

**The Politics of Change? A Critical Analysis of Power  
Sharing in Kenya after Kofi Annan's  
Mediation in 2008**

By

**Elisabeth Hijnekamp**

**HJNELI001**



SUBMITTED TO THE UNIVERSITY OF CAPE TOWN

A minor dissertation submitted in partial fulfilment of the  
requirements for the award of the degree of  
Master of Social Science in International Relations

Faculty of Humanities  
UNIVERSITY OF CAPE TOWN

**February 2020**

**Supervisor: Associate Professor Zwelethu Jolobe**

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## **Abstract**

This thesis explores the relationship between the mediation led by Kofi Annan in 2008 in Kenya, in the middle of the post-election violence that took place after the presidential elections, and the performance of the subsequent power sharing agreement. This study does so by focusing on five variables, as defined by Alexandre Raffoul, that are particularly relevant in understanding barriers to elite cooperation in power sharing settlements. By analysing problems relating to the balance of power, inside and outside spoilers, identity and political accountability problems and credible commitment problems, barriers to a successful power sharing agreement can be examined. To analyse how the mediation affected power sharing, five variables concerning the mediation are examined, namely the use of leverage, horizontal and vertical inclusivity, relationship-building and the content of the agreement. These five variables are combined one-on-one with the power sharing analysis to determine how mediation affects the performance of power sharing. This study argues that the type of mediation shapes the performance of power sharing, and that barriers to elite cooperation in the power sharing period can be addressed in the mediation phase of conflict to prevent future tensions. This knowledge can contribute to improving mediation efforts and make power sharing a more viable undertaking. By regarding mediation as an integral process to peacebuilding and to change mediation designs when applicable, conflict can be addressed in a more sustainable way that will bring long-term benefits.

## Abbreviations

AU	African Union
CIC	Commission for the Implementation of the Constitution
CIPEV	Commission of Inquiry into the Post-Election Violence
ECK	Electoral Commission of Kenya
EU	European Union
GNU	Government of National Unity
ICC	International Criminal Court
IDP	Internally Displaced Person
IIBRC	Interim Independent Boundaries Review Commission of Kenya
IIEC	Interim Independent Electoral Commission
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
KNDR	Kenyan National Dialogue and Reconciliation
MP	Member of Parliament
NARC	National Rainbow Coalition
NCIC	National Cohesion and Integration Commission
ODM	Orange Democratic Movement
PEV	Post-Electoral Violence
PNU	Party of National Unity
TJRC	Truth, Justice and Reconciliation Commission
UN	United Nations
US	United States

## Map of Kenya



Map of Kenya and its provinces<sup>1</sup>.

<sup>1</sup> Peter Macharia, *Map of Kenya Showing 8 Provinces*, October 2017, Research Gate accessed 8 February 2020, [https://www.researchgate.net/figure/Map-of-Kenya-showing-8-provinces-colored-and-the-47-sub-national-units-counties-as\\_fig1\\_330853768](https://www.researchgate.net/figure/Map-of-Kenya-showing-8-provinces-colored-and-the-47-sub-national-units-counties-as_fig1_330853768).

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## 1. Introduction

“We have had trouble here before, but never anything this bad... When it comes to night-time, everybody is in a state of panic,” is how one inhabitant of Rift Valley expressed the horror of the crisis that engulfed Kenya in the aftermath of the contested 2007 elections.<sup>2</sup> On December 27<sup>th</sup> 2007, after months of aggressive and divisive campaigning, Kenyans went to the polls to vote for a new parliament and president. The presidential poll featured the incumbent President Mwai Kibaki of the Party of National Unity (PNU) against Raila Odinga of the Orange Democratic Movement (ODM).<sup>3</sup> The elections of December 2007 were the fourth presidential elections in Kenya since the introduction of a multiparty system in Kenya in the beginning of the 1990s. The voting day was peaceful, characterized by a huge voter turnout.<sup>4</sup> However, tensions started arising when the vote counting began, as there seemed to be big inconsistencies in the voting process.<sup>5</sup> Violence engulfed the country when the Electoral Commission of Kenya (ECK) declared incumbent President Kibaki the winner of the election in the midst of heated debate over voting discrepancies. He was immediately sworn in in a hastily organized ceremony 45 minutes later, while international observers had noted discrepancies in the elections and the opposition under the leadership of Raila Odinga of the ODM declared that the elections were ‘rigged’.<sup>6</sup>

