

The Role of the African Union in Post-Election Violence in Kenya

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Abstract

Although post-colonial Kenya avoided major conflicts, it failed to develop political and institutional arrangements capable of promoting social cohesion and co-operation among a divided people. What emerged after the fall of colonialism were political and institutional arrangements that fostered patterns of domination and exclusion. These observations lay the basis for the issues surrounding the post-election violence that broke out in Kenya in December 2007. This paper provides a critical analysis of the causes, extent and nature of the post-election crisis in Kenya, paying particular attention to the processes employed by the AU to deal with conflict, the AU's strengths and challenges in managing electoral conflict and the gaps within the AU's current approach to electoral conflict management. Hall (1996) and Steinmo' (2001) Institutional Theory provides an analytical lens in examining the AU's role. Institutional theory assumes how institutional values shape/constrain the behaviour of individual members and produce change.

Keywords: African Union, Kenya, Violence, Election, Conflict Trends, Conflict.

Introduction

The life cycles of intrastate conflict are prevalent in Africa. Though a categorisation of Kenya as the 'round table' of the so-called conflict-ridden countries, especially in comparison with other countries in its region (such as Rwanda, Burundi, DRC, and Eritrea



i.e., in the East African Community (EAC) is tempting, it is nonetheless, problematic (Nnaeme and Asuelime, 2015). It is important to note that Kenya has enjoyed relatively stable economic growth as the biggest and most advanced economy in Central and East Africa. However, a situational analysis shows that conflict is observable. Such conflict has shaped Kenya's history, beginning from the colonial era, spilling into post-colonial era. With the causes originating from both external and internal forces, the latter has received much attention especially considering the post-colonial state. In his writings, Materu (2014: 18) states that the Kenyan fight for freedom and recognition of their rights came with the Mau Mau movement between 1952 and 1960. A number of heroes are noted, and these include Jomo Kenyatta (Kikuyu hero; first president of Independent Kenya) and Daniel Arap Moi (a Kalenjin) who became the second president (Materu, 2014: 22-23).

The causes of conflict in Kenya's post-colonial state are traced to the monopoly of politics within the Kenyan political system. The post-colonial state predominantly encompasses both interparty and intra-party conflict. During the colonial period in Kenya, the British introduced "a divide-and-rule system that entailed a purposeful stratification of the colony's population in several ways, including along ethnic lines, mostly for ease of ruling and exploitation" (Oguyi, 1997: 2). Hence, under this system some ethnic groups benefited more than the other thus, sowing the seeds of resentment leading to future conflicts. Oyugi (1997 cited in Materu, 2014: 17) highlights that "soon after independence, the dominance of government and political arena by the Kikuyu-Luo alliance became clear and overwhelming". Soon after seizing state power, Kenyatta implemented his agenda which entailed taking care of the needs of his Kikuyu community (Oguyi, 1997). By 1978, Kenyatta had secured (captured) for the Kikuyu tribe, the state, and a homeland along the Kenyan Coast and in the Rift Valley, which put "commerce in the hands of the Kikuyu" (Oguyi, 1997). Not surprisingly, these regions i.e., the Coastal Region and the Rift Valley experienced "serious ethnic violence in the decade of the 1990s" (Oyugi, 1997).



Historically, there have been regional conflict amongst the Kalenjin and Kikuyu communities over landownership of these 2 regions; often cited as a cause of conflict. Hence ethnic conflict often escalates during election periods (1992, 1997, 2008, 2012) amongst these rival communities resulting in many deaths. Elections often are the primary forum of inter-group competition. When President Kenyatta died in 1978, his successor Daniel Arap Moi set out to redress the inequalities suffered by his ethnic group, the Kalenjin, under Kenyatta (Oyugi, 1997: 49).

The government, the security apparatus (military, police, intelligence), most of the available fertile land, and the private sector were all dominated and controlled by the Kikuyu. Oyugi notes that land was an underlying factor behind much of the organized violence in the Rift Valley, as well as being critical to the more localized ongoing conflicts in Mt Elgon and Molo (1997: 41-69). Materu submits that when Kenya became independent, political parties represented ethnic demands of their respective members, although the differences between the parties also entailed an ideological aspect (2014: 18). The ethnic aspect remained one of the key issues dominating Kenyan post-colonial politics including the 2007 elections. For example, the Luos complained of marginalization in the political leadership of the country. Throughout the post-colonial state, the presence of ethnically motivated violence suggests that politicization of ethnicity has been a source of conflict. In all, the conflict trends in Kenya suggest that the country had unresolved issues stemming from the marginalization of other groups in the political leadership of the country. The 2007/2008 post-electoral violence in Kenya can only be understood by combining its immediate causes and the explosive cocktail of complex historical political processes (Carvalho, 2013: 114). This further instigated the violent clashes in the 2007/8 post-election period.



