimbabwe that could only be resolved by sharing power among opposing political parties, substantiate this and therefore open up area of inquiry for this study. Understanding the resort to power-sharing requires an analyses and the history of the democratic framework, ethnicity, elections and electoral violence as necessary barometers for measuring democracy in any given African polity. The proceeding chapter defines these concepts, and then considers a variety of literature and historical developments, aimed at a better understanding of the concepts. It seeks to contribute to the discussion of ethnicity as a core feature of African democracy, tracing its historical origins. It finally takes a look at the various approaches to power-sharing and then introduces *power-sharing following disputed elections* as the neglected but new approach to power-sharing.

### **2.2 The Concept of Democracy**

Even as thousands of scholars have written and argued about the true nature of democracy, no precise or universally accepted definition has yet emerged. The in-depth analysis of the different definitions of democracy is beyond the scope of this study. However a well known, non-academic definition of democracy is given by Abraham Lincoln as “government of, for and by the people”. This definition is further elucidated by Richard M. Flanagan cited in the online Oxford Dictionary of Politics (2006) as “a

form of government in which supreme power is vested in the people and exercised by them directly or indirectly through a system of representation usually involving periodic free elections. In a direct democracy, the public participates in government directly (as in some ancient Greek city-states, some New England town meetings, and some cantons in modern Switzerland). Most democracies today are representative. The concept of representative democracy arose largely from ideas and institutions that developed during the European Middle Ages and the Enlightenment and in the American and French Revolutions. Democracy has come to imply universal suffrage, competition for office, freedom of speech and the press and the rule of law.”

As in the above definition Heywood (2002) suggests the existence of two main types of democracy, participatory democracy and representative democracy. On the one hand, participatory democracy (sometimes also called direct democracy) is based on the direct, unmediated and continuous participation of citizens in the tasks of government. It is a system of popular self government. This was possible in Athens through a form of government by mass meeting (Heywood 2002:70). Despite the fact that democracy equates in some circumstances to participatory democracy, some scholars argue that direct democracy is totally different from participatory democracy and therefore they conclude that there are three main forms of democracy; direct, representative and participatory (Abdul & Lindsay 2009:7).

Direct democracy is democracy without representation, where sovereignty is exercised directly by the people either in public assemblies or via referendums. Depending on the particular system, this assembly might pass executive motions, make laws, elect, dismiss officials and may even conduct trials. Assembly-based direct democracy was practiced in ancient Athens, while referendums are widely used in contemporary Switzerland. On the other hand, representative democracy is a limited and indirect form of democracy. It is limited in that popular participation in government is infrequent and brief, being largely confined to the act of voting every few years. This form of rule is democratic as long as representation establishes a reliable and effective link between the government and the governed. This is sometimes expressed in the notion of an electoral mandate (Heywood 2002).

Today, it is almost impossible to understand the theory and practice of democracy without linking it to the process of elections. Lindberg (2003) concurs that every modern vision of representative democracy entails the notion of elections as a primary means of selection of political decision makers. As for participatory democracy, Glaser (2007:133) holds that it was a form of democracy which had been tested and yet abandoned in some African countries including Mozambique. As a result, representative democracy will predominantly be dealt with, which implies elections as the source of legitimacy of the rulers (Abdul & Lindsay 2009). Before taking an in-depth analysis of elections, it is vital to revisit the advent, dynamics and processes of Africa's wave of democracy.

### **2.2.1 Third Wave Democratic Experience in Africa**

The collapse of the Soviet Union, which symbolized the end of communism as an alternative development model in 1990 ushered in a new political era for Africa with the dramatic turn to multiparty democracy. Bratton and Vande Wall cited in Southhall (2003:8) note that in 1989, twenty nine African countries were still governed under some form of a single party constitution, a residue of the post-independence dominance of this model of governance. Democracy, understood as institutionalized and competitive elections, along with respect for civil and political liberties, began from 1989 onwards to be placed on the agenda of many countries that had hitherto suffered from the suffocating yoke of one party rule or outright military dictatorship (Abdul & Lindsay 2009:1).

According to some social indicators, Africans were worse off at the end of the 1980s than they were in the 1960s (Ake, 2000:46). These negative growth rates translated into collapsing infrastructure, rising debt burdens, rising social tensions, intensifying poverty, chronic malnutrition and premature deaths had left many Africans questioning the effectiveness of the one party system. The poor economic climate generated by leadership failure in most parts of Africa became life-threatening to ordinary people who then resorted to pressing demands for democratization as a solution to the crisis

In most African countries, there was a demonstrated failure of leadership which stemmed from the loss of legitimacy by the state and its managers which were further compounded by fiscal crisis, that were at the centre of government's inability to deliver service.

With their physical survival under threat, Ake further confirms, ordinary people were obliged to mobilize themselves to address this tragic crisis. Given this, and other threats of lawlessness made by unpaid soldiers, police officers and workers, the people had no option but to seek what they call in francophone Africa a 'second independence' which was geared at handing ruling powers to the people through a new democratic wave.

In this heated political climate, most sitting governments gave into demands for democracy, while a lot more leaders showed tough resistance to change. It is thus the reason that the democratic process in Africa was never unique.

### **2.2.3 Democratic Process**

A cursory look at how the leaders and people of Africa embraced or opposed the democratic wave and the pressures of democracy, suggest two types of strategies. There are the preventive and accommodation strategies, (Ake, 2000:52). In the latter situation, the leaders were willing in varying degrees to accommodate democracy. What sets the leaders in this group apart is that for whatever reasons, some saw some merits in democracy and the need to accommodate it, if this was possible without losing power.

The accommodation policy is an example of what the democratic dynamic in Benin and Cape Verde followed. Political leaders in both countries were open to democratic reforms, which ended up in constitutional amendments that stripped incumbent parties of supremacy, paving the way for multi-party elections. The uniqueness of this process is that the leaders in this category like Benin and Cape Verde supported reforms even in the face of an evident risk of being defeated by the opposition (Ake, 2000:54). In the case of Benin, the sovereign national conference was the instrument of reform.



On the other hand, the preventative strategy is a kind of brutal repression in decimating opposition and therefore reducing any thought of democracy. This was the strategy undertaken by a majority of African leaders including Abdou Diouf of Senegal, Robert Mugabe of Zimbabwe, Ibrahim Babagida of Nigeria, Omar Bongo of Gabon etc. With this strategy, ruling regimes employed coercive tactics against protagonists of democracy which in most cases met with rebellion, leading to heavy casualties.

What has drawn the attention of most scholars to the African democratic process is the manipulation of state institutions by leaders to gain or retain power. Conspicuous to this is the deliberate fuelling of ethnicity and ethnic divide by those who are in control of state power or are aspiring to control in furtherance to their political objectives (Nnoli cited in Apollos 2001). That is why any approach to democratic development in Africa that does not recognize and give attention to the diversity of ethnic communities, cannot succeed (Berman et al. 2004). Ethnicity as a course of political uncertainty will be examined in this study, not only because it was at the center of the post election violence in Kenya, but also because ethnic tensions remain a threatening part of the democratic process in Africa (Addai, 2009).

#### **2.2.4 Ethnicity and Democracy**

Ethnic identities can best be understood as a social construct with deep psychological, cultural, linguistic, racial, or religious roots (Isiksal 2002:13). Ethnicity is one of the most complex and elusive terms to define and measure clearly; but Isiksal (2002:2) attempts an explicit definition of an ethnic group as ‘a collectivity within a large society having real or putative common ancestry, memories of a shared past and a cultural focus on one or more symbolic elements which defines the group’s identity, such as kinship, religion, language, shared territory, nationality or physical appearance’. With the advent of multi-party democracy for which numbers matter most, ethnic rivalry deepens. For the most part, elections in Africa are ethnically-driven (Cowen & Laakso, 2002) and victory not only gives the power to form government but is also increasingly regarded as a symbol of ethnic superiority and assurance of sectional advancement. Politicians worsen the

situation by perpetuating and exploiting these sentiments for political points during electioneering campaigns (Abubakar, 2001, Akindes, 2004, Ambrosio, 2002, Hunter-Gault, 2006, Mathews, 1999, cited in Addai, 2009), and perceive each other more as enemies than partners providing alternative and complementary views toward the same goal. As a result, political competition intensifies especially among the electorate for whom victory to their ethnic cronies is the essence of democracy, (Addai 2009). The religiosity and abusive nature of the competition among electorates readily foments conflicts.

Some of the most difficult issues facing established and new democracies alike have had to do with the management of ethnic conflict that are more or less fuelled by politicians, which is why ethnicity has become a politically salient issue and a difficult feature of the political landscape to do away with (Sisk et al 1999).

Some authors have argued that ethnicity in Africa creates a fundamental challenge in general and to the process of democratization in particular. It is a problem that traces back, in large part to the policies of European colonizers on the continent (Mamdani, 2001, and 1996; Wesseling, 1996 cited in Addai, 2009).

### **2.3 Ethnicity as a Colonial Legacy**

The externally imposed European colonial structures have created massive historical transformations that have resulted not only in dividing the continent but in producing major political anomalies that affect nearly every African society. The imposition of European colonial authority on African societies brought about the inclusion of different groups into a larger structure called the state, (Morgan 1997: 93) where, in some cases for the first time, they engaged in sustained interaction as a *mélange* of many languages and cultures, often artificially bound together. This thus brought about the political conjoining of diverse people with different interests, cultural ways of life, language, history and social and economic position.

Modern African ethnicities were shaped by a particular relationship with the institutions of the colonial state. According to Morgan (1997), using indirect rule as an administrative formula, colonial bureaucracies played a key role in the constructions of tribal identities out of earlier kinship groups. They built upon indigenous power relations of clientage between political leaders and supporters, having recognized the divergent background of the people they had thrust together. Colonialism then exercised a decentralized despotism of local control via traditional rulers within ethnically-defined administrative units (Mamdani, 1996).

Some authors have suggested that ethnicity was also promoted by Christian and education missions who created standardized print versions of tribal languages from related vernacular dialects, creating an ethnicity-conscious intelligentsia which could be compared to the bourgeois intelligentsias that created the ethnic nationalisms of Europe (Benedict Anderson cited in Berman, 2004:6). Delving into historical intricacies is beyond the question because the focus here is to establish ethnicity as a grave factor in contemporary African democracy. Imposing itself as a salient political issue, ethnicity has been seen to play a vital role in electoral democracy.

### **2.3.1 Ethnicity & Electoral Democracy**

The nature of division within a society is revealed, in part, by the extent to which ethnicity correlates with party support and voting behavior. (Reynolds 1999:272). The current trend is to characterize multi-party elections in Africa as nothing more than ethnic or racial censuses, offering a useful description of the central problem confronting divided societies (Berman, 2004:6).

Furthermore, Mattes and Gouws (1998) highlight another concept – that of ethnic parties and ethnic voters. According to this theory, in divided societies, parties are formed on ethnic or racial bases. These are parties that embrace the demands of some ethnic groups, to the exclusion of others. Under such circumstances, there exists what they consider to be ethnic or racial voting. Horowitz (2008) has characterized such voting as simply the

registration of ethnic affiliations, with the voter's choice essentially pre-empted at birth. Ethnic voters are those individuals who 'choose' in effect not to choose, but to give their votes to an ethnically defined party (Reynolds 1999:272).

Howard French cited in Reynolds (1999) contends that the emotional pull of allegiances based on tribe, language and religion remains far stronger than appeals based on policies and platforms. It is hard to deny that in Africa parties tend to divide voters along ethnic lines (Reynolds 1999).