The violence quickly spread throughout the country taking on the form of ethnic dimensions. Kibaki, who was an ethnic Kikuyu<sup>7</sup>, could count on the support from his fellow Kikuyu’s and related groups such as the Embu and the Meru in Central Kenya. Raila Odinga had the support of his Luo community in addition to the Luyha, Kalenjin and Mijikenda groups. What initially started as peaceful protests in ODM strongholds quickly escalated when police responded with

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<sup>2</sup> Xan Rice, “Kenya at Breaking Point: Dozens Killed as Mob Sets Fire to Church”, *The Guardian*, 2 January 2008, Accessed January 10, 2020, <https://www.theguardian.com/world/2008/jan/02/kenya.topstories3>.

<sup>3</sup> Leon Schreiber, “Making Power Sharing Work: Kenya’s Grand Coalition Cabinet, 2008-2013”, *Global Challenges* (2016): 2.

<sup>4</sup> Gilbert M. Khadiagala, “Forty Days and Nights of Peacemaking in Kenya”, *Journal of African Elections* 7:2 (2008): 7.

<sup>5</sup> Peter Kagwanja and Roger Southall, “Introduction: Kenya – A Democracy in Retreat?”, *Journal of Contemporary African Studies* 27:3 (2009): 260.

<sup>6</sup> *Ibid*, pp 263.

<sup>7</sup> Kenya is a country that consists of ethnic minorities; the biggest community are the Kikuyu, who are about 22% of the Kenyan population and live mostly in Central and Eastern Kenya. The next biggest group are the Luhya (14%), who inhabit the western provinces. The Luo (13%) mostly live in Nyanza, whereas the Kalenjin (12%) are central to the Rift Valley. The Meru and Embu groups (6%) live around the Mount Kenya area. The Mijikenda are a small community from the coastal region.

excessive force.<sup>8</sup> ODM supporters started attacking PNU supporters, which were mostly Kikuyus, and drove them out of their homes and destroyed their properties.<sup>9</sup> Notorious gangs such as the Mungiki and the Taliban, which are known to have strong ties to influential politicians,<sup>10</sup> came out of their sleeper cells<sup>11</sup> and took advantage of the situation, driving tens of thousands out of the slums. Ethnic militias initiated the killing of Kikuyus in a pursue of an ethnic cleansing in the Rift Valley. The Kikuyu community hit back with retaliatory attacks on ODM supporters and innocent Luo and Kalenjin populations. While the international community watched in horror, both the PNU and the ODM tried to capitalize on the violence to grab power.<sup>12</sup>

International and domestic pressure eventually brought both parties to the negotiation table where the two parties agreed to a mediation under the leadership of the African Union's Panel of Eminent African Personalities. The Panel, headed by Kofi Annan, consisted of former President of Tanzania Benjamin Mkapa and former First Lady of Mozambique, Graça Machel. After forty-two days of mediation and with incredible international support, Kibaki and Odinga finally agreed to sharing power in a Grand Coalition Government. They also complied to alter the Constitution and signed the National Accord and Reconciliation Act, which ended the violence.<sup>13</sup> A power sharing cabinet was created that remained functional until the elections in 2013.

The National Accord demanded a cabinet that consisted of an equal number of members of both the PNU and the ODM in an effort to solve the political impasse between the two parties. This cabinet was given an extensive list of tasks to achieve in the next few years to ensure reforms were made and the country would not slide back into violence in the elections to come.<sup>14</sup> Although the coalition government appeared to be relatively functional, few of the

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<sup>8</sup> Jacqueline Klopp and Prisca Kamungi, "Violence and Elections: Will Kenya Collapse?", *World Policy Journal* 24:4 (2008): 12.