Causes of Conflict in Kenya in 2007/8

It is apparent that conflict has been recurring in post-colonial Kenya. However, a focus on the year 2007 was necessitated by the fact that this is the immediate episode of conflict. It is also among the deadliest episodes of electoral violence in Africa in recent decades (Salehyan & Linbearger, 2015: 23). The nature and context of conflict during the 2007 was a heated and volatile one, which erupted after presidential elections of 30 December 2007. According to Dersso (2008: 3-4), post-election violence began on 30 December 2007, the date which the Electoral Commission of Kenya (ECK) declared “Mwai Kibaki the winner of the concluded presidential election. Following this announcement, tensions arose, as allegations emerged that there had been large-scale rigging of the election, mostly levelled against the Party of National Unity (PNU), Kibaki’s party alliance” (Materu, 2014: 49). Iraki (2010) identified two key issues that directly caused tension, namely, the announcement of the presidential poll and the quick swearing in of Kibaki. Lafargue (2009: 14) notes that both the pre-and post-election periods were marred by conflict with the latter experiencing more of this conflict. He further indicates that initial reports suggested that over 70 people were killed and over 2 000 displaced during the pre-election violence. The extent and magnitude of the violence that followed in the post-election period was immense (Human Rights Watch, 2008). The violence took the form of attacks on civilians, involving acts considered as crimes under the laws of Kenya (Materu, 2014: 50). Official records show that about 1 133 people were murdered, “3 000 were raped and 350 000 others were internally displaced (IDP)” (Materu, 2014). Furthermore, “there were 3 561 incidents of grievous bodily injuries and 117 216 incidents of destruction of properties, including 41 000 houses. Six provinces, namely, Nyanza, Rift Valley, Central, Nairobi, Coastal provinces, and Western provinces, were most affected, but in varying degrees”



(Materu, 2014: 50). This situation necessitated a quick response given the high numbers of casualties and IDPs.

The first huge controversy surrounded the utterances by Samuel Kivuitu, the then Chairperson of the KEC. He declared publicly that although as the chairperson he had announced the presidential results, he could not say for sure if Kibaki had won fairly. Materu (2014: 49) further states that Samuel Kivuitu declared the results “under immense pressure; and that as the chairperson he did not have full control of the electoral commission”. On top of that, Materu highlights that international observers stated emphatically that the presidential vote counting and tallying processes were flawed or had been tampered with” (2014: 49). Similarly, regional observers, namely the AU and EAC, stated irregularities in vote counting but, were quick to approve the election as free and fair. Informed by these developments, the majority of the public saw the entire presidential election as flawed. Such sentiments spurred the opposition calls for a ballot recount. The Kenyan Law Society also demanded that Kibaki should step down immediately due to a lack of legitimacy (Materu, 2014: 49). In all, this provided a veritable ground for clashes between and amongst people of opposing views concerning election results, with clashes based on political party affiliation which are often organized along ethnic lines. The Orange Democratic Movement (ODM) supporters (dominated by Kalenjin-Luo tribe) argued that the PNU (dominated by Kikuyu tribe) had stolen the election while PNU supporters claimed to have legitimacy.

The ODM under Ralia Odinga’s leadership viewed the election result as not free and fair, claiming that its victory had been ‘stolen’ (Materu, 2014: 49). According to the official results by the “Electoral Commission, Kibaki garnered 4 584 721 votes (46 %)” whilst Raila Odinga garnered 4 352 903 votes (44 %) (Materu, 2014: 49). The ODM claimed that the utterances by Samuel Kivuitu proved beyond doubt that the “election had been ‘stolen’. The Kenyan Constitution had a clear legal mechanism, which could be used to



challenge the announced presidential results in the High Court. However, the ODM denounced this mechanism publicly, alleging that the existing judiciary was incapable of rendering *impartial justice*” (Materu, 2014: 50). According to Human Rights Watch (2008: 59), the ODM argued that it was “not possible to obtain justice from a partisan judiciary that was known to subvert justice in electoral matters,” and that Mwai Kibaki’s appointment of new judges two days prior to the elections was done in “preparation for a biased consideration of the anticipated election petitions”. Roberts (2009: 9) acknowledges that the perceived bias of the judiciary led to the ODM resorting “to mass action, which included protests and demonstrations countrywide”. Materu (2014:50) adds that “as part of this strategy, they threatened to swear in Raila Odinga as the ‘people’s president’ if Kibaki did not agree to a re-run”. The culmination of these events resulted in clashes between the supporters of the ODM and PNU, which quickly spiralled into ethnic violence, which impacted most of Kenya. Considering this, the immediate cause of the conflict was the announcement of the presidential election results amid allegations of the flawed electoral process (i.e. discrepancies in vote counting and tallying). Therefore, one can categorize the type of conflict as post-election conflict.