In Kenya and Malawi, it seems that at least one-fourth of the electorate voted for the incumbent autocrat merely because he was a favorite son of their ethnic group (Reynolds 1999). Clearly if such ethnic allegiances are primordial, and therefore rigid, as some writers argue, then a specific type of power sharing, which recognizes and accommodates interests based on ascribed communal traits rather than individual ideological ones, is needed to manage competing claims for scarce resources (Mattles & Gouws, 1998).

Bill Beckeley (cited in Reynold 1999) describes Kenya as an all too typical study in the use of ethnicity as an instrument of tyranny. He quotes an opposition lawyer who describes how Daniel Arab Moi consistently pursued policies that encouraged various ethnic groups to think of themselves as different, not as one nation. French (cited in Reynolds 1999) further contends that the prevalence of ethnic voting has meant that in countries as diverse as the Ivory Coast, Zambia, Kenya and multi-racial South Africa, political parties have been turning elections into contests of ethnic solidarity that all too often leave the winners with formidable strength and the losers feeling dangerously vulnerable. In such circumstances, losers may become dangerously aggressive should they believe that elections were not free and fair.

It would be superficial and naive to simply conclude that ethnic divisions in society do naturally turn elections in to a racial census, where the dominant ethnic group consistently drives election outcomes leading to permanent winners and losers (Feree 2004:1). If this was to be the case for example, Raila Odinga, a Luo would not even have

come close to becoming the purported winner of the 2008 presidential elections coming from a much smaller ethnic group than his main Challenger-Kibaki. This therefore aligns credible evidence that ethnic groups may share the same cultural history but the manner in which individuals see the world and view politics is substantially different. Taylor and Hoeane (1993:139) in confirming this view argue that , the dominant view which stifles African elections as predominantly ethnic driven is misconceived as proponents fail to give a credible scientific explanation that authenticates their claim. Furthermore, there exist alternative ways of reading campaign politics and voting behaviour other than on ethnic lines.

#### **2.4 Election as A measure of Democracy**

Elections are generally understood to refer to the process of choosing people for particular jobs by voting (Ojo 2008:6). In the political realm, elections are conceived as a formal expression of preferences by the governed, which are then aggregated and transformed into a collective decision about who will govern, who should stay in office, who should be ousted and who should replace those who have been ousted (Harrop et al. 1987). This is simply the process of elite selection by the popular masses in any given political system (Ojo, 2008).

The conceptualization of elections in the political field rests squarely on the concept of liberal democracy (Ojo, 2008). Today it is almost impossible to comprehend the theory and practice of democracy without linking it to the process of elections.

Elections therefore play an important role in the larger project of democracy. According to Akzin in Nwolise (2007), Elections have technical and social significance. In the technical sense, they are the process through which an office is assigned to a person by an act of volition that requires the simultaneous expression of a multitude of opinion. In the social sense, an election is the process by which a person is linked to an office through the participation of the people who will bear the weight of his/her authority. He notes that it is this social aspect of election that generates the idea of governing a society with the

consent of the governed and that this amounts to democracy and distinguishes elections from mere political appointments. In a nutshell, elections as a symbol of popular sovereignty, serve the purpose of investing governments with political authority and legitimacy. It ensures that the citizen retains the power to ‘hire and fire’ political leaders (Reymond & Reilly 1997).

To achieve the above goal, elections must be free and fair or at least perceived to be so (Elklit and Svensson, 1997). The structures and processes of elections must be guided by democratic ideals and practices. At the structural level, there must be as minimum prerequisites: a competent, relatively autonomous and non-partisan electoral body to administer the conduct of elections; an impartial judiciary to interpret electoral laws and adjudicate on electoral matters; freedom of press; and a non-partisan police force. At the procedural level, there must be a body of electoral laws and electoral systems acceptable to all the parties in a given election (Laakso 2007).

An election is not just the casting of votes on election day but a sum total of processes that come before and after this event. For this reason, it is submitted, elections should not be viewed as periodic once-off events but as “set of events and decisions leading up to elections that have long-lasting consequences once the proverbial dust has settled” (Reynolds & Sisk 1998:11). In choosing to vote one candidate over the other, voters are essentially selecting a set of policies that will define their life for the next four or five years, as the case may be. It is for this reason that elections are always somewhat emotive and tend to be susceptible to violence, either violence intended on influencing or challenging its outcomes. This is where the interest of this study now turns.

#### **2.4.1 Elections as Cause of Violence**

It is common knowledge that where the wishes of the people as expressed in open national elections is not respected, the resultant consequences have often been loss of civil liberties in the face of violent strikes and a general political instability that

sometimes degenerates into an outright civil conflict, leading to loss of lives and damage to property.

A cursory look at the roots of African conflicts today show that they have often originated in part from the poor implementation of democratic principles and values, especially those around elections (Mehler, 2007). Carothers (2007:12) confirms this, when he considers it a mistake to assume that democratization – especially open national elections - is a good idea. He further states, “When tried in countries poorly prepared for it, democratization can and often result in bad outcomes-illiberal leaders, or extremists in power, ethnic and other types of conflicts and interstate wars.”

#### **2.4.2 Electoral Violence**

As one opens the study of electoral violence, an interesting inconsistency is revealed. Going by the above definition it is noted that elections are often held up as a way of resolving political differences through non-violent means. If this is so, it makes little sense to study electoral violence, since elections in essence should be part of a democratic method to resolve political conflict, without the appearance of force and violence (Laakso, 2007:224). This inconsistency notwithstanding and despite the many efforts geared at putting a stop to election violence, its study will remain relevant in Africa given the increasingly weak and vulnerable democratic institutions.

According to Nwolise (2007:160), “violence is any form of organized or spontaneous action or threat affected by the people or by the government or its agents to occasion harm, undue advantage, injury or destruction, with the aim of influencing or achieving a desired objective”. Electoral violence may thus be viewed as violence targeted towards the electoral process. It may take place before, during or after elections. It has to be seen as an activity motivated by an attempt to affect the results of the elections (Laakso, 2007:228) either by manipulating the electoral process procedures and participation or contesting the legitimacy of the results. In other words, it is the use of physical force or psychic terror tactics to pursue improper electoral gains (Nwolise 2007:160). In this

regard, electoral violence occurs at the two ends of elections; before and after and assumes physical, psychological and structural dimensions.

### **2.4.3 Violence Before Elections**

The main concern of pre election violence is often to influencing the choice of the voters. Its repertoire includes intimidation of potential voters to stop them from putting on preferred party regalia, participating in public debates that have potential to influence votes and attending public campaign rallies of their choices. The violence against opposition supporters in Zimbabwe leading up to the June 2008 presidential run-off is a case in point in this regard. Voters may also be violently displaced to prevent them from voting (Laakso, 2007:228). The ethnic clashes witnessed in the 1992 and 1997 in Kenya (Akwumi Report, 1999) as well as in 2000 in Ghana, are evident of such pre-election violence.

### **2.4.4 Violence After Elections**

Post-election violence is usually a reaction to what is perceived as a “stolen” election victory. It is a violent means of contesting the legitimacy of an election results (Laakso, 2007:227). As such, post election violence is a product of a disputed election. It may take the form of street riots and attacks against those who are perceived to have voted for what may be viewed as the ‘wrong’ candidates (Laakso, 2007:228) or those who conspired in the rigging. The violence following the Kenyan 2008 elections is a case in point. It must be noted here that the act of disputing an election is not in itself reprehensible; rather, it is that violent means employed to express it that makes it so. Indeed election disputes are not limited to Africa. Elections have been disputed in the US since 1800 and elsewhere in the world. In 2000, the world had occasion to witness election disputes between supporters of Al Gore and George Bush in the American presidential election. The problem in Africa is the violence associated with election disputes, which more often than not has an ethnic undertone as was observed in Kenya and elsewhere.



#### 2.4.5 Legitimacy of African Elections

Some have denounced African elections as choiceless elections in which the electorate vote without choosing (Mkandawire in Abdul and Lindsay, 2009:10). However, Villalon and Huxtable, cited in Abdul and Lindsay (2009:10), differ with the above. They rather suggest that elections in Africa may have a deeper significance. They argue that elections are only an initial response to the pressures for change within African societies. Elections and the wider debates within which they occur are only the beginning of the deeper processes of change that African states appear to be undergoing. For their part, Bratton et al in Abdul and Lindsay (2009:11), argue that simply participating in voting affects mass opinion by increasing democratic values within the system as a whole. This point is strongly endorsed by Lindberg (2006: xi) in Abdul and Lindsay (2009), who argue that elections improve the quality of a democracy. Using quantitative analyses of more than 200 elections in African since the third wave of democratization, along with Freedom House data on civil liberties<sup>1</sup>, he suggests that an uninterrupted series of competitive elections, regardless of their relative freeness and fairness, have a positive impact on human freedoms and democratic values. He argues that the general trend is for repeated elections to change an actor's behaviour, which in turn reinforces and improves the democratic qualities of subsequent elections.

He is further supported in this idea by Carothers (2007) who posits that recent study of African politics since the early 1990s finds that those countries which moved early towards elections and persisted with elections thereafter have done better at consolidating all aspects of democracy, than those countries that delayed holding elections.

Further, Lindberg (2004 b) cited in Gero Erdmann et al (2007:7) indicates that contrary to general belief, the quality of elections has in fact improved so that he optimistically

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<sup>1</sup> Freedom House is a Washington-based non-governmental organisation established in 1941 to promote democracy around the globe. The organisation has since 1973 published the *Comparative Survey of Freedom*, which rates the level of democracy or freedom in all independent states and some disputed and dependent territories in what has become known as the Freedom House Index.

concludes that a series of elections will more often than not contribute to democratization. Poles apart from the above views that year after year African elections have improved in quality and organization, some researchers have found otherwise, dismissing African elections as choiceless and a mere formality, where the incumbent thinks of elections only as a means of legitimizing his position. Erdmann et al (2007:7) are of this opinion when they admit that multi-party elections have clearly become a regular institution in Africa, but expresses doubts as to the meaning and quality of the elections.

Furthermore, the view held by Carothers et al. that persistence in elections improves all aspects of democracy, is challenged by recent elections in Nigeria in 2007, Kenya in 2007 and Zimbabwe in 2008, during their fourth round general elections since the emergence of third wave multi-party politics. Cote D'Ivoire has provided the most recent example of a disputed election followed by violence. According to the Freedom House Index, Kenya and Zimbabwe (case study) had made early improvements at consolidating democracy, until their dramatic turn in recent years.

Judging from the above, it is clear that the recent election years in these countries have challenged proponents of the theory of improved African elections. This has therefore brought to bear the question of the legitimacy of the victors of such elections and where legitimacy becomes an issue, violent protest easily surface, opening a window for mediators who rather than back the winner of such elections to assume their positions, have found power-sharing an ideal and easy solution to bring protagonists to ease and bury the harsh question of legitimacy.

## **2.5 Arguments for Post Election Power-Sharing.**

Having noted that in most divided societies, violence is likely to occur at the instance of elections, the bone of contention has been for the international community to find solutions that reflect the core of the problem. In Africa and elsewhere, some kind of power sharing whereby government posts are distributed across the most contending

political parties or groupings have been argued, are the only way out of such intransigent conflicts in politically divided, multi-ethnic African societies (Spears 2004:123). He further notes three reasons why power-sharing is likely to appeal to international mediators. Firstly it provides an alternative to the type of high-stakes, winner takes all elections that provide an incentive to electoral violence. Secondly, it also offers a promising solution to disgruntled groups who can neither envision secession nor tolerate the status-quo. Thirdly, power sharing does not mean that democratic principles and procedures must be abandoned; indeed, power-sharing arrangements must be compatible with democracy while diminishing its most destabilising side effects (Hartzell and Hoddie 2003:320). Given the above reasons, power-sharing can be intuitively appealing as a means of post-election conflict resolution.