<sup>9</sup> Karuti Kanyinga, "Stopping a Conflagration: The Response of Kenyan Civil Society to the Post-2007 Election Violence", *Politikon* 38:1 (2011): 92.

<sup>10</sup> H. Nanjala Nyabola, "The Legal Challenge of Civil Militia Groups in Kenya", *African Security Studies* 18:3 (2009): 95.

<sup>11</sup> In periods outside of election times, Kenya's militias and gangs make their living by providing 'security' to people in mostly urban slums, often crossing the the borders of legality and illegality (Bodil Folke Frederiksen, 1083).

<sup>12</sup> Klopp and Kamungi, "Violence", pp 12-13.

<sup>13</sup> Kanyinga, "Stopping a Conflagration", pp 86.

<sup>14</sup> Monica Juma, "'African Mediation of the Kenyan Post-2007 Election Crisis'", *Journal of Contemporary African Studies* 27:3 (2009): 423.

goals set by the Accord were actually achieved. One of the main reasons for this was the continuous abuse of power by the ruling group behind a screen of functionality. Anti-reform alliances were formed through which politicians effectively hindered reforms and attempts to end the culture of impunity.<sup>15</sup> This was in line with the manner politics has been in Kenya since independence. As a result, little long-term change was achieved through the signing of the National Accord.

Kofi Annan's mediation was widely praised as an example of international intervention and the diplomatic practice of the Responsibility to Protect<sup>16</sup>. Kenya was yet again viewed as an island of stability in a volatile region by the international community. However, few of the provisions made by the National Accord were actually implemented and against the government's promises, reforms were barely realized. Therefore, the question arises whether the power sharing period truly achieved its goals as determined by the mediation. To analyse this, this dissertation closely examines the 2008 mediation to determine its consequences on the performance of power sharing in Kenya.

## **1.2. Research question and objectives**

This thesis aims to analyse the power sharing period in Kenya by answering the research question "How did the Annan-led mediation in 2008 affect the long-term performance of power sharing in Kenya?". The research question will be answered by looking at five different variables of power sharing as established by peacebuilding scholar Alexandre Raffoul. Raffoul has developed a framework that exists of five different variables which analyze power sharing by looking at problems that hinder post-agreement cooperation between parties. These variables are problems relating to the balance of power, inside and outside spoilers, identity and political accountability problems and credible commitment problems. This study follows Raffoul's work and combines research into power sharing with mediation, by analyzing mediation through five other variables, namely the use of leverage, horizontal and vertical inclusivity, relationship building and the content of the agreement. By applying the five variables on power sharing to the five variables concerning mediation one-on-one, the

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<sup>15</sup> Nic Cheeseman and Blessing-Miles Tendi, "Power Sharing in Comparative Perspective: The Dynamics of 'Unity' Government in Kenya and Zimbabwe", *The Journal of Modern African Studies* 48:2 (2010): 207.

<sup>16</sup> The Responsibility to Protect (R2P) is a global commitment endorsed by all member states of the UN in 2005 to prevent and react to cases of genocide, war crimes, ethnic cleansing and crimes against humanity (Crossley 193).

mediation in Kenya can be examined to determine its consequences on power sharing. This theoretical framework was selected because it is the only scholarly research that combines the performance of power sharing with the preceding mediation, even though mediation creates the power sharing agreements that are crucial to the power sharing period. Therefore, this thesis focuses on the period of power sharing in Kenya, from 2008 to 2013, to establish how the power sharing was affected by the mediation and to answer the research question.