Extent, nature and patterns of the violence in Kenya

The initial stages of the violence were in the form of protests against the announced results. As already alluded to, the clashes were either between Kibaki (PNU) and Odinga (ODM) supporters or vice-versa. For example, in the Rift Valley Province, “a stronghold of the ODM during the 2007 elections, the violence targeted the *unwanted* communities, the Kikuyus (Kibaki’s ethnic group) and other non-Kalenjin communities or groups, which were perceived to be PNU supporters” (Materu, 2014: 51).



The violence acquired a “pattern of massive and revengeful attacks directed against specific groups of people” or their properties (Moremong, 2008: 3-4). This politically motivated conflict further sparked other conflicts as some communities saw this as an opportunity to settle old scores. There were reports suggesting calls for ethnic cleansing by certain ethnic leaders (African Press International, 2008). For instance, “in the Rift Valley province, whose original inhabitants are Kalenjins, the Kikuyus and non-Kalenjins in general were viewed as foreigners on the land” (Materu, 2014: 51). Evidently, traditional leaders and local political leaders, interested in fixing long-standing grievances within their communities regarding land “and other perceived discrimination against the targeted victims, were largely involved in violence” (Materu, 2014: 51). In the Central provinces and the Rift Valley province, several incidents were reported in which various statements were said which incited violence. Violence also took the form of organized killings of people based on their political inclination, regional and or ethnic affiliation. The ethnic antagonism that persisted in the post-election violence indicated long time unresolved land issues and negative ethnicity, which politicians had used to incite divisions in the country (Materu, 2014). In the case of Kenya, Dersso (2010) notes that ethnic violence that persisted in the post-election period was instigated by the overall perception that since attaining independence, certain ethnic communities had benefited more than others in various aspects, such as being excluded from the country’s leadership.

In retaliation, in Nairobi and the Central Province, “which were PNU’s strongholds, the Kikuyus, through their militia gang, attacked the Luos (Odinga’s tribe) and Kalenjins, who were perceived to be ODM supporters” (Materu, 2014: 51). Armed gangs “carried out attacks in Nakuru against perceived enemy communities, by beheading Luo men or forcefully circumcising them by using pan gas and broken bottles” (Materu, 2014: 51; Moremong, 2008: 3-4). Materu (2014: 50) further demonstrates that “in preparation for these attacks, prior plans had reportedly been in place, including one for alleged



recruitment of 300 new members into the armed gangs specifically for this task. Moreover, intelligence reports revealed that local leaders in Nakuru conducted fund-raising meetings to raise money for financing the revenge or attacks against the Luo, Luhya and Kalenjin". That kind of organisation consequently led to many deaths.

During the electoral violence, not all civilian deaths were because of civilians attacking fellow civilians. Ideological State Apparatus (ISAs) i.e., media outlets and Repressive State Apparatus (RSAs) i.e., police; armed forces were also used by Mwai Kibaki to instill fear and intimidation on perceived opposition. For instance, one ought to acknowledge the role the vernacular radio stations played in inciting the violence. Arguably, Materu (2014: 55) notes, their role was perhaps "similar to that of the Kigali-based *Radio Télévision Libre des Mille Collines*, which was used in inciting the Hutus against the Tutsis during the Rwandan genocide of 1994". The role played by four vernacular state-owned radio stations, namely, "KASS FM (Kalenjin station), Kameme (Kikuyu stations) and Lake Victoria FM (Luo station)" (Materu, 2014: 54), was particularly notorious in the distribution of hate speech in favour of Mwai Kibaki's ruling party. It is assumed that the Kalenjin local leaders incited the people to violence by using derogatory statements such as "remove the roots", against the Kikuyus. Leaders in the ODM, "including Raila Odinga and William Ruto, once asked the Kalenjin community to remove all 'madoadoa' (stains) from Rift Valley" (Materu, 2014: 55).

On RSA's, it has been reported that, generally, the role of the police in this respect changed between being commendable to being responsible for perpetrating some atrocities (Okia, 2011:1-3). For example, mounting evidence points to the police being implicated in some of the atrocities as they actively perpetrated violent acts. Lynch (2008) concurs that state apparatus such as the police and the army also instigated violence in some instances. A case in point is the Nakuru, Kisumu and the Nairobi slums, where violent clashes occurred between the police and the demonstrators (Dersso, 2008: 3-4). The



police also allegedly participated by omission, which indirectly encouraged the civilian perpetrators to commit the atrocities (Okia, 2011: 1-3). As previously noted, this cast doubt on the assertion that “the post-election violence was a citizen-to-citizen violence” (Materu, 2014: 52). The police were often used by the political party in power to perpetrate violence on its behalf.