Support for power-sharing as a solution to post election conflicts has come from practitioners of conflict resolution who cite “winner-takes-all” politics as being at the root of Africa’s current electoral process (Spears 2000 : 105) and also from other scholarly sources. In his April 1998 report to the UN Security Council, Kofi Annan argued that Africa’s leaders must give up the “winners-takes-all” political mentality which prevails in so many African countries and consider including opposition groups in public debate. On the other hand, U.S diplomats while calling for free and fair elections in Africa, also call for a move from exclusive to inclusive governments and even the establishment of an inclusive political transition that would end the cycle of violence and impunity (Spears 2000: 106). In furtherance, William Zartmam cited in Spears (2002) concurs that successful mediation returns conflict solutions to normal by securing the cooperation of all parties, government and rebels in a new creation, while, more succinctly, power-sharing pact maybe the only attainable short term goal compatible with long term democratisation (Ottaway 1995: 248).

### **2.5.1 The Theory of Power Sharing**

Power sharing is a system of governance in which all major segments of society are provided a permanent share of power; this system is often contrasted with a majoritarian

system in which ruling coalitions rotate among various social groups over time (Sisk, 2003). Such coalitions may be the outcome of either pre-election or post-election bargaining between or among political parties. The latter is where the focus of this dissertation rests. Spears (2000: 105) claim that some kind of power –sharing has been a feature of government in all societies that have successfully overcome internal divisions.

The basic aims of power sharing are traditionally to ensure the decentralisation of power; the protection of minority rights for groups; the establishment of a grand coalition government in which nearly all political parties are represented and the provision of mechanism to ensure decision making consensus (Hartzell and Hoddie, 2003). Furthermore, it is argued that when the minority is a permanent one defined by race, ethnicity, or language and where the system of political party competition coincides with the communities rather than cut across them, such a minority may be permanently excluded from governmental office and from all prospects of political influence. Thus a system of power-sharing approaches that guarantee the minority positions in the government and other political offices proportional to their voters is suggested (Beethem & Boyle 1995:21-22).

## **2.6 Approaches to power-sharing.**

### **2.6.1 Autonomy Approach.**

Autonomy, as Yash Ghai (cited in Sisk 2003:144) suggests, is not a term on which there is a consensus definition. Nonetheless, his best effort at one is useful: "Autonomy is a device to allow an ethnic group or other groups claiming a distinct identity to exercise direct control over important affairs of concern to them while allowing the larger entity to exercise those powers which are the common interests of both sections". Among the forms of autonomy is symmetrical federalism, in which all units enjoy similar powers, and asymmetrical federalism that might provide enhanced powers to a particular region. Non-territorial forms of autonomy are also relevant here, e.g. the 'segmental autonomy' advocated by consociationalists, which may give leaders of segments of the population control over particular policy areas affecting them e.g. education.

### **2.6.2 The Integrative Approach. .**

The integrative approach seeks to build multi-ethnic political coalitions (again, usually political parties), to create incentives for political leaders to be moderate on divisive ethnic themes, and to enhance minority influence in majority decision-making (Horowitz, 1985 cited in Sisk 2005). The elements of an integrative approach include electoral systems that encourage pre-election pacts across ethnic lines, non-ethnic federalism that diffuses points of power, and public policies that promote political allegiances that transcend groups (Spears 2002 :124). Some suggest that integrative power sharing is superior in theory, in that it seeks to foster ethnic accommodation by promoting crosscutting interests (Sisk 2005). Spears (2000: 106 &107), however, argues that the use of incentives to promote conciliation will run aground when faced with deep-seated enmities that underlie ethnic disputes and that are hardened during the course of a brutal civil war. This approach by contrast, eschews ethnic groups as the building blocks of a common society. The approach features options that purposefully seek to integrate society along the lines of division. It can also be called "centripetalism," because it tries to engineer a center-oriented spin to political dynamic (Sisk 2005).

### **2.6.3 Group Building-Block Approach.**

Another possible option Sisk notes is a looser form of autonomy, not always explicitly territorial, termed consociationalism. The option is in essence a *group building-block approach* that relies on accommodation by ethnic-group leaders at the political center and guarantees for group autonomy and minority rights; in essence, this approach is "consociational" in that it encourages collaborative decision-making by parties in conflict. The key institutions are federalism and the devolution of power to ethnic groups in territories or policy areas; minority vetoes on issues of particular importance to them; grand coalition cabinets in a parliamentary framework, and proportionality in all spheres of public life.

The above approaches open a window for a critical examination of power-sharing as it brings to bear ethnicity as a core motivation for power-sharing and fails to capture power-

sharing specifically resulting from contested democratic election outcomes as in Zimbabwe and Kenya. This therefore opens to include *disputed elections* as one of the forgotten or new causes of power-sharing.

Even so, a critic of the above typology might argue that autonomy and the group building approach are quite related and should not be seen as distinct because autonomy features as a core characteristic of both.

#### **2.6.4 Disputed Elections Approach**

Having discussed the theory of power-sharing formation and the various approaches to such governments found in Africa, it now falls to analyzing *power-sharing following disputed elections* as a newest continental approach. As earlier highlighted, the resort to power-sharing governments to unchain political impasses in the aftermath of disputed elections in Africa is a new phenomenon that was first pioneered in Kenya and later replicated in Zimbabwe. Debates surrounding the propriety or otherwise of this approach dominated Africa's political discourse immediately following Kenya's experience which was later replicated by Zimbabwe. The uniqueness of this approach lies in that it is only suggested as a solution for ending violence following a flawed electoral process that challenges frail democratic institutions. This approach involves a pattern where incumbents lose elections but due to weak democratic institutions, overhauls the results and declare themselves winners. They refuse to back down even against an upheaval of violent strikes, boycotts and international condemnation which potentially includes economic and political sanctions.

But because the international community is repulsed by the continuous slaughter of innocent citizens, goodwill institutions and individuals offer their services to mediate. As hitherto discussed, the reasons that make power-sharing appealing to mediators now come in to play making power sharing the only suggested route map out of the impasse. In this situation, the purported victors and vanquished are each given a slice of power which makes them see, at least in theory, less incentives to fight. This therefore ends the spectre of bloodshed and interest is now diverted to the formation of a new government that ushers in new institutions. Unlike the other approaches where new features include

federalism, the devolution of power to minority groups etc, the disputed elections approach includes the position of an ostensibly powerful prime minister and an increase in the cabinet size so to incorporate elites of both sides of the divide and a monitoring committee charged with implementation.

Given that this approach offers the loser the opportunity to retain the most powerful position of president as before, coupled with the increasingly vulnerable African democratic institutions, the approach certainly seems appealing to African leaders who do not want to relinquish power to opponents even after they had been defeated. Judging from the African democratic trajectory there is reason to anticipate that this approach that was pioneered in Kenya and replicated in Zimbabwe has come to stay in Africa.

## **2.7 Conclusion**

The democratic tenet in Africa is one that has drawn so much attention in a diversity of issues which have ended up in doubts on the utility of elections as an instrument of political change on the continent. One would have to appreciate that electoral violence in Africa is not simply a function of flawed elections but also significantly a feature of historical components of ethnic diversity and allegiance. Thus the issue of violence requires strategies that seek to address past injustices and prevent similar future occurrences.

## **Chapter Three**

### **The Kenyan Crisis: An analysis**

#### **3.1 Introduction**

Having analyzed the theoretical views of democracy and ethnicity and the resort to coalition governments, this chapter looks more closely at the Kenyan democratic experience, leading up to the 2007/2008 political debacle. Located in the turbulent East African region otherwise referred to as the Horn of Africa, Kenya had maintained an outstanding reputation of uninterrupted peace (Kwatemba, 2008:77, Ajulu 2008:33) until the 2007 elections which ushered in turbulence and bloodshed. The history of Kenyan politics since independence underlines the salience of ethnicity which was at the centre of the post election violence. Kwatemba (2008:78) highlights that there can be no political history of Kenya without due recognition of the part played by ethnicity. Thus before proceeding to investigate the key issues related to the 2007 presidential elections, this chapter attempts to trace the foundation and consolidation of ethnic politics through the regimes of Jomo Kenyatta, Daniel Arap Moi and Mwai Kibaki leading to the 2007/2008 political debacle and the different dynamics employed to curb excessive bloodshed and once more institutionalize order. It further examines the 2008 power-sharing deal and finally settles on why the ODM leadership and supporters found violent protests and thereafter, negotiations useful tools for solving such a political problem rather than adopting a more democratic solution, say, of petitioning the courts.

#### **3.2 Ethnic Politics in Kenya.**

While the origins of ethnic consciousness are debatable, in Kenya as in other parts of Africa it was reinforced when the British colonial administration pronounced boundaries and local governments on the bases of culture and linguistic lines. This decision was predicated on the perception that Africans lived in tribes, so tribes should constitute the bases of colonial administration (Sandbrook & Barker 1985:49&50). After independence



the politics of Kenya was shaped along ethnic lines, thus opening the gates of marginalization as economic and political resources remained accessible only to the ethnic group of the sitting president (Kwatemba 2008: 80). This despite the creation of a one-party system under the pretext that it was necessary for the promotion of national unity and nation building (Mutua 2008: 40 cited in Kwatemba 2008: 80). This new state of affairs then accorded enormous and unchecked power to the president, which unfortunately opened the gateway to a coterie of political elites with ethnic inclinations who created an imperial presidency that favoured the Kikuyu ethnic group from where Kenyatta hailed (Kwatemba 2008:81) to the exclusion of other major ethnic groups, who would always yearn for an opportunity to generate a reversal of these ethnic privileges to their favour. It is important to note that Kenya as a country is constituted of more than 40 ethnic groups of varied proportions including; Kikuyu 22%, Luhya 14%, Luo 13%, Kalenjin 12%, Kamba 11%, Kissi 6%, Meru 6%, Other African 15%, non Africans 1% (Asian, Europeans and Arabs). This ethnic plurality was always liable to complicate nation building, providing plentiful raw material for ethnic political mobilisation (Kenya National Commission for Human Rights Referendum Report (2006:25). Unsurprisingly and correctly, political commentators perceive the violence that rocked Kenya after the 2007 elections as more than anything else a reaction to perceived ethnic exclusion and an expression of an earnest desire for ethnic inclusion. It is thus important that this study plot a route to the analyses of the three post independent regimes with the intention of demonstrating how each regime used ethnic politics to its advantage at the expense of other ethnic groups.

### **3.2.1 The Kenyatta Regime and the establishment of Ethnic Politics.**

On the threshold of independence, it was a sense of nationalism and not ethnicism that guided most of the decisions made by nationalist politicians (Kwatemba 2009:80). For example in 1961 while Jomo Kenyatta was in detention, Jaramogi Oginga Odinga<sup>2</sup> (A Luo) and his fellow compatriots refused to enter independence negotiations with the

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<sup>2</sup> Jaramogi Oginga Odinga is the Father of Raila Odinga, therefore Raila Odinga will be mentioned by his first name 'Raila' throughout this report.

British colonial administration, demanding the release of Kenyatta (Kikuyu) as a precondition (Kwatamba 2009:80.) This decision was based on the premise that entering negotiations with Kenyatta and others still in detention was tantamount to betraying a collective cause that bonded all freedom fighters irrespective of their ethnic origins.

However, at independence two dominant political parties; the Kenyan African National Union (KANU) and Kenyan African Democratic Union (KADU) had emerged representing different ethnic affiliations and divisions that were already taking shape at the approach of independence. KANU represented two large ethnic groups of Kikuyu (Kenyatta's ethnic group) and Luo (Odinga's ethnic group). On the other hand KADU represented the smaller ethnic groups of Kalenjin, Lulya and Giziana who feared domination by the larger ethnic groups (Throup 1993:371). On the first anniversary of independence in 1964, Kenya gained the status of a Republic with Kenyatta as President and Odinga, a member of the radical wing of KANU, was vested with the responsibilities of the prime minister (Ajulu 2009:35). Just then, internal problems led to the dissolution of KADU and members joined the ruling KANU to form a de facto one party system.