### **1.3. Rationale**

This research is valuable as mediation is often employed to address both intra- and interstate conflict in Africa, whereby international mediators regularly suggest power sharing as a means of conflict resolution. Since the 1990s, nearly all mediated settlements in Africa have included power sharing elements in many countries, including Angola, Comoros Islands, Burundi, Central African Republic, Chad, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Liberia, Kenya, Mali, Senegal, Somalia, South Africa, Sudan and Zimbabwe.<sup>17</sup> Despite its increasing popularity, power sharing can be a risky approach to conflict transformation, as while power sharing has proven effective in the short term, in the long term it tends to create problems that hinder peacebuilding and reconciliation.<sup>18</sup> This thesis looks at the type of mediation to understand the performance of the power sharing. Although the mediation brought an end to the violence in Kenya, in the long-term, the power sharing period was not as successful as hoped. Therefore, it is important to analyze the start of the peacebuilding process to see its effects on the performance of power sharing, as the type of mediation can greatly influence the period following the signing of the agreement. This is also this dissertation's contribution to the literature: not many scholars have examined power sharing in light of the preceding mediation process, even though researchers such as Lanz and Siegfried suggest a link between the design of the mediation and the subsequent power sharing settlement.<sup>19</sup> This is an angle that has not yet been sufficiently explored in the literature, and that is the gap this dissertation aims to fill. This study does not intend to criticize Kofi Annan personally as the mediator, but rather hopes to inquire what could have been done differently in the mediating process to invoke long-term change. Therefore, this dissertation contributes to the scholarly understanding of power sharing in general and Kenya in particular.

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<sup>17</sup> Cheeseman and Tendi, "Unity Government", pp 204.

<sup>18</sup> Allison McCulloch and Joanne McEvoy, "The International Mediation of Power Sharing Settlements", *Cooperation and Conflict* 53:4 (2018): 468.

<sup>19</sup> David Lanz and Matthias Siegfried, *Mediation Process Matrix* (Bern: Swisspeace, 2012).

## **1.4. Clarifying concepts**

### **1.4.1. Power sharing**

This dissertation examines the practice of power sharing. Power sharing has come to comprise a wide range of arrangements varying across dimensions. It can refer to power shared between elites, either politically, economically, military or territorially.<sup>20</sup> This thesis concentrates on political power sharing, which can be understood as “mechanisms for joint involvement of key protagonists of conflict in political institutions”.<sup>21</sup> For the Kenyan case, this meant a grand coalition that incorporated both the ODM and the PNU equally. This thesis will focus specifically on the timeframe from April 2008 until April 2013 to research the performance of the power sharing agreement.

### **1.4.2. Mediation**

This work adopts the widely accepted definition suggested by Bercovitch and Houston, which describes mediation as “a reactive process of conflict management whereby parties seek the assistance of, or accept an offer of help from, an individual, group, or organization to change their behavior, settle their conflict, or resolve their problem without resorting to physical force or invoking the authority of the law”.<sup>22</sup> This definition is broad enough to analyze different aspects of the mediation, such as the incentives for the mediator to intervene, and the social context the mediation takes place in.

## **1.5. Overview of the structure**

This dissertation starts with an explanation of the research design, in which the research strategy will be explained. This thesis uses a case study approach and the research design section will elaborate on the specifics of this methodology. After the research design, a literature review follows. The literature review looks into the literature written on power sharing in Kenya, focusing on elite politics, interethnic power sharing, justice reforms and constitutional provisions and establishes the gap in the literature. The next chapter is the theoretical framework, which explains the framework designed by Alexandre Raffoul that this

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<sup>20</sup> Caroline Hartzell and Matthew Hoddie, “Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management”, *American Journal of Political Science* 47:2 (2003): 320.

<sup>21</sup> Christine Bell, *Political Power Sharing and Inclusion: Peace and Transition Processes*, PA-X Report (Edinburgh: University of Edinburgh, 2018): 9.