All of these atrocities that happened during the course of the post-election violence were indisputably appalling. One such incident which happened in Kiambaa area in Rift Valley province is summarized below;

On 31 December 2007, about 3,500-armed Kalenjin members raided and torched the Kiambaa settlement area in Eldoret, predominantly inhabited by Kikuyus. The residents were forced to flee. Some of them sought refuge in a church building in the locality, the only place they considered safe in the circumstances... (Materu, 2014: 53).

Accounts of other similar incidents of this magnitude are well-documented. What is clear is that this violence was “more than just citizen-to-citizen opportunistic assaults” (Materu, 2014: 55). From the discussion, the political violence entailed coordinated or organized attacks on civilians based on their political leanings and ethnicity. In addition, there was evidence of police involvement in the post-election violence. Furthermore, “there was a manifestation of politicized commands, which entailed non-interference whenever pro-government mobs committed crimes against the opposition” (Dersso, 2010: 3-4). The extent, organization and nature of political violence have been outlined, including the main actors involved in the post-election violence.

The conflict in Kenya in 2007 was mainly because of allegations of a flawed electoral process (i.e., discrepancies in vote counting and tallying), and as indicated by Materu (2014), a ‘stolen’ election by the PNU. The conflict was a turning point in the country’s history. Further clashes that ensued were based on ethnic and regional



affiliations. Although there were other underlying factors such as poor economy, poor services delivery and high rates of unemployment among the youth, one can argue that the 2007 election provided an opportune moment for marginalized ethnic groups to vent their frustration against the ruling party and its power base. Because of the casualties in the pre-and post-election period, there was a need for to the AU to intervene. The following section highlights the role of AU in conflict management in Kenya through the African Peace and Security Architecture (APSA).

Institutional theoretical lens will be used in the analysis of the AU's intervention. The premise of institutional theory lies on the assumption that, "institutions create elements of order and predictability" in which they "fashion, enable and constrain political actors as they act within a logical and appropriate action" (March and Olsen, 2005: 2; 3). The theory assumes that institutions as organisations with rules, norms, values and principles translate to established authoritative guidelines for appropriate behaviour for political actors. Hence institutions constrain/shape the behaviour of actors within the environment they act to conform to these rules and values. Such assumptions will enable an analysis of the AU as an institution created to promote and safeguard peace and security through democratic values and principles. In so doing the analysis will review how the political values of the institution are translated into practice *vis-a-vis* intervention.

The African Union Peace and Security Council (PSC) and the Kenyan crisis

According to Article 2.1 of the Protocol establishing the PSC, the Security Council is a "standing decision-making organ for the prevention, management and resolution of conflict" (Protocol Establishing the PSC, 2002: 4). The agenda for meetings is determined by on-going conflict and crisis situations, which is usually done in consultation with the



PSC members and proposals submitted by the commissioner of Peace and Security (Williams, 2009:612; Protocol PSC, 2002: 12). Through formal meetings, briefing meetings and consultations, the PSC deliberates on the way forward regarding conflict interventions. Williams's notes that the PSC "has taken policy decisions requiring action, whether in the form of mediation, peace operations, or sanctions regimes" (2009: 614).

In line with its role, the PSC reached consensus to begin mediation in the Kenyan crisis on 21 January 2008 within an African framework: a recommendation it had received by the AU commission after consultations (Juma, 2009: 413). The then AU chair President John Kufuor of Ghana met with Mwai Kibaki and Ralia Odinga upon agreeing to an AU-led mediation. Williams notes that emphasis on consensus by the PSC is important as the "council operates with a significant degree of collective responsibility" (Williams, 2009: 615). As stated above, the PSC declared its full support for the mediation initiative (Juma, 2009: 413). On 21 January 2008, a week before the start of the AU summit, the PSC met at ambassadorial level in Addis Ababa to consider the situation in Kenya. In their communique, the PSC condemned "the gross violations of human rights in Kenya, stressed the need for the parties to extend full co-operation to the mediation effort, and requested the AU commission to follow up and report on the situation in Kenya" (Juma, 2009: 154). This is in line with the stated role of the PSC as the decision-making body for conflict management. Through the official statements, the PSC was able to elicit substantial and sustainable commitments from member states to support its decisions. The inclusion of Kenya on the AU agenda indicates the seriousness of the PSC in its efforts in finding a political solution to the Kenyan crisis.