This move bolstered the conservative wing of KANU and the protracted ideological differences with the radicals surfaced intensely. During this period not only did Kenyatta become uncomfortable with divergent opinions championed by radicals of his party, he equally began to surround himself with fellow members of his Kikuyu ethnic group to the exclusion of others. This move resulted in the resignation of Odinga and other leading figures to form the Kenya Peoples Union in 1966 (KPU) (Ajulu 2009:35), forcing the country to adopt a multi-party system.

This was just preparing the country to face its second most serious political crisis. In 1969 Tom Mboya who was regarded as the only remaining Luo link to the government was assassinated in Nairobi. His assassination came amid growing resentment by the Luo community of economic and political marginalization by the Kikuyu dominated administration (Ajulu 2009:35). In the same year government banned the KPU and the country returned to a single party system (Okoth-Ogendo 1972: 69). These events

significantly damaged the reputation of the country internationally and further eroded the legitimacy of the Kenyatta regime (Ajulu 2009:36).

Kenyatta's response to these crises was that he sought refuge under his Kikuyu ethnic group which led to the oath-taking campaign. He lured the Kikuyu peasantry and the urban dwellers to an oath designed to unify the Kikuyu ethnic group in a determination to keep the "flag in the house of Mumbai" (Kazimi & Ockueng 1998 in Ajulu 2009:37) that is, the government should stay under Kikuyu leadership. In relation to this, the Gikuyu Embu Meru Association (GEMA) was formed among political elites which became the channel through which state resources and political power was channeled to the exclusion of the other ethnic communities (Kwatamba 2009:81). This paved the way for the accumulation of capital and property within the Kikuyu, particularly the Kiambu group which directly controlled state power. Since then, political manipulation of ethnicity has been rooted in Kenyan politics, with deep seated ethnic prejudices overriding the feeling of national identity. Therefore by the time of his death in 1978, Kenyatta had successfully sowed an ethnic seed that would follow his successors, especially as each tried to divert the privileges to his own ethnic group.

### **3.2.2 The Moi Regime and the institutionalization of ethnic politics.**

Daniel Arap Moi ascended to the position of President following the sudden death of Jomo Kenyatta; as vice president he was the constitutional heir to the position. He was a Kalenjin ethnic member; Kikuyus unsuccessfully mounted an opposition to his accession to power (Matanga 2003:37). Upon accession, he pledged to follow the footsteps of his predecessor in a political philosophy he titled 'Nyayoism' which meant footsteps. But it didn't take long before he dismantled the Kenyatta based Kikuyu political and economic accumulators in favour of his Kalenjin ethnic group (Ajulu 2009; 38). In order to neutralize criticism and gain the confidence of the Kikuyu who had vehemently opposed his rise to power, he appointed Mwai Kibaki, a Kikuyu, as his Vice President. He also returned all the Kenyatta ministers who had made it back to parliament following the

1979 elections. However a total overhaul of the system was made after the 1982 failed coup attempt.

The failed coup was perhaps the most important turning point in Moi's consolidation of power and the institutionalisation of ethnic politics. He openly dismantled the Kenyatta's security and replaced it with his own. He further used it as an opportunity to surround himself with his Kalenjin ethnic cronies (Ajulu 2009: 38). This gave rise to a new Kalenjin political elite who could only access wealth by looting from the already established Kikuyu capital base, as Mutahi Ngunyi (1993) cited in Ajulu (2009:38) puts it, Kalenjin capital accumulation 'could only be predicated on the dissolution of an already entrenched Kikuyu capital'. In other words it was looting from the looters. Furthermore, Moi politicized the allocation of public and private infrastructure such as roads, agricultural and educational investments. He further assisted his ethnic group's accumulation of wealth by opening up parastatals and the other state agencies through which illegal state accumulation was made easy. Access to universities, state and employment was 'Kalenjinised' (Ajulu 2009:39) in an effort to build a Kalenjin political and economic power base. This new state of affairs meant that before the advent of multi party politics in the early 1990's, Moi had consolidated his position through a distinct ethnic solidarity base that would not be easy to break.

At the advent of multipartism Moi's position was that Kenya's one party democracy was the ideal model for the country because it promoted unity among ethnic groups, alerting that multipartism would result in ethnic conflicts and chaos. In his own words "democracy would result in people frying themselves in their own fat" (Appolos 2001 cited in Kwatemala 2008:95). However multiparty democracy did not puncture Moi's strong hold on power as had been expected. This was because opposition parties were formed on the bases of and relied on ethnic allegiance, making opposition parties small and weak. According to Mutua (2008:87) cited in Kwatemala (2008:95) an analysis of the 1991 elections clearly showed the triumph of ethnic ideology over political liberalism.

In 1997, the same ethnic divide replicated itself with all five major ethnic groups fielding presidential candidates, coupled with violence perpetuated by pro-government youth militias who prevented opposition parties from campaigning in the Rift Valley, Western and Coast provinces (Akiwumi Report 1999). It was thus another easy win for Moi's last term in office. But in doing this, he had added another element in Kenyan politics; ethnic violence which would eventually explode at the end of Kibaki's first term.

### **2.2.3 The Kibaki Regime and the Explosion of Ethnic violence.**

The rise to power of Mwai Kibaki was greeted with much euphoria for it signaled the end of KANU's uninterrupted rule since independence. It also marked the beginning of a new political era in Kenyan democracy. The victory of this new government was made easy after opposition parties coalesced under the National Rainbow Coalition (NARC) with the single agenda of winning the 2002 presidential elections. Their choice of Mwai Kibaki (a Kikuyu) as a presidential candidate was a calculated attempt to neutralize the Kikuyu support for KANU's presidential candidate Uhuru Kenyatta – son to late president Jomo Kenyatta.

The NARC government brought with it a spate of changes that expanded the democratic space. However, it wasn't long before tensions started to grow between the initial coalition parties; the National Alliance party of Kenya (NAK) under Kibaki and the Rainbow Alliance under Raila Odinga. Tension is said to have mounted when Kibaki refused to implement the decisions contained in a secret memorandum of understanding (MOU) they had signed during negotiations. Central to this understanding was that a new constitution would be adopted within 100 days in office which will create the office of prime minister to be occupied by Raila. Furthermore, like his predecessors, Kibaki started playing the tribal card. He quickly surrounded himself with his GEMA-ethnic cronies which to them was an opportunity to restore the economic and political power they had lost in 1978. They would therefore begin another episode of channeling resources to the GEMA community so as to regain the ground lost during the years of being outsiders (Oyugi 2006:71).

Kibaki and his ethnic cronies made it clear that the powers of the president would not be diluted. This position was affirmed when the government amended the draft constitution which was popularly known as the Wako draft (named after the country's attorney general) with the effect that the position of premier was removed (Kwatemba 2009:101). The resultant effect was that the draft constitution was rejected in the 2005 referendum that polarized the country along ethnic lines (Mutua 2008 cited in Kwatemba 2009:101). The draft constitution was seen by its detractors as a GEMA attempt to cling to power while the GEMA communities saw it as an attempt to take power away from the GEMA communities (Musambayi 2006:50). Little did people know the ethnic tussle witnessed in the 2005 referendum was a test of strength in preparation to an inter-ethnic bomb that awaited the 2007 elections.

### **3.3 The 2007 Presidential Elections**

The 2007 elections were the fourth in Kenya since the advent of multipartism in the early 1990's. Before 2007, recent past elections had instilled some degree of confidence in the ballot box for most Kenyans. The conduct of the 2002 elections which the opposition won and the 2005 referendum which stopped government's constitutional amendment were generally exemplary and helped in no small way in boosting the electorate who thought their democracy was maturing. No wonder the 2007 elections recorded the highest voter turnout in Kenya's electoral history (Ajulu 46:2008), as people came out in great hope of effecting the much desired redress of historical injustices blamed for ethnic and regional inequalities, economic deprivation and unmitigating poverty. In view of the above, it could not be anticipated that the 2007 elections could end in violence. But taking the nation aback as it did, four issues posed by the elections must be analysed: Preparation to elections, disputed results, violence clashes and the coalition government.

### **3.3.1 Pre election atmosphere and disputed Election Result.**

Even though the December 2007 elections were contested by nine different presidential candidates, it appeared to be a direct clash between President Kibaki of the party of National Unity and a Kikuyu against Raila Odinga of the Orange Democratic Movement (ODM) and a Luo. The atmosphere gearing up to the elections was already dented by mistrust and suspicion as Kibaki had unilaterally appointed all 22 members of the Electoral Commission of Kenya (ECK). This action ran contrary to the Inter Party Parliamentary Group (IPPG) agreement of 1997 that expected political parties to nominate members. It also eroded the perception of neutrality of the commission (Odhiambo 2008:115).

On polling day it is generally accepted that the voting process went well (Keyan election observers 2007 and Odhiambo 114:2008) with the conduct of ECK members exemplary (Odhiambo 114:2008). Trouble set in when results started trickling in from various corners. The early stages of vote counting indicated that Raila's ODM was well in the lead with about one million votes from incumbent president Kibaki. It was also noticed that returning officers covering Kibaki's purported strongholds were nowhere to be found causing delays in vote counting. This coincided with ODM's concerns of disparities between provisional results announced at constituency level and results contained in the statutory forms at the ECK headquarters. Odhiambo (2008:116) further confirms this in his assertion that not only were there discrepancies between results but in a number of areas, vote casts were greater than the number of registered voters. The chairman of the ECK confirmed ODM's fears when he acknowledged that he feared some of the ECK officials had doctored the results (Khadiagala, 2008:7). Mutua (2008) cited in Kwatamba (2008:105) confirms that the elections were flawed particularly at the counting stage and that victory was out rightly stolen from Raila and his ODM.

It is therefore no wonder that when the Chairman (Samuel Kivuitu) announced Kibaki as the winner, the ODM immediately rejected the results. Kuvuitu later confessed that he was not sure who won the elections as he had been forced by PNU and ODM-k to

announce such results (European Union Election Observation Mission report (2007:17) and Khadiagala (2008:7). The rejection of the results thus occasioned an immediate spiral of violent clashes across the board that degenerated with each passing day in to inter-ethnic violence, lasting over several months.

### **3.3.2 Dynamics of violent clashes & effects.**

The violent clashes that engulfed Kenya immediately after the release of the 2007 election results was in most parts regarded as a spontaneous protest action against what was perceived as rigged election results (Haineit & Raph 2008:138). This violence entered history as the worst since independence, leaving over 1300 persons dead with an estimated 500,000 others homeless (Bayne 2008:2). According to Harneit & Ralph (2008:138) the violent attacks can be grouped under three main dynamics, political and social protest accompanied by violent attacks, a clampdown by government security forces and a campaign of ethnic cleansing especially in the Rift Valley resulting in the generalization of more ethnic warfare involving existing militias and revenge attacks.

Minutes after the release of the elections, spontaneous violence broke in many parts of Kenya largely ODM strongholds in protest at what they called rigged elections, which in days ahead turned into ethnic cleansing. Events turned ugly when in the Rift Valley, Kalenji-organized warriors started driving away Kikuyus and PNU supporters employing looting and arson (Khadiagala 2008:7). In Kisumu, it took a different turn as the CBD experienced severe destruction and the Kikuyu and Indian businessmen were forced to flee. It is important to note that the protests were so widespread that regular police force was largely unable to contain them. Ethnicity had also polarized and divided the police force itself, compromising its ability to provide impartial policing (Harneit & Ralph 2008:139).