<sup>22</sup> Jacob Bercovitch and Allison Houston, “The Study of International Mediation: Theoretical Issues and Empirical Evidence” in *Resolving International Conflicts: The Theory and Practice of International Mediation*, ed. Jacob Bercovitch (Boulder: Lynne Rienner, 1996): 13.

dissertation follows. The framework consists of five variables that look at power sharing. Following Raffoul's research, this dissertation looks at how the mediation of Kofi Annan in 2008 affected power sharing in Kenya. Therefore, five more variables are described that analyze the mediation that correspond one on one with the variables regarding power sharing. This is all explained in the theoretical framework chapter. After this chapter, a background chapter narrates the course of the post-election violence to provide a better understanding of the environment the mediation took place in. The causes of violence are also explained further. After the background chapter, the mediation is introduced. The chapter notes how the mediation originated, who was involved and what the goals were. The chapter further applies the five variables as developed by Raffoul to analyze the mediation further. The last chapter elaborates on power sharing in Kenya by following the five variables regarding power sharing, linking power sharing to mediation. After this chapter the conclusion summarizes the findings and provides a short analysis, after which suggestions for future research are mentioned.

## **1.6. Research design**

The purpose of this subchapter is to present the methodology for this study in order to achieve the research aims and objectives. This chapter is divided into different sections. This chapter first reiterates the research question again, after which the following section explains the terminology used in this thesis. Then, the research approach and strategy are outlined. Thereafter, the methods of data collection and analysis will be introduced. Lastly, the limitations of the research methodology are explained.

### **1.6.1. Research strategy**

In line with the research question, an interpretive case study approach has been adopted to provide an in-depth understanding of the multi-faceted topics involved in the research context. As a definition, Yin states it efficiently: "A case study is an empirical inquiry that: investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used".<sup>23</sup> The underlying presumption of interpretive case studies is that research needs to be carried out in an in-depth and holistic manner in order to place the phenomena in the

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<sup>23</sup> R. Yin, *Case Study Research: Design and Methods* (Newbury Park: Sage Publishing, 1989): 23.

appropriate context.<sup>24</sup> Case studies have been used by researchers for many years across different disciplines, mainly the social sciences, to analyze present-day concrete situations.<sup>25</sup> Bensabat et al point out that case studies are relevant when focusing on process and context questions that look at a long process rather than a specific point in time; case studies assist in tracing links in longer periods of time.<sup>26</sup> Runeson and Höst note that case studies are used for phenomena that cannot be studied in isolation. In addition, case studies are incredibly useful in providing a deeper understanding of the phenomena under analysis. Lijphart praises the case study method as one that allows for intensive examination even when the researcher's resources are limited. He also mentions that interpretive case studies make explicit use of existing theories; by applying general theory to a specific case a deeper understanding of the case can be achieved.<sup>27</sup> By using a critical interpretive case study approach, the researcher investigates various dimensions to paint a complex, holistic picture out of detailed narrative data.<sup>28</sup> The case study method has often been criticized for being "less valuable" than general and controlled empirical studies, impossible to generalize from, and carried out by biased researchers.<sup>29</sup> However, these misconceptions can be met by recognizing that knowledge is more than statistical significance and by employing appropriate research methodology practices.<sup>30</sup>

As mediation in post-election crises and their long-term effects have been severely understudied, an interpretive case study will assist considerably to understand the complex facets of the Kenyan crisis. Case studies produce the context-dependent knowledge that is necessary for humans to develop from rule-based beginners to experts.<sup>31</sup> The case study method was selected for this study as it tends to give the researcher the freedom to focus on the case itself, rather than a theoretical model which would evolve around the model itself rather than the case.

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<sup>24</sup> Wenshin Chen and David Bennett, "Gaining Social Values of Wireless Technology: An Interpretive Case Study in the Healthcare Institutional Context", *International Journal of Information Management* 33:5 (2013): 803.

<sup>25</sup> Fahad Alnaim, "The Case Study Method: Critical Reflection", *Global Journal of Human-Social Science* 15:7 (2015): 29.

<sup>26</sup> Izaak Bensabat, David Goldstein and Melissa Mead, "The Case Research Strategy in Studies of Information Systems", *MIS Quarterly* 11:3 (1987): 369.

<sup>27</sup> Arend Lijphart, "Comparative Politics and the Comparative Method", *The American Political Science Review* 65:3 (1971): 692.

<sup>28</sup> Bettie Ray Butler, Heather Coffey and Jemimah Lee Young, "Justice-Oriented Teaching Dispositions in Urban Education: A Critical Interpretive Case Study", *Urban Education* 0 (2018): 11.