Given that leaders were in consensus regarding the need for cessation of conflict in Kenya, the adoption of the PSC's recommendations was swift. This concurs with Hentz's (2013: 194) study on the role of the PSC in the case of Comoros conflict in 2004 where leaders reached a consensus regarding the deployment of peacekeepers. Hentz suggests



that where there is agreement, the action is swift. One can conclude that this is in line with Institutional Theory's assumptions that institutions with norms, values and principles are able to establish authoritative guidelines for its members. Consequently, an institution becomes effective in executing its mandate when it observes its norms and values. Bouka (2016: 5) suggests that the PSC's efforts in prevention, management and resolution of conflict often face resistance. Often, incumbent Presidents receive PSC reviews with negativity when subjected to early warning, for instance in the crisis in Burundi in 2015.

The African Union Panel of the Wise (POW) and the Kenyan crisis

The POW is the AU's "most high-profile structure for preventing conflict, conducting on the ground fact finding, presenting policy options, and brokering agreements" (Nantulya, 2016: 2). Laibuta (2014: 7) notes, "in order to stop the humanitarian crisis in Kenya, the AU facilitated a mediation process through the Panel of African Eminent Personalities, under the leadership of the former UN Secretary General Kofi Anan". This study found that POW played an important advisory role during the mediation process in Kenya. This is in line with Juma's sentiments on POW which reveals that, for instance, Julius Nyerere played an important role in Burundi and Rwanda conflict with Nelson Mandela, Jacques Chissano in Northern Uganda, Thabo Mbeki in Côte d'Ivoire and Obasanjo in the DRC (2009: 417). The AU chairperson, John Kufuor, "was instrumental in convincing the parties to the conflict to cease hostilities" (Baldauf, 2008).

An important factor of the POW is the moral integrity of the leaders on the panel. For example, Ralia Odinga of the ODM, who was sceptical of Museveni's human rights record, rejected early mediation efforts by President Yoweri Museveni of Uganda, who was the chair of the EAC. Hence, when the POW came in, the composition of its delegates



proved significant as Juma (2009: 413) argued, “clearly the stature of Kufuor and his position as the chair of the AU yielded positive results.” On 29 January 2008, the Panel managed to engage the PNU and ODM in this process, which was carried out within a framework called the Kenya National Dialogue and Reconciliation (KNDR). According to Juma (2009: 417), Koffi Annan “brought value that helped navigate the complex Kenyan political terrain.” Hence, the POW was able to bring the protagonists to agree on the immediate cessation of hostilities including “putting immediate measures to address the humanitarian crisis and promote reconciliation” (Laibuta, 2014: 14). In a similar study by Williams (2011: 13), the POW was able to bring a cessation of conflicts in DRC when it brokered a truce between President Joseph Kabila and opposition leader Etienne Tshisekedi after a heated election. Juma (2009) argues that the willingness of the protagonists to negotiate was also significant in determining the successes of POW.

The outcome of the mediation process did, however, **left** more to be desired. The formation of a unity government was in contrary to the values and principles that established the organisation. The POW compromised despite mounting evidence of election irregularities by the incumbent, which constituted an unconstitutional change of government as stated in the African Charter on Democracy Election and Governance (ACDEG) under article 23(4) of (2007). The whole exercise of creating unity governments “contradicts the purpose of elections whose sole purpose is to give the winners opportunity to govern the country and the losers to accept” (Mapuva, 2013). Mapuva (2013: 109) notes that such compromises had an unintended consequence as it gave losing political candidates the opportunity “to get back into mainstream politics through the backdoor”. The inclination towards compromising exposes the institutional culture of the AU as it protects incumbents, as Omotola (2014: 29) highlights that, “unwritten rules and informal alliances within the AU suggest that incumbents should be protected from humiliation”. Similarly, EISA (2016: 5) notes that the AU *does not act decisively* against



incumbents. Furthermore, Bouka (2016: 6) adds that the continued reluctance of the AU about what constitutes an unconstitutional change of government beyond coups lies within the institutional culture. Hence, the organization remains hesitant in using a forceful approach, as was the case in Kenya. Despite these criticisms, the formation of a unity government led to the decrease of the violence and unnecessary loss of lives. Although the creation of a unity government somewhat contradicted the principle of free and fair elections determining the outcome of who will govern, it did lead to a decrease in violence in the country.