Perhaps it was these weaknesses that led the government to bring in the Paramilitary General Service Unit (GSU) to quench riots in the burning areas. In a show of state ability to crack down insurgency, as much as 100 people were shot dead in Kisumu, the



capital of Raila's ethnic heartland (Harniet & Ralph 2008:139). It is also noted that the immediate reason for the protest was abandoned in pursuit of redress of long standing grievances arising from a history of ethnic exclusion and accumulation that had little to do with the issue at hand.

As earlier mentioned, thousands of people lost their homes in the process with others taking over the abandoned spaces. Soon afterwards, Kikuyu ethnic militias emerged known as 'mungila' (a Kikuyu sect) who started to defend the Kikuyus. The apex of these attacks was in late January 2008 when the Mungiki group launched a large scale attack on the Luo in two Rift Valley towns of Naivasha and Nakuru with a large Kikuyu population. These attacks in the eyes of many political observers as expressed by Harniet & Ralph (2008:140) established a 'balance of terror' in the ethnic warfare that had hunted Kenya's post election period. It is called a 'balance of terror' because the Kikuyu who had been at the receiving end of the violence came attacking.

Most sources agree that sponsors of such violent acts were political heavy-weights of both the ODM and the PNU, some of whom today hold ministerial positions (Harniet & Ralph 2008:140 & Waki report 2008:121).

Upon handing over its report, the Commission of Inquiry into Post Election violence (CIPEV) reported that prior to the balance of terror attack, a meeting was held in Kibaki's residence. In this light (Waki report 2008:121) it recommends the prosecution of alleged planners and perpetrators of the violence, who also include office holders in both sides of the coalition (Waki report, 2008: 121&122). It was these mounting complexities which prolonged to 40 days and nights an AU sponsored mission to broker a peace deal in Kenya (Khadiagala 2008).

### **3.4 Negotiating the Peace Deals**

Given the escalating tensions and violence that followed the weeks after Kibaki's installation, it was but common for men, women and goodwill institutions to offer their

services in bringing leaders of both sides of the edge to reason peace. It all started with South Africa's Archbishop Emeritus Desmond Tutu who three days into sustained bloodshed offered to bring the contestants to the dialogue table (Khadiagala, 2008:9). Although he failed in his efforts, he had however succeeded in receiving a commitment from ODM, that Raila would accept international mediation (East African Standard (EAS) 3 January, cited in Khadiagala 2008:9). Tutu had thus opened the gateway for mediation. Preceding John Kufuor's arrival was U.S. Assistant Secretary for African Affairs, Jendayi Fraser, who also failed in bringing both parties to the negotiation table but succeeded in issuing the first threats of forceful action against feuding Kenyan parties, warning "we'll find an international mechanism if they can't find it internally" (Lobe 2008 in Khadiagala 2008:11).

It was prior to the arrival of Ghanaian President and AU Chair, John Kufuor, that both parties moderated their demands, with the ODM opting for negotiations rather than the immediate resignation of Kibaki. On the other hand government shifted to incorporating some key ODM figures in to the Cabinet (Khadiagala 2008:12). Although Kufuor did not succeed in effecting a peace deal, his presence and diplomacy led both parties to break the political impasse and agree an unconditional commitment to dialogue (under Kofi Annan) and the use of constitutional means to resolve any conflict (Khadiagala 2008:12).

The shuttle diplomatic success of Kufuor went ahead of Annan's led mediation team of Benjamin Mkapa (former Tanzanian President) and Graca Machel (wife of Nelson Mandela) who finally brokered a handshake between the two protagonists. This was the beginning of a peace deal that culminated in the signing of a power sharing accord on the 28th of February 2008, with far reaching implications.

### **3.5 An Analysis of the Power sharing deal.**

The highly skilled Annan mediation team finally squeezed through a peace deal which led to a power sharing accord. The main thrust of the peace deal was the establishment of

the office of prime minister and head of government and the sharing of cabinet positions among rival parties.

Even though the ‘yes’ vote in the August 2010 referendum enshrined a new constitution which scraped out some important articles that made-up the power-sharing accord like the office of the Prime Minister, which is replaced by the vice president (Article 147 of the 2010 constitution). It further limits the number of ministries from its standing 44 to a maximum of 22 and minimum of 14 for any new government (Article 152 of the 2010 constitution). It however allows the functioning of the coalition government until 2012 when new elections are due or before then, at such a time when coalition partners think otherwise.

But taking an in-depth analysis of the content of the power sharing deal reveals significant insufficiencies and discrepancies which are pertinent to the survival and guarantee of sustainable peace and democracy. It can be justified that the power-sharing accord seeks to satisfy the greed and quench the power thirst of Kenya politicians rather than ensure democratic and development growth of the nation. This is reflected in the formation of a 42 member cabinet at the wake of the coalition, the biggest in Kenyan history (Kiai 2008:164). This leaves the tax payers with the burden of financing the extravagancies of an ‘over-sized’ and ‘inflated’ cabinet despite a devastated economy. This therefore puts the ordinary citizen in a situation of having to pay triple fold for the disputed elections, firstly by bearing the burden of the violent attacks, secondly by paying the cost of the coalition government and thirdly by footing the cost of reconstruction.

Even more interesting was the clause establishing the position of the Prime Minister. This ‘tailor-made’ provision in section 3(2) states that the prime minister shall be an elected member of the National Assembly and also the leader of the largest party in the Assembly. It is ‘tailor-made’ because it’s obvious this clause was made because Raila meets the qualifications. Another issue of interest is that, it is stated that the composition of the coalition government will at all times take into account the principle of portfolio balance and will reflect their respective parliamentary strength (NARA 4(3)). Given this,

ODM would have had the most cabinet positions over PNU. But in practice, PNU does not only hold most but also control the most influential ones as well (280). Disturbing is also section 6(a) of the deal which states that the coalition shall be dissolved if inter alia, the current parliament is dissolved while Section 59 (2) of the Kenyan Constitution dictates that the powers to dissolve parliament solely lies with the president. This so indirectly puts one coalition partner at the mercy of the other. However, the appointment and dismissal of any member of the cabinet lies with the president but with due consultation (NARA section 4(2 & 5)). Apart from this, it is safe to say the deal is structured on a strong presidential system with the president scoring overwhelming powers over his associate -the Prime Minister. However, the new constitution in section 9 (2) entrenches an even stronger presidential system having eroded the position of the P.M. thereby allowing the presidency to accumulate both functions.

According to Ong'ayo, 2008(1), the power sharing deal also falls short of addressing the very factors that occasioned the post election violence in the first place. These include the many decades of political and economic exclusion, as well as the deprivation of opportunities for millions of Kenyans to realize their full potential through the explanation and expropriation of natural resources whose beneficiaries are only the political elite in collaboration with international interest. The deal finally fails to address the problem of a non democratic governance and politicized ethnicity (Ong'ayo 2008:1)

With the above discrepancies, the implementation of the deal raises the question of durable peace, economic prosperity and the democratic order millions of Kenyan seek to see. The issue of the internally displaced, land squatters and the rights of voters that were violated during the elections have not featured in the deal.

However, it would be fair to mention that mediators saw need for the above to be addressed, that is why the settlement included the appointment of two commissions. One, to examine the violence (CIPEV) and the other, an Independent Review Commission (IREC) to investigate the elections from various perspectives (IREC report 2008: ix). ). Even though as an Independent Review Commission established to examine the validity of the results, it also failed to ascertain the winner. It laid blame on the ineptitude and

unprofessionalism of the ECK as the cause of the election fiasco and finally concluded that the conduct of the election at the constituency level was so flawed that it has been impossible for the IREC to determine who had won the elections (Odhiambo 2008:16). In other words the IREC logically decided a 'no winner' verdict, which has been largely seen as pragmatic, yet significant at keeping the Coalition government intact. It may be desirable to indicate that the very fact that IREC was to release its findings months after the institutionalization of the coalition government may have seriously affected its verdict. Otherwise what would have been the outcome of the coalition if the IREC had declared an outright winner? One can rightly argue therefore that the existence of the coalition government born of disputed elections renders undesirable any attempt to determine the winner. In other words, since the basis of the coalition government is disputed elections, naming a single winner is tantamount to dissolving the unity government. Therefore, it remains in the interest of the coalition that the bone of contention remains unresolved. But once the issue remains unresolved it ushers in another issue; the question of legitimacy.

Coalition governments in the aftermath of disputed elections rests on a fragile legitimacy. This assertion is particularly true of Kenya's coalition government in the light of IREC's verdict. If neither Kibaki nor Raila won the 2007 presidential elections, then neither of them can confidently assert that he is in office legitimately. It must be noted that both of them have accepted the IREC report. Thus it would only have been fair if the coalition acted on an interim bases at the end of which fresh elections are conducted. But as it stands today, it seems Kenyans never went to the poll in the first place, and what happened can be described as Kibaki's cabinet of national unity. Therefore, the post election violence in Kenya and the peace deal seem to be aimed at solving the differences between the political power elites rather than fostering the much needed sustainable democracy.

### **3.6 Why ODM Resorted to Negotiations and not the Courts**

In an ideal setting the ODM would certainly have petitioned the courts to overturn Kibaki's alleged victory. This was the case in 1992 and 1997 when Matiba and Kibaki, respectively, challenged Moi's re-elections. But Raila was simply categorical that he would not petition Kibaki's courts (Ouko 2008:23). What could be the reasons behind such a gloomy statement? The answers to this include inter-alia the fact that there existed no time frame within which the courts must hand in their verdict on a given electoral petition. This is evident in 2003 when 34 petitions were filed against the 2002 elections and it took three to four years for the courts to hand their judgment with about three petitions verdicts yet to be handed (Odhiambo 2008:119).

Secondly, the law does not provide a special court for the arbitration of electoral disputes; given this omission, judges to adjudicate a petition are appointed by the Attorney General. The Attorney General in question was not only appointed by Kibaki as per article (61(1) of the Constitution of Kenya, he also answered present at his secret swearing-in ceremony. This therefore created doubts in the minds of the ODM members as to the impartiality of the judiciary in adjudicating the problem if it was taken to the law court.

Thirdly, the law in section 7, section 20(1)(a) of the National Assembly and Presidential Election Act also requires that election petition must be addressed personally to the respondent . In this case, the respondent- Kibaki had already assumed the position of the President and as such the protocol and security that surrounded him would have made it difficult if not impossible to effect the service.

If one makes use of the above analysis, then it offers an insight as to why the ODM insisted on negotiations rather than judicial means when violence did not prove useful. In this case, the resolution of election disputes by negotiations with a perceived vanquished is a reflection of the failure of the institutions of democracy; in this case the judiciary and the ECK. Perhaps it was this gap which led the IREC to recommend a complete overhaul

of the ECK (IREC report 2008) which led parliament to pass a constitutional amendment in November 2008 abolishing the ECK and replacing it with two interim Commissions, the Interim Independent Commission and the Interim Boundary Commission (Odhiambo 2008:120). In the long run, such reforms should also include the judiciary, unless the future political contestants think negotiation is a good way out of election disputes.

### **3.7 Conclusion**

There is overwhelming evidence that the 2008 post election violence was an explosion of accumulated grievances of ethnic marginalization and other important factors other than just flawed elections. Furthermore, it has been seen that the coalition government so-far has revealed some short-comings that incapacitates its effective commitment to provide sustainable peace and democracy. Therefore, the route to be taken by Kenya is first of all to address historical grievances of ethnic marginalization and also to encourage the formation of inclusive governments that take in to account Kenya's ethnic diversity. Finally, to ensure sustainable peace is to institute meaningful democracy and democratic institutions like an impartial and independent election governing body and courts that should gain the confidence of the people in their ability to freely and effectively adjudicate election irregularities without fear and favour.