<sup>29</sup> Bent Flyvbjerg, "Five Misunderstandings about Case Study Research", *Qualitative Inquiry* 12:2 (2006): 221.

<sup>30</sup> *Ibid*, pp 224.

<sup>31</sup> *Ibid*, pp 221.

### **1.6.2. Data collection**

According to Yin, a case study is a thorough methodology which incorporates different types of data from different sources, which enables the researcher to acquire a more comprehensive understanding of the subject being studied.<sup>32</sup> To fit this requirement, both primary and secondary resources were examined. A literature research was pursued as interviews with top political officials in Kenya would have been incredibly hard to execute. For that reason, this thesis is built on an extensive review of the literature regarding Kenya's mediation, the violence and the power sharing phase. Secondary literature was selected on the basis of the reputation of the scholars. Mostly literature from well-known scholars that have created the basis of research into the field has been drawn from. In addition, a balance was sought between international and nation scholars, as many Kenyan scholars have examined the mediation and power sharing in their home country. Official documents drawn up during and after the mediation, such as the National Accord, have been extensively analyzed. Secondary sources, such as academic articles and books, in which academics have combined and summarized results from primary literature, have also been thoroughly studied. The findings from both types of sources have been combined in this research.

### **1.6.3. Limitations**

Although the secondary literature approach fits the aims of this research, certain unavoidable limitations should be noted. First, because this study relies on secondary literature, the data in this thesis is not in any way exhaustive. More in-depth and on-the-ground research is necessary to make a conclusive analysis. Secondly, because of the novelty of Raffoul's theory, the application of it to Kenya's case is not in any way exhaustive nor conclusive. Although this thesis will research the appliance of Raffoul's theory to the Kenyan case, this dissertation does not draw conclusions as to the wider application of the theory, as more research employing the theory to various cases needs to be done to fully understand the reliability and shortcomings of the theory.

### **1.6.4. Conclusion**

This chapter has illustrated that the most suitable research strategy for this study is the interpretive case study method, based on the research question and objectives of this research. This thesis will use both primary and secondary sources and apply documentary analysis in

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<sup>32</sup> Yin, "Case Study", pp 34.

order to obtain data. Both primary and secondary data will be drawn from multiple sources. Despite the fact that this research approach has limitations, the data assembled will be sufficient to arrive at a valid conclusion.

## 2. Literature Review: Power sharing in Kenya

This chapter constitutes a short literature review of what various authors have written on power sharing in general, before zooming in on the process of mediation and power sharing in Kenya. Power sharing is a topic that has been researched profoundly in the scholarly literature. As mentioned in the chapter before, since the 1990s, most negotiated peace agreements have included elements of power sharing.<sup>33</sup> In an effort to bring an end to prolonged civil conflict in countries such as Somalia, Bosnia and Rwanda, power sharing governments were introduced to appease all groups. As a result of the perceived success of power sharing agreements in some of these cases, power sharing became a favorite method of mediators to settle conflict.<sup>34</sup> As Hoddie and Matthew point out, power sharing first came to the attention of the academic community as a result of Arend Lijphart's studies, in which he argues that pluralistic communities that use elements of power sharing would be able to wield power consensually. This point of view was reinforced by Eric Nordlinger, who appeals that power sharing can be deployed to control conflict in deeply divided societies. However, neither scholar linked these practices of power sharing in institutions to the process of negotiation. Yet in post-conflict societies where neither party has won the right to outline new rules and institutions during the conflict, elements of power sharing via mediated discussion is often the reality.<sup>35</sup>