The role of the POW in the Kenyan conflict created a middle ground for conflicting parties to enter negotiations and have a transitional arrangement. The success of this organ hinged on the characteristics and capabilities of the prominent personalities within it. The initial mediation efforts by Yoweri Museveni, the then chair of the EAC proved fruitless, as he was rejected due to his low human rights record. The intervention of the Kufour mission was successful for a number of reasons, including the fact that both parties regarded him as a trustworthy broker. However, as much as the composition of the POW is significant for its success, the willingness of the protagonists has a profound effect on the outcome. As indicated by Moller (2009: 11),

One should however not place too much emphasis on the organizational set up, as what matters is the political will to do what is needed. If the will is there, states will find a way around organizational obstacles, but if it is lacking even the best organizational set up under the most binding commitments will be of little help.



The Continental early warning system and the Kenyan crisis in 2007

The CEWS was established to facilitate the anticipation and prevention of violent conflicts by “gathering and analyzing information to enable the Chairperson of the AU Commission, the PSC and other actors under the peace and security architecture to prevent violent conflict in a timely manner” (Porto & Engel, 2010: 9). According to Juma (2009), the CEWS failed to anticipate the escalation of conflict in the Kenyan election of 2007 and this compromised the AU’s ability to manage this conflict. However, this is not the first time that CEWS failed to anticipate the incidence of conflict. A study by Williams (2011: 9-10), showed that “CEWS personnel were unable to generate early discussions within the PSC on the crisis” and instability in Guinea-Bissau in late 2008. Another study by Williams (2014: 148) suggests that the “African Peace and Security Architecture (APSA) remains incomplete with several of its institutions still work in progress”, including the CEWS and the ASF. The lack of coordination between the CEWS and PSC led to the delayed response of the AU in Kenya. Institutional Theory submits that the competence of an institution relies heavily on proper coordination and harmonization of units and departments that make up a system, in this case, APSA. This, therefore, implies that without this coordination, the system will hardly meet its objectives.

The role of other actors in conflict management in Kenya

Despite the rhetoric of African solutions to African problems by the African Union, Africa seemed more reluctant to find solutions to its own problems (Simura and Asuelime, 2015, 2017). Other actors involved in the mediation process include the international actors, civil society groups, faith-based groups and women organizations (Baldauf, 2008; Kanyinga,



2007; McGhie, 2011). According to Juma (2009: 421), international actors such as the World Bank (WB), the EU and the US put “enormous pressure on the Kibaki government to abide by the mediation and threatened to suspend assistance (donor aid) if a diplomatic solution to the political crisis was not found”. Baldauf (2008) notes that significant progress occurred during the two months of negotiation through the “concerted international support for the AU-led process” (Juma, 2009: 421). For example, the UN “provided technical assistance in the form of staff members who assisted in analysis, policy advice and general staff support for the mediation team” (Juma, 2009: 422).

Although the efforts by the AU were instrumental at the beginning of mediation to end the violence, its success was partly due to the increasingly intense domestic and international pressure. The consensus among international actors created a formidable pressure group, which generated momentum for the mediation process. Similarly, the WB and the African Development Bank (ADB) “encouraged Kenyans to seek a viable long-term solution, and expressed willingness to support the Annan team, under the African Union initiative” (Juma, 2009: 424). Furthermore, the UN “called on the political leadership to find an acceptable solution through dialogue so that the country could return to its peaceful and democratic path” (Juma, 2009: 425; United Nations, 2008). This call from the UN chief was significant in encouraging the parties to stay the course. The UN Security Council commended the efforts of the PSC and emphasized “its full support for the mediation in assisting the parties find a political solution” (United Nations Security Council, 2008, Juma, 2009: 425).

Civil society groups also contributed immensely to the mediation process. Kanyinga (2010: 4) note that since the “period between the early 1990s and the 2002 general elections, civil society was synonymous with the democratization process in Kenya”. Hence in the post-election election violence of 2007/8, it played a significant role. According to Kanyinga (2010: 2), “Kenyan civil society organisations and their networks generated and



sustained domestic pressure to end the violence”. For instance, the Concerned Citizens for Peace (CCP) participated through media engagement and dialogue with different actors and engaged with the AU Panel of Eminent African Personalities on a regular basis (Kanyinga, 2010: 10). Also, they were part of regional and international advocacy to highlight the crisis and to ensure the International community had unbiased facts about the causes of the crisis and its consequences. Hence, they “petitioned international donors and governments to bring pressure on the two political parties to resolve the crisis” (Kanyinga, 2010: 9). From the foregoing one can, therefore, acknowledge the importance of domestic actors in the mediation process of the conflict.

In all, the multiplicity of actors in the mediation process suggests that conflict management relies on the balance and incorporation of combined efforts from various stakeholders. Their impact was of great significance in as far as making the political parties abide by the mediation process. Therefore, one can say that conflict management relies on the combined efforts of the various actors.