## **Chapter Four**

### **The Zimbabwean Crisis: An Analysis**

#### **4.1 Introduction**

Having analyzed the Kenyan political situation, leading up to the 2008 power-sharing deal, Zimbabwe which learned the dynamics of power-sharing also comes into context. Happenings in Zimbabwe in the last decade have pushed the Southern African nation to an unprecedented prominence in international news organs, and have raised general concern as to the plight of Zimbabwean people.

A country once reputed for its abundance in agricultural produce, today is faced with a tragic food crisis with about 5 million of its citizens relying on international food aid (Bratton & Masunungure 2008 cited in Calbourne, 2010:7) for survival. Inflation in November 2008 rose to a staggering 231 million percent, rendering the national currency almost useless, before finally being brought under control by US dollarisation. Needless to say the economy had disintegrated making life completely unbearable for the average citizen. This partially explains the mass exodus of Zimbabwean migrants to neighboring countries. Also the supreme reign of political terror that has engulfed the country in recent years especially with the arrest, detention and brutal beatings meted on members of the opposition parties have also largely contributed to this mass exodus. The above, coupled with a poor democratic show have all contributed in bringing the country to its knees and opening the area for this study.

This chapter opens an inquiry in to the historical happenings that have stifled democracy in Zimbabwe leading to a situation where the ruling party runs the presidential elections unopposed with opposition leaders going in hiding. It further looks at the 2008 presidential elections ordeal, leading to the political impasse that could only be averted by a power-sharing deal. The chapter then narrows down with an exhaustive analysis of the September 15<sup>th</sup> 2008 power-



sharing deal referred to as the Global Political Agreement (GPA), pointing its flaws and oversights.

## 4.2 Historical Brief of the Crisis

It is widely accepted that the roots of this political and economic disintegration are embedded in a long history of land contestation tracing back to the early colonial period (Alexander 2006). Alexander (2006) further highlights that a change in government policy in the 1990s of acting against illegal farm settlers (known as squatters), encouraged and was complicit in the violent seizure of white owned farm land in the 2000s which soon metamorphosed in to political crisis. Alexander (2009) holds that the transformation from land to political and economic crisis started when in 1997, the state agreed to meet long standing and neglected demands for financial and land compensation to war veterans of the Zimbabwean liberation struggle. In the mid 1990s, as indicated by Tongkeh in his *Zimbabwe and Western Sanctions: Motives and Implications* (2005), Mugabe was caught between intense pressure from the dispossessed blacks whom he had promised land during the liberation struggle and satisfying white land owners to ensure friendly ties with and support from Western financial donors. When he resorted to the former, it signaled the beginning of the end of the friendly relationship he had enjoyed with the west especially the US and the UK, engaging them in a bitter row of diplomatic intolerance characterised by sanctions (aimed at weakening the Zimbabwean economy and removing the regime from power), threats and verbal exchanges (Tongkeh, 2008) . According to Connie White in *Sanctions on Zimbabwe: Africa Under Attack* (2003), While the US and EU continued with sanctions and pressure to stop land seizure, Mugabe and his cronies vowed not to give-up, claiming the EU and US had an ‘illegal’ interest in Zimbabwe, further claiming that it is unjust for just 1% of the population to own 95% of the total arable land.

This policy forged a new political alliance between the state and the war veterans which not only became instrumental in the seizure of white owned commercial farms for redistribution to pro ZANU PF members (an act that dictated the fate of the country down

the path to hunger and starvation) it also became crucial in the state's response to its defeats (Alexander 2009) culminating in the 2000 referendum defeat which ZANU PF labeled a 'worrying victory' for newly created MDC party. The launch of the Movement for Democratic Change (MDC) party in 1999 signaled the beginning of a new political era for Zimbabwe, coming to challenge the unopposed and all powerful ZANU PF. It soon became a torn in flesh of the ruling party as it gained the support of not only the white settlers whose farms were being seized, but also of western governments who thought it was a means by which Mugabe would be ousted. This new party also raised the hopes of marginalised Zimbabweans of a political power change when they came from behind to overturn the proposed ZANU PF constitutional referendum which if passed would have given the government legal powers to take over white owned farms without compensation (Tongkeh, 2008). This no doubt became the most significant victory of the MDC as it accentuated the new party as the 'hope' of anti ZANU PF Zimbabweans. Even though some analysts have termed the 'No' vote a surprise, while others see it in relation to the support of the Western donor countries to the opposition MDC, Kriger (2007:70) sees the "No" vote as none of the above and as no surprise given the following set of reasons: The referendum came in the wake of a disastrous Economic Adjustment Program the government had adopted in early 1990's and also the costly and unbudgeted payout of war veteran's grants compounded by the country's involvement in the 1998 peace keeping mission in the Democratic Republic of Congo (DRC) where in half a year the government had spent more money than it had done on land purchases since 1980, plus the corruption and embezzlement of state funds by the ZANU PF elite. Given this therefore the No vote could be considered not as vote against the proposed constitutional revision per se, but as a warning vote against state mismanagement and a pointer to how future elections may look.

It is worth noting that while the 2000 referendum election turn-out stood at only 1.3 million voters (the lowest ever turnout since 2000) parliamentary elections of the same year recorded about 5.8 million voters, a figure supposedly one of the highest in Zimbabwean history (Pottie 2000). Two reasons may have accounted for this. The victory of the 'No' vote may have

galvanized voters to the fact that political change could well be brought to Zimbabwe through the ballot not the bullet nor through international sanctions. The second reason could as well be the relatively peaceful and democratic manner in which the referendum was organized, free from violence, intimidation, electoral malpractices and fraud that previously and thereafter characterized the electoral atmosphere of Zimbabwe.

Again, the MDC curtailed the ZANU PF parliamentary monopoly, coming close to a win by rallying 45.5% of the votes cast representing 57 against 47.2% of the vote and 62 seats for the ZANU PF (Mathebula 2010:46). In parliamentary terms, the MDC number could stop a constitutional amendment but could not stop or prevent a normal legislation from being passed; a weakness that in 2002 acted against the MDC. Despite the above, the 2000 election had thus marked a decline in the fortunes of the ruling ZANU PF while placing MDC as a political force in Zimbabwean politics.

It became apparent that if something was not done to frustrate the soaring reputation of the MDC by the ruling elite, they were simply on track to lose power in the next elections. This in mind, ZANU PF employed its parliamentary majority to their advantage to pass the Public Order and Security Act (POSA), a ‘tyrannical’ piece of legislation which accorded untold powers to the Zimbabwean police which has for a long time reinforced Mugabe’s grip on power (Colburne, 2010) and which has been used as a tool of oppression and intimidation against pro MDC supporters and leaders and against anti ZANU PF campaigns.

Notwithstanding national and international pressure against Mugabe’s rule of impunity (galvanised by former colonial master Britain and its ally the USA) he has decided never to submit to their ‘neocolonialist’ demands even if it means presiding over Zimbabwe’s total state collapse. He presented his actions as a fight against western colonization and branded his opponents as “sell outs” (Matyszak 2008).

It is only fair to mention that since 2000, the Zimbabwean elections calendar has been rigorously followed, but for 2008 parliamentary elections which were originally slated for 2010. Even though regular elections are held, international observers and political analysts have confirmed that the elections playing field has never been leveled for equal participation. They have therefore presented Zimbabwean elections as a simple tool to legitimize the stay of Mugabe and his cronies. But just how a leader like this manages to retain political grip on power in the mist of such international sanctions, threats and economic boycotts which have all contributed to a dehumanizing crises remains a puzzle. However, political analysts have been quick to point to manipulated elections, oppression and loyalty (especially that of the military) as the cornerstone of his political grip on power.

The manner in which election organization has been carried out in Zimbabwe seems to be starkly contrary to the underlying theory that repeated elections whether successful or not reinforce the democratization process (Mathebula 2001:42). As earlier noted, Lindberg (2006:139) argues that elections regardless of their relative freeness and fairness have a positive impact on human rights and democratic value, a claim further supported by Adejumobi (2005:20) cited in Mathebula (2010:42) for whom elections remain a viable means of securing the orderly process of leadership succession and change. But in reality, the reason for elections in Zimbabwe according to Norman cited in Colbourne (2010:37) is to present Mugabe with a unique opportunity to identify his opponents whom he could then prosecute. This possibility cannot be denied judging from the large number of Zimbabwean oppositions activists tortured, detained and even killed by pro government militias especially during election periods. For example, after 2008 general elections alone, over 50 Zimbabwean were murdered, at least 2000 injured and over 30,000 displaced as a result of widespread electoral violence involving state owned machinery (Bratton & Masunungure 2008).

### **4.3 2008 Elections and its Aftermath**

Unlike in Kenya where mediators flew in to broker a post election impasse, the pre-election atmosphere in Zimbabwe was characterized by political mediation anchored by SADC. The beginning of these mediation efforts was the final outcome of an extraordinary SADC summit of heads of states and governments which mandated Thabo Mbeki to lead negotiations in Zimbabwe aimed at establishing conditions for free and fair elections in Zimbabwe in 2008 and to further ensure that the election outcome is accepted by all parties (EISA, 2008:9). This outcome was in response to a complaint filed by the MDC of ZANU PF's intimidation, harassment and organized violence against its supporters. The pre-election mediation success included minor amendments to electoral, media and security laws, a draft constitution and issues of violence, sanctions and food aid (The Star Newspaper, 10 January 2008, p. 3). Even as this led to a happy beginning in the run-up to the elections, it was never to last as ZANU PF strongly opposed the implementation of the amended sections of the constitution before the election, arguing that such changes must be effected by a referendum. The mediation effort was further hampered by Mugabe's unilateral announcement of March 2008 as the election date which the MDC described as a slap on the face of SADC's mediation effort (Mail & Guardian, 28 Jan 2008).

In all, the efforts of regional mediators were not all dashed as the Electoral Institute for the Sustainability of Democracy (EISA) observer mission report (2008:27) commended the peaceful environment that prevailed months leading to the 2008 elections, reporting that "unlike in previous elections, the campaign period was generally characterized by freedom of assembly, freedom of association, freedom of movement and freedom of speech, which could generally be exercised without due hindrance". Harare residents revealed that

for the first time in a decade they were free to wear political regalia and display posters of their preferred candidates without intimidation (EISA 2008).

Even though the above commended environment prevailed, there were minor abuses as several stakeholders pointed out that the ruling party's posters were visibly forcefully planted on individual cars or houses and in other areas, and the ruling party agents would force markets to close down for community members to attend their rallies. Questions were also raised on the commitment of parties to accept the election verdict. Unlike in Kenya where the opposition threatened not to accept election results due to a wide range of irregularities, in Zimbabwe, it was pro-government security and intelligent forces who were quoted to have publicly declared that they would not accept a pro-opposition election results (Herald & nation media cited in EISA 2008:41). President Mugabe who was expected to denounce such undemocratic comments is rather quoted to have endorsed them when he stated that the MDC will never be allowed to rule this country "... Only God, who appoints me, will remove me..." (Solidarity peace trust, cited in EISA 2008:28).

This therefore means that the incumbent was ready to do whatever it takes to ensure the next five years in power, when he said there will "never be a regime change here.....never" (The Mail and Guardian Newspaper, 20-27 March 2008, p. 6). How then could elections possibly be free or regarded as fair under such circumstances?