McCulloch and McEvoy point out that third parties regularly incentivize competing groups to accept, preserve and transform power sharing institutions. Third-party mediators are generally inclined to propose resolutions with clear exit strategies that focus on short-term solutions.<sup>36</sup> As Mehler notes, power sharing is attractive to peace negotiators as they are often looking for a solution that will bring a quick end to the conflict and they are usually under extreme pressure to come up with a resolution.<sup>37</sup> However, Mehler argues that power sharing often undermines the practice of democracy and peace negotiations that result in power sharing agreements give rebels and would-be leaders an incentive to cause insurgencies.<sup>38</sup> This view is supported by McCulloch and McEvoy, who note that power sharing can encourage political fanaticism and ethnic outbidding. This outbidding might lead to collapse, unless one of the parties is willing

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<sup>33</sup> Anne Jarstad, "The Prevalence of Power Sharing: Exploring the Patterns of Post-Election Peace", *Africa Spectrum* 3 (2009): 42.

<sup>34</sup> Nic Cheeseman, "The Internal Dynamics of Power Sharing in Africa", *Democratization* 18:2 (2011): 336.

<sup>35</sup> Hartzell and Hoddie, "Institutionalizing Peace", pp 319.

<sup>36</sup> McCulloch and McEvoy, "International Mediation", pp 469.

<sup>37</sup> Mehler, "Peace and Power Sharing", pp 453.

<sup>38</sup> *Ibid*, pp 455.

to back down. As such, political immobilism – the inability to create or implement policy as a result of protracted disagreements – can lead to defection. However, concession can lead to a loss of credibility and voter support as well.<sup>39</sup> As a result, there is an academic debate about whether power sharing institutions facilitate political stability.

Anne Jarstad, one of the most quoted researchers in the field of power sharing, notes that even though power sharing can prevent violence in the short-term, it can be regarded as a constraint on democracy. It seldomly solves all the issues at stake and usually means an institutionalization of polarization in divided societies.<sup>40</sup> Multiple scholars, such as Nic Cheeseman and Ian Spears, analyze power sharing in Africa specifically.<sup>41</sup> The majority of scholars problematizes power sharing as a means of conflict resolution. For example, Spears argues that power sharing agreements rarely stand the test of time. After examining peace processes in Rwanda and Sierra Leone, he notes that power sharing is a remarkably unstable form of governance that in the best-case scenario only provides temporarily relieve from violent conflict. Power sharing is in most cases only a temporary break from conflict, not a resolution.<sup>42</sup> Despite multiple authors criticizing the use of power sharing, it is still one of the most used agreements used to conclude mediation. There are few functioning alternatives that will prevent violence in the short-term.<sup>43</sup> Power sharing is also increasingly used to solve political crises that emerge as a result of post-electoral violence.<sup>44</sup> Kenya is an example of this. There is limited literature available on power sharing in Kenya, however, this literature review focuses on four main themes that emerge repeatedly throughout the literature reviewed. These themes are elitist politics, interethnic power sharing, justice reforms, and constitutional provisions.

Nic Cheeseman and Andreas Mehler are arguably two of the most famous scholars in the literature on power sharing in Africa. Both have published considerable work in the field and are some of the most quoted researchers. In his article on power sharing in Kenya and Zimbabwe, which he wrote with Zimbabwean scholar Blessing-Miles Tendi, Cheeseman

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<sup>39</sup> McCulloch and McEvoy, “International Mediation”, pp 469.

<sup>40</sup> Jarstad, “Prevalence”, pp 42.

<sup>41</sup> See for example Nic Cheeseman, “The Internal Dynamics of Power Sharing in Africa”, *Democratization* 18:2 (2011): 336-365.

<sup>42</sup> Ian Spears, “Africa: The Limits of Power-Sharing”, *Journal of Democracy* 13:3 (2002): 123.

<sup>43</sup> Jarstad, “Prevalence”, pp 42.