Outcomes

The case study of Kenya established that the country evolved from a relatively peaceful nation to a volatile one following the 2007 election. Prior to 2007, Kenya was seen as a ray of hope for African democracies (Juma, 2009: 408). However, findings from the research highlight that despite elections being central to democracy, they have become a source of conflict. This study submits that essentially, the AU’s intervention through APSA came at an opportune time leading to the formation of a GNU, a decrease in violence, loss of life and disruption of livelihoods. The mediation process brought about immediate benefits in the peacebuilding process. Some of the positive benefits that came out of the mediation



include the formation of an independent Commission of Inquiry by the coalition government (Truth Justice and Reconciliation Commission, TJRC) into the post-election violence (Materu, 2014: 57).

Laibuta (2014: 17) adds that the inquiry had the mandate to investigate crimes such as “gross violations and abuses of human rights, including abductions, disappearances, detentions, torture, sexual violations, murder, extrajudicial, killings”, which had occurred during the post-election violence and make recommendation thereof. Independent bodies such as the United Nations Office of the High Commissioner inquiries for Human Rights (UNHCHR) and the Kenya National Commission on Human Rights, which acts as a watchdog, conducted enquiries over the government “in pursuit of the protection and promotion of human rights in Kenya” (Materu, 2014: 58). Therefore, there is need to acknowledge the role played by other actors such as the EU, UN, civil society and women groups in the mediation process. conflict management requires complementary efforts from all stakeholders.

The research makes relevant observations consistent with the fact that the AU’s institutional culture is inclined to protecting the incumbents (Mapuva, 2013). Laibuta (2014: 8) submits that the “early AU involvement highlights the need for prompt intervention by AU leadership whenever a member state is facing a conflict or constitutional crisis.” The events in Kenya where a power-sharing agreement was created with a losing candidate, established a trend on the African continent where “losing political candidates get back into mainstream politics by claiming to hold the mandate of the electorate” (Mapuva, 2013: 109). As Bwanya (2008: 109) and Mapuva (2013) acknowledge, it had the unintended consequence of opening floodgates of similar scenarios elsewhere in the continent the moment political elites realised that they could “come back into the political fold even if they are defeated in an electoral contestation”. Consequently, in Zimbabwe 2008, the AU resorted to a power sharing agreement despite



overwhelming evidence pointing to the illegitimacy of the incumbent Robert Mugabe. The consequence of its conflict management approach towards intervening in election related conflict inadvertently *encouraged* electoral related violence as it set precedent for future incumbents to refuse to relinquish power, as was true in Zimbabwe 2008 and in Cote d'Ivoire 2010/11 crises.

Therefore, the AU faces several challenges in its conflict management approach in election-related violence, particularly that of protecting incumbents. Bouka (2016: 6) states that, "the continued reluctance of the AU about what constitutes an unconstitutional change of government beyond coups lies within the institutional culture of protecting incumbents". In Kenya, the AU pushed for unity government despite evidence showing that the incumbent had rigged the election. Institutional Theory assumes that institutional (political) values and actual commitment are sustained through practice and implementation of these norms. Rather than abiding by its principles to protect democracy, the AU continues to falter towards its commitment through compromising.

The intervention of the PSC was commendable. Through consultations between the PSC and the AU Commission, the PSC was able to reach a consensus, which resulted in the decision to mediate in the conflict. Failure to reach consensus results in delayed or no response as was the Case in Burundi 2015 (Bouka, 2016). Also, in Comoros 2004, the AU PSC's consensus on the need to deploy peacekeepers resulted in the swift intervention in the country. Therefore, the ability of the PSC in managing the electoral crisis in Kenya is noteworthy. A study on Kenya by Juma (2009: 408) suggests, "The Kenyan experience underscores the value of speed and rapid response in intervention". It further illustrates that the AU's delayed intervention was due to delays in the passing of early warning information to the PSC. This study, however, expresses that the efforts by the PSC averted the continued killings of the citizens.



On the role of the POW, a study by Williams (2011) attributes the success of the POW as determined by the calibre of the members on the panel. In the case of Kenya, the panel consisted of former President of Tanzania Benjamin Mkapa, Graca Machel and Koffi Annan who are well-respected in the African political circles. Therefore, one can safely conclude that the success of the POW strongly hinges on the characteristics and capabilities of the prominent personalities who are usually former heads of governments.