#### **4.3.1 Alleged Election Irregularities**

As earlier mentioned, the pre-election period of March 2008 elections were fairer than earlier elections and so was polling day. The Zimbabwean law (Electoral Act, 61-64 of 2007) prescribed that after the close of the day, the counting of ballots is to take place at the polling stations where the voting took place. This should be done in the presence of accredited international observers,

polling officers, national observers, the candidates and their election representatives. The result return slip should then be shown to all present. Thereafter, a copy of the return should be displayed outside the polling station. Election observers confirmed that this is in fact what was observed in March 2008 elections (EISA 2008).

Trouble began to set in after the result started trickling in at the ZEC headquarters. The pace of verification, tabulation and announcement of results was unusually slow. This and the opaque nature of the process raised concerns and rumors of vote rigging thereby fueling political tension. Even after the parliamentary, senatorial and local election result was released, concern still mounted why the presidential results were being delayed more than anticipated (ZESN 2008).

Notwithstanding the fact that both MDC and ZANU PF were challenging each other's parliamentary results in and outside the court, tension mounted when the ZEC national command centre, responsible for verification and tabulation of results, was closed down from the 6<sup>th</sup> of April to the 1<sup>st</sup> of May without having proclaimed the presidential election results, and with no apparent justification for that (EISA 2008).

Having waited too long for the proclamation of the results, the MDC petitioned the high court for an order compelling the immediate release of election results. On the 14<sup>th</sup> of April 2008, when the court dismissed its application with no valid reasons (Mulenga 2008, Mpofu 2008 cited in EISA 2008), the MDC responded by calling an indefinite prolonged general strike which was largely unheeded (Marawanyika 2008 cited in EISA 2008).

On May 2<sup>nd</sup> 2008, the long overdue presidential election result was declared. The result disclosed that none of the candidates had clinched a straight majority and so in terms of section 110 of the 2007 Electoral Act, a re-run was needed

between the two leading contenders (Tsvangirai and Mugabe). Many observers questioned the validity of the results, placing doubts on transparency in the verification, collection and tabulation of results and also on the fact that the party representatives who by law were to be invited to witness these stages were not invited. The MDC dismissed the results as fraudulent and not a true reflection of the Zimbabwean majority (MDC, 2008). The MDC however agreed to participate in the run-off only if certain conditions were fulfilled. They included:

- Run-off to take place within two weeks, not later than 23<sup>rd</sup> May.
- Cessation of violence
- Unrestricted access to international observers
- SADC peacekeeping force to be on the ground
- Re-constitution of ZEC and
- A free press – local and international

Even though the government rejected most of these demands, the MDC did not give up hopes as their campaign continued. The MDC took the international community by storm when on June 22 2008 it announced through its presidential candidate Morgan Tsvangirai that the party was pulling out of the run-off citing widespread violence unleashed on the people of Zimbabwe as a result of the MDC victory in the March 29 elections claiming that “this violent distribution agenda has seen over 200,000 people internally displaced and over 86 MDC supporters killed, over 20,000 homes have been destroyed and over 10,000 people have been injured and maimed in this orgy of violence” (EISA 2008, and MDC 2008). The above therefore left Mugabe the sole contender, leading him to a much needed victory as the ZEC declared him an 85% winner of the run-off.

The situation in Zimbabwe so raised international concern that on the 1<sup>st</sup> of July, the African Union (2008) summit held in Egypt passed a resolution that called



for negotiations between Mugabe and Tsvangirai and proposed the formation of a government of national unity. Three weeks after this call Thabo Mbeki, acting under the auspices of SADC, was able to secure a memorandum of understanding (MOU 2008) signed by leaders of ZANU PF and the MDC factions in Harare. The MOU 2008 was a commitment “to dialogue with each other with a view to creating a genuine, viable, permanent and sustainable solution to the Zimbabwean situation” (MOU 2008: Act 2). The parties adhered to MOU and as soon as the 15<sup>th</sup> of September 2008, an agreement herein and after referred to as the Global Political Agreement (GPA) had been agreed upon and signed by the various stake holders. Signing the deal was never much of an issue but the lapses and shortcomings of the GPA compounded by greed and unwillingness to accept compromises by stakeholders made implementation difficult especially over the allocation of ministries.

#### **4.4 An Examination of the Global Political Agreement.**

A careful perusal of the 20 page document suggested a daunting task of getting both parties adhere to the letter and spirit of the agreement especially given the divergent positions of the different stake holders prior to the agreement. This position is further based on the fact that apart from SADC and AU as facilitators and monitors of the Global Political Agreement, (GPA) the only standing committee tasked with the implementation is the Joint Monitoring and Implementation Committee (JOMIC) whose composition is made up of only members of ZANU PF and MDC (Article 22:1), who are most likely to spend endless time arguing if a section of the agreement has been breached or not. Even so, JOMIC holds no coercive powers to ensure implementation or adherence. Apart from this, the document as a whole fails to spell out any sanctions should any party fail to comply with the terms of the deal.

After the agreement was signed on the 15<sup>th</sup> of September 2008, it took many more months of negotiations and diplomacy to ensure enforcement and the

formation of the government of national unity which was the first step to effective implementation. One would suggest that the feet dragging and wrangling that preoccupied this period over the allocation of ministries was the unwillingness to be flexible and make the much needed concessions as had been prescribed by article 20 of the agreement or simply because the agreement lacked explicitness and precision. For example, the agreement does not only fail in allocating positions based on the principle of portfolio balance i.e. number of ministries should reflect the number of seats in parliament, it also makes a serious omission of not announcing which party should occupy which ministry. Apart from announcing that ZANU PF will occupy the position of 1<sup>st</sup> and 2<sup>nd</sup> vice presidents (20.1.6(2)) while MDC-T and MDC-M nominate occupants for the 1<sup>st</sup> and 2<sup>nd</sup> vice prime minister, it only declares that of the 31 ministers to be appointed, 15 are to be nominated by ZANU PF, 13 by MDC-T and 3 by MDC-M (Article 20.1.6(6)). Because the agreement erected this gap, the point of conflict during this period was which party occupies the Finance ministry, Home Affairs, External Relation, Information & Local government which are considered vital organs of effective power, but for the ministry of defense which had long been surrendered to ZANU PF (Matyazak 2008). The Zimbabwean agreement seems to be biased because unlike in Kenya where the majority in parliament provided the most number of ministers as aforementioned, in Zimbabwe ZANU PF with a minority in parliament does not only occupy the most ministries, it directs the most influential as well.

As one further analyses the agreement, it becomes clear that the purpose for the formation of the post of prime minister (to share the executive powers of the president) is overshadowed as the president remains firmly in control. This is affirmed by Mugabe himself when he reassured his supporters that he remains in charge a few minutes after signing the GPA (Matyszak 2008). Indeed Mugabe retains most of the powers he wielded before. He and his party not only retain control of most of the key ministries, his security apparatus remains perfectly under control. According to IDASA (2009) Mugabe continues to

unilaterally appoint ZANU PF members to permanent secretaries in ministries, Ambassadors, Governor of the reserve bank and Attorney General even against the wish and consent of the MDC.

Finally, the fact that the principle of portfolio balance was neglected also means that Mugabe and his party are able to have a majority in cabinet. The agreement has not assured the opposition of a majority when one reads the agreement vis a vis the constitution. The letter of the agreement as read concurrently with the constitution determines 17 members of the MDC formation (Matyszak 2008) (16 ministers and prime minister) while ZANU PF holds 19 i.e. including 15 ministers, President, 2 vice presidents, the Attorney general as a non-voting member (Section 76(3b)(a) of the Constitution). There is nothing in the agreement nor in the Constitution to suggest that the two deputy prime ministers will also sit in cabinet.

The above suggest that perhaps in a bid to hurriedly secure an agreement to dampen rising tension the MDC accepted an agreement that would not guarantee real and meaningful power-sharing of executive authority.

Finally, the difficulty in the implementation of the deal in Zimbabwe can partially be explained under the liberation discourse, which resonates not only in Zimbabwe but also in most of the Southern Africa. Unlike Kenya which is a much more open society that has undergone different phases of democratic transition, Zimbabwe is coming out from a history of political liberation which shapes the ideology and philosophy of the major political actors and guides their sense of entitlement. It follows that any political ideology outside the liberation mainstream is branded as a sellout to colonialism. Therefore Zimbabwe's political challenge is to secure a transformation from a liberation movement controlling the state to a more open society where the people can decide an alternative political leader and agenda.

## 4.5 Conclusion

The land crisis appear to have been the root cause of the decade long political meltdown that has occasioned the onset of Zimbabwe's economic stagnation. Also, the EU and US economic and political sanctions on Zimbabwe and its leaders compounded by the latter's fear of getting prosecuted should they relinquish power have been positive contributors to ZANU PF's heavy hand in politics and its refusal to leave office. Looking at the power-sharing deal, one realizes that ZANU PF's acceptance of the GPA was not for the sake of reconciliation with their adversaries; it was rather on the basis of using them to legitimize its position and getting loose the external sanctions once imposed. It is perhaps because this intention was not met that ZANU PF today pushes strongly for new elections to get rid of an unworkable union even though it's still at variance with the MDC with the drafting and implementation of a new constitution that should guarantee meaningful democracy and the necessary reforms in the electoral law as recommended by the GPA. Finally, should new elections take place in Zimbabwe under the prevalent status quo, nothing should be expected to change from the previous ones; oppression and violence will remain as useful as in the past.

## **Chapter Five**

### **Kenya & Zimbabwe in Comparative Perspective**

#### **5.1 Introduction**

Having taken a closer look at dynamics of power-sharing deal in Kenya and Zimbabwe, realizing that in both cases post election violence had different historical underpinnings, the fact that both countries followed the same political trajectory of power-sharing almost at the same period, leaves little doubt that the different case studies hold much in common and therefore opens an interesting comparison between the two. What follows is an attempt to go further than most existing literature in addressing both similarities and differences between these two cases.

#### **5.2 Differences**

Kenya & Zimbabwe are significantly different in some ways relevant to the study. Even though they shared the same colonial master, Kenya gained independence much earlier in 1960 while Zimbabwe's independence came 20 years later. Furthermore, Kenya has successfully passed through three different political regimes while Zimbabwe still struggles with the first.

Violence started in Kenya just minutes after proclamation of results and within hours it had taken an ethnic dimension. Early attacks were directed on members of the Kikuyu ethnic group, perceived to be supporters of the incumbent Kibaki. Even though retaliatory attacks were organized by the outlawed 'Mungiki' group, it however poses a fundamental difference with the Zimbabwean situation in that, violence in Zimbabwe was orchestrated by pro-government militias against opposition members and leaders even before proclamation and was also not limited by ethnic barriers. Furthermore, in Kenya, victims of the violent clashes were visible on both sides of the political

and ethnic divides unlike Zimbabwe where victims of assaults and political violence were limited to opposition activists.

The power-sharing deal in Kenya, seemed to have brought together erstwhile political friends <sup>3</sup> to once more reason and work together in achieving set goals of peace and political stability unlike Zimbabwe, where it brought long standing political enemies to reason in the same direction. The difference between the two situations became clear once the attention of the international actors had moved elsewhere, leaving the political field to local institutional and partisan players. In Kenya for example, while there are undoubtedly problems within the coalition partners, there seem to exist more areas of cooperation than animosity especially in comparison to Zimbabwe. The drafting of a new constitution that had a smooth drive through a referendum acclaimed by both partners as a democratic victory is just one of the many examples. Furthermore, the collusion of both the PNU and ODM in parliament to deny victims of the post election violence justice by jointly voting against the setting-up of a tribunal to try perpetrators and instigators of the post election violence as recommended by the Waki commission is another area of cooperation. On the other hand, ZANU PF and MDC continue to play the “cat and mouse” game. The arrest and detention of the MDC treasurer on the eve of the inauguration of the coalition government was a slap in the face of the peace deal. The MDC continues to cry foul at its constant marginalization in key decision making. Not only has the MDC threatened pulling out of this ‘unholy alliance’ on several occasions, at the time of writing this report, they have taken ZANU PF to court on charges of open violation of the agreement. They have charged ZANU PF and President Mugabe for ‘illegally’ appointing without consultation pro-ZANU PF members as ambassadors, governor of the reserve bank and provincial governors even in provinces that were won by the opposition. These appointments are a direct

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<sup>3</sup> in 2002, the parties of Raila and Kibaki coalesced to veto the proposed constitutional amendment in a referendum and soon after, their presidential candidate Kibaki won the presidential election on the coalition ticket

defiance of article XXI (p) of the GPA which seeks consultation (therefore, consent) with the prime minister before any such key appointments are made.