<sup>44</sup> Cheeseman and Tendi, “Unity Government”, pp 204.

presents a comparative analysis of unity governments in the two countries. Critical of power sharing arrangements in political crises, Cheeseman and Tendi research the historical roots of veto players in power sharing governments and how the implementation of the power sharing agreement is affected by these veto players.<sup>45</sup> They look at the Kenyan political sphere from an elite perspective, in which elite consensus and division define the stability of the post-colonial state.<sup>46</sup> They emphasize that the Kenyan crisis was not a conflict between two clear-cut factions, as political alliances in Kenya have always been fluid since independence and politicians regularly switch parties. Neither of the PNU and the ODM had the monopoly on victimhood and both factions had an interest in preventing post-election prosecutions, as atrocities were committed on both sides. Cheeseman and Tendi assert that because of these common interests and a history of elite inclusion, key veto players agreed to a power sharing settlement.<sup>47</sup> Power sharing in Kenya enabled elites to build new alliances to maximize their own conditions of service, which Cheeseman and Tendi call ‘the politics of collusion’. It is through these new alliances that Kenya’s legislators have been capable of exercising their veto to prevent prosecution and to continue Kenya’s state of impunity.<sup>48</sup> Although Cheeseman and Tendi’s account on elite politics is clear, well-written and convincing, they do not elaborate on the nature of the alliances that Kenyan politicians create. They mention the alliance between Uhuru Kenyatta and William Rutoto avoid prosecution by the ICC<sup>49</sup>, but they fail to incorporate the manipulation of ethnicity by Kenyan politicians and the utilization of identity, which are so often exploited to mobilize voter support and form the basis of elite alliances. Andreas Mehler follows a route similar to that of Cheeseman and Tendi regarding elites in his paper on peace and power sharing in Africa. Like Cheeseman and Tendi, he criticizes power sharing as a means to conflict management as it sacrifices democracy in the name of peace.<sup>50</sup> He also notes that most peace negotiations revolve around warring factions and leave out civilian parties, thereby enshrining culprits of violence safely into government.<sup>51</sup> For the Kenyan case, he notes that the peace agreement had numerous ambiguities, which led to continuous fighting the first few months into the power sharing.<sup>52</sup> In addition, he calls the

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<sup>45</sup> Cheeseman and Tendi, “Unity Government”, pp 206.

<sup>46</sup> Ibid, pp 208.

<sup>47</sup> Ibid, pp 214.

<sup>48</sup> Ibid, pp 223.

<sup>49</sup> Ibid, pp 224.

<sup>50</sup> Andreas Mehler, “Peace and Power Sharing in Africa: A Not so Obvious Relationship”, *African Affairs* 108:432 (2009): 453.

<sup>51</sup> Ibid, pp 462.

<sup>52</sup> Ibid, pp 469.

agreement an “elite pact”, as civilians were not included and the reality of the power sharing settlement revolved around the concerns of the political elite; no root causes were addressed.<sup>53</sup> However, he does not specify how the concerns of civilians could be mitigated or how elitist the agreement was. This leaves room for a more detailed research into the Kenyan case. Both Mehler and Cheeseman and Tendi conclude that power sharing is not a sustainable solution to conflict resolution, as unity governments generally postpone conflicts rather than resolve them.<sup>54</sup>

Gilbert Khadiagala carries out an in-depth analysis of coalition building by Kenyan political parties against a background of ethnic division. He argues that ethnic political management has been the key element driving the formation of ethnic alliances in the Kenyan political sphere, together with the lingering legacy of the one-party state.<sup>55</sup> According to Khadiagala, it has been incredibly difficult organizing parties in Kenya, as old constitutional rules and structures have continuously hindered actors seeking to build alliances outside their ethnic group.<sup>56</sup> He claims that Kenya’s political system in itself is too weak to build interethnic alliances, as parties are too weak to evolve their moralistic norms and values and therefore cannot enter into genuine coalitions.<sup>57</sup> When in 2008 the mediation by Kofi Annan resulted in the creation of a grand coalition that incorporated members from both sides on a 50/50 basis, it would not function, according to Khadiagala’s statements regarding coalitions in Kenya’s politics. Indeed, he notes that the power sharing government has experienced challenging problems as he argues there were two centers of power built on equally weak coalitions.<sup>58</sup> After two years of power sharing, ethnic tensions started to emerge within the ODM when Odinga and Ruto had a disagreement, thereby pitting Luo’s against Kalenjins within the cabinet. Similar