In summary, one cannot underestimate the impact of the AU's mediation efforts in as far as decreasing the incidence of violence in Kenya, the mending of the deteriorated relationship between the PNU and ODM, and stability that came with the cessation of conflict. As noted in the discussion, the AU capacity to manage electoral related conflict is challenged by many factors including the institutional culture of the organisation of protecting incumbents. This research argues that there has been a rise of post-election violence because the AU's response to it has been inadequate mostly because it heavily relies on mediation even though in some instances forceful intervention is required to remove incumbents. Omotola (2014: 29) states that unwritten rules and informal alliances within the AU suggest that, "incumbents should be protected from humiliation" resulting in the AU not acting in accordance within its norms and values. EISA (2016: 5) supports this view by stating that the AU pushes for a government of unity rather than acts against them, as was the case in the Kenya post-election violence in 2007/8. The consequence of its conflict management approach towards intervening in election-related conflict inadvertently encouraged electoral related violence as it set precedent for future incumbents to refuse to relinquish power as was in Zimbabwe 2008 and in Cote d'Ivoire 2010/11 crises.

Given that the same conflict reoccurred in 2017 in Kenya, the sustainability of power-sharing agreements comes into question. The AU has often been criticized of merely rubber-stamping election results (Louw-vaudran, 2017). However, it is important



to note that, the AU has improved its system of observing elections by looking more comprehensively at a country's political situation ahead of elections. Despite this approach, however other factors that are also at play in the interaction between the AU and its member states have meant that these missions are often of little consequence (Louw-vaudran, 2017). The AU pre-election mission findings acknowledged the exploitation of ethnic divisions through the use of deeply polarising campaign messages by major political actors was a cause for concern. Ethnic violence was at the centre of the post-election violence of 2007/8. The election in 2017 was marred with inconsistencies as opposition leader Ralia Odinga accused the incumbent Kenyatta of rigging the election. The AU observers declared the election free and fair, but the Kenyan Supreme court nullified the results which consequently put the AU in the spot light. From this Kenyan episode, it is fair to say that the AU still has a long way to go in as far as upholding and enforcing democratic development in the continent. Mehler (2009) argues that, power sharing, has reversed democratisation efforts in Africa in the last twenty years centred on state-building and political liberalisation, thus prioritising peace before process. Hence, what the AU needs to embrace its principles of intervention as stipulated in its founding documents the Constitutive Act.

The reoccurrence of the conflict suggests that power sharing did not deal with the underlying causes of the conflict in the first place. Mukhlani (2014:174-175) highlights that "narrow settlements that focus on political power-sharing alone are less likely to endure..." a view that highlights the inadequacies of power-sharing as a conflict management towards election-related conflict. The Kenyan episode reinforces the views by Jarstad and Sisk (2008) that, power sharing in fact, "fuels extremist, radical and anti-democratic behaviour; inhibits the transition of conflict-management to conflict-resolution and damages the relationship of



transparency and accountability". Therefore, the above underscores the challenges the AU faces in managing election-related violence as demonstrated in Kenya 2008.

Conclusion

This paper highlights conflict trends from pre to post-colonial Kenya. The politicization of ethnicity dominated Kenyan politics and this created marginalization of certain ethnic groups in strategic sectors such as land ownership and control, the economy and political leadership. Throughout Kenyan history, there has been cases of ethnically motivated conflict over issues such as land and isolated cases of violence during election periods. Despite various issues ranging from youth unemployment and the economy dominating the election, the 2007/2008 post-election violence was a turning point in Kenyan politics. The manifestation of ethnic violence highlights unresolved issues stemming from years of discriminatory politics. This further instigated the violent clashes in the post-election period. This paper highlights the intervention of the AU through APSA and the utility of the PSC, CEWS and POW. Emphasis was on three of its five pillars based on their application during this conflict. The assessment of these pillars in the management of this conflict assisted in demonstrating the capacity of the organization in Kenya's conflict. For instance, the failure of the CEWS undermined the role of the PSC in making early and sound judgements on the Kenyan election. The challenges noted include the lack of coordination among the arms of the APSA i.e., PSC, POW and CEWS. The failure of the AU in conflict management highlights the challenges the institution faces which have undermined its stability and legitimacy. The delays in the AU's intervention in Kenya highlight some of the challenges presented by coordination of its conflict management mechanisms and its institutional culture of protecting incumbents. Bouka (2016) acknowledges this fact and



further points out that the AU reacts promptly to coups while it is reluctant to react in election-related violence.

The paper also submits that various domestic and international actors played a significant role in the mediation process. For instance, the EU's threats of withholding donor funds pressured Kibaki to abide by the mediation process. Also, domestic actors such as the civil society and women groups petitioned international donors and governments to bring pressure on the two political parties to resolve the crisis. Hence, they sensitized the entire community to the importance of peaceful means to the post-election conflict.

The outcomes of the mediation process led to the decrease in violence between supporters of PNU and ODM. In addition, a National Accord was signed which resulted in the formation of the Government of National Unity. However, the recurrence of election conflict in the 2017 highlights that the root causes of election conflict was not completely addressed.

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