Continuing with this contrast, close to two years after the signing of the peace agreement, the Kenyan socio-political economy seems to be stabilizing and growing as evident in the home return of the thousands of people who were displaced and also in the drafting and progressive implementation of a new constitution. Meanwhile, displaced Zimbabweans are still hoping for an end to political and economic setbacks. The question of Zimbabweans returning home to a country that is plagued by economic hardship (despite the first signs of economic stabilization) still hangs in the balance. After all, the very problems which forced them out are yet to be fully resolved.

In Kenya, while implementation of the deals was left solely in the hands of the coalition partners - Party of National Unity (PNU) and Orange Democratic Movement (ODM) - who both pledged to uphold the letter and spirit of the agreement, the Zimbabwe situation was a little different as from time to time Mbeki and SADC flew in to mediate during implementation deadlocks which were a usual occurrence. With Mbeki out of the picture, President Zuma, now charged with overseeing the implementation struggle, has set-up a committee who are charged with ensuring compliance and reporting (Dzirutwe & Banyana, 2010)

Another difference was the nature of actors involved at the negotiating table. Unlike Kenya where negotiations were directly under the whims and caprices of civilian politicians, in Zimbabwe, the military under the guise of JOC was present. Their ever increasing support for Mugabe and ZANU PF made compromise difficult for ZANU PF during and after the deal. It is therefore a combination of these that have made respect of the deal difficult while in Kenya, the history of elite cohesion and the absence of the military in negotiations are believed to be behind the less stressful implementation and

respect of the deal. For example, at the time of writing this, Zimbabwe is still dragging feet at calling a constitutional referendum; twenty-six months after they agreed on an 18 months period to do so. Even though Kenya's referendum came later than was scheduled, both parties were happy with the outcome of the referendum that adopted a new constitution (Barasa, 2010).

Interestingly though, both incumbent presidents did not only refuse to hand over their president positions even as their self proclaimed victories were quite controversial and marred by condemnation, they both sought to maintain control over the main levers of political power: including the ministries of defense, police and home affairs, external relation etc. In both cases, another significant difference was that because of Zimbabwe's desperate economic plight coupled with the unreserved western (donor) preference for MDC, the powerful ministry of finance was given to the opposition MDC (Cheeseman 2009:219) in a bid to change western perception and rally international financial assistance.

### **5.3 Similarities**

Apart from the fact that both incumbent presidents allegedly lost elections but refused to relinquish power in its entirety, they were both willing to share power as long as it assured them of the dominant presidency from where they would be able to veto reforms they consider are problematic and detrimental to their stay in power. In both cases, opposition parties hold parliamentary majorities but lack the requisite executive power to show for it.

Significantly, both power-sharing agreements also led to the creation of the new position of an executive prime minister which was occupied by the professed election victors (Raila for Kenya and Tsvangirira for Zimbabwe) to whom the president was expected to cede some powers. Also the structure of the governments portray another similarity in that cabinet positions were more or



less distributed down the middle between the oppositions and the incumbent government and in both cases the incumbent maintained control of the most powerful ministries considered the hub of power which includes the ministries of defense, foreign affairs, home affairs and internal security . The fundamental difference here was the allocation of the vital finance ministry to the opposition in Zimbabwe because international donors seriously wanted the MDC to handle this critical portfolio which is vital for state reconstruction.

Similarly, the signing of the deals in Zimbabwe and Kenya failed to give any meaningful guarantee of an end to electoral malpractices and violence. Evident is the fact that perpetrators of the violence are yet to be punished and there exist no clause in any of the agreements stating that they be punished as a deterrent to future occurrences. However, this does not deny the fact that the Kenyan government<sup>4</sup> has continuously turned down calls to try perpetrators or hand them over to the International Criminal Court for trials. This therefore means that the state machinery may just be recycling perpetrators for the next elections.

Finally, both peace deals were negotiated behind closed doors and championed by eminent African personalities and the deals were signed amidst growing international concern and pressure.

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<sup>4</sup> Both ODM and PNU seem to agree on pardoning instigators and perpetrators of the post election violence because top officials and supporters on both sides are included in the lists handed to the ICC by Annan

## **Chapter Six**

### **Conclusion and Recommendations**

#### **6.1 General Conclusion.**

Electoral outcomes in Africa can be said to be dependent not on voices of the majority who are supposed to dictate the entry and exit of leadership, but rather on how powerful the ruling executive is vis a vis the military. The modus operandi of these regimes lie in their ability to negotiate symbolic security alliances and mutual sinecure benefits with the military. Thus, these regimes are noted for a system of oppression of citizenry leading to an impotent civil society which works perfectly to their advantage. Once these important forces have been neutralized, executive impunity rises and every democratic activity is sanctioned at their whims and caprices. The ballot box therefore is simply reduced to an instrument of legitimization. These state of affairs leads to the breakdown in the electoral process which competitors don't take kindly. Once the electoral process is perceived as flawed, violence is hence introduced as an alternative to achieving what could not be achieved at the polls.

Notwithstanding, an analysis of the electoral violence reveals flawed elections as just part of a larger picture of violence aimed at addressing deep seated historical grievances of marginalization . Therefore once the integrity of the elections is tampered with, past memories of historical injustices are evoked (injustices that were to be addressed through the polls) paving the way for street action. This meets earlier analyses that the violence which followed Kenya's last election was largely a reaction to the history of marginalization, injustices and deprivation. Thus in attempting to give lasting solutions to the crisis, power-sharing continues to be reflected as the ideal approach to ending such wanton brutality against fellow humans. As hitherto analyzed, the resort to power-sharing may just be momentary solutions, acting to save both states from collapse, but far from an active solution that can be considered sustainable or that which consolidates democracy. What has been noticed to flow from these examples of power-sharing have

rather been monopolization of power and deepening conflicts especially in Zimbabwe that in a sense may well be exploiting the next available opportunity to explode. This approach of power-sharing exemplified in Kenya and Zimbabwe gives very few reasons to be optimistic about it being a sustainable solution as it fails to tackle the root causes of the violence and also the fact that both coalition partners carry with them different political ideologies making deal implementation difficult and stifling decision making. Furthermore, this sort of power-sharing runs parallel to democracy and seems to redefine democracy as it means consensus of political elite rather than instituting the will of the majority. Judging from these case studies, this approach of power-sharing may be setting a dangerous precedent in Africa as leaders may see an incentive to cling to power even after losing an election in the intention of sharing power with their foes. The recent political climate in Cote D'ivoire where the incumbent refuses to be defeated and clings to power authenticates this view. However, to end the cycle of bloodshed like in Kenya and Zimbabwe, power-sharing may remain the option between the status quo and total state collapse. This option has already been proposed by Thabo Mbeki on an AU assignment to end the impasse.

If there is one thing to be learned from these case studies, it is that a society that holds off from addressing grievances only helps accumulate them for future explosions. In addition, power-sharing deals following disputed elections may act as a temporary solution to unchaining political deadlocks and a cycle of wanton bloodshed but should never be thought of as a permanent nor as a democratic solution. Even so, for it to become an effective temporary solution, it must be backed by a genuine desire and commitment by the various stake holders to effect peace. And for it to be transformed in to long term solutions there should be sufficient commitment and innovation to create appropriate democratic institutions and structures which are strengthened by a strong constitution that actively accommodates all groups within the mainstream social, economic and political society. Even though an analyses of the new Kenyan Constitution go beyond the scope of this study, it is but fair to mention that the constitution adopted in August 2010 has not only been applauded because it's an American style constitution, it has come a long way to addressing most of the deep seated problems that have centered

socio-political and economic discourse in Kenya. However, caution must be taken before concluding that the democratisation landscape of Kenya will change for the better simply because a wonderfully written constitution has been adopted. This is because, not once have we seen countries go down in turmoil behind such ‘flawless’ constitutions. So, until implementation of the constitution is done and in good faith, there is still need for cautious optimism in Kenya.

## **6.2 Recommendations**

Considering the emergence and nature of violent post elections in Africa, taking consideration of the thousands of productive lives, taken by such violence, the below recommendations may well offer an insight to the type of solutions needed to end the spectre of bloodshed during and after elections and also mitigating the spillover effects of power-sharing.

Holding free, fair and transparent elections organized in Kenya and Zimbabwe will require new set of laws that would provide a level play ground for all competitors. This should be preceded by dismantling the institutions of state organized violence against opponents as in Zimbabwe and state sponsored militia as in Kenya. Elections should be organized by trustworthy individuals whose dignity and integrity cannot be questioned and whose appointments should be transparent and based on consensus of various political parties. Furthermore, the professionalism and financial autonomy of this institution must be guaranteed by law. Finally, the above must be superimposed on a strong and independent judiciary.

At the international level, in order to end the specter of violence emerging from flawed elections or winners refusing to leave office when defeated, there is need for a new world order in respect to elections. This may be a UN or AU commission charged with monitoring the conduct of election, endorsing the results and ensuring compliance perhaps with the assistance of military forces stationed at their disposal. However, for this to be effected without violating the principle of sovereignty or non interference in the

internal affairs, African states especially must ratify and uphold Article 4 (j) of the AU charter which allows the AU to intervene in a country where a serious threat to legitimate order is at stake.

There is also need for African countries to consider amending their constitution to get rid of the zero-sum electoral process which also appears to be the centerpiece cause of electoral malpractices on the continent replacing it with a mandatory unity government. This law is capable of reducing conflict during and after election as all competitors are assured a slice of power. However, it goes without saying that, once this becomes effective, the important role of the opposition, of criticizing government policies, suggesting alternatives and keeping the citizenry informed is also compromised. Therefore, before this is done, ways of mitigating this limitation must be clearly thought through and implemented.

In order to reconcile the nation and prevent past violent ordeals from repeating themselves in Kenya and Zimbabwe as well as other African countries, the present coalition governments must be ready and willing to force masterminders and perpetrators of the violent acts to face trial. In both cases the recommendations outlined by Kenya's CIPEV on the creation of a special tribunal to try and charge instigators (CIPEV, 2008: 472) should be rigorously implemented. If this is not done, and timeously too, the international criminal court should be offered a mandate to extradite and try the suspects. It is only after justice to victims has been effected that a national reconciliation committee can be formed to reconcile the nation.

Power sharing deals after post election violence should be transitory, that is, they should be temporary and considered interim until such a time where the political atmosphere seems stable enough to organize, free, fair and transparent elections that would effectively hand over power to the legitimate winner who should then find motivation to form a government of national unity.

In drafting new constitutions, stakeholders should bear in mind that ethnically plural societies like those in Africa can better be administered by devolution of power from a centralized authority to locally created administrative unit which should take care of local development agendas. Decentralization of power in this case naturally reduces the nursing of grievances of marginalization and neglect as would often be the case in centralized governments where certain areas could either be neglected or forgotten. Worthy of note is that the new Kenyan constitution takes seriously this idea and has fostered local government administration as a key partner in development.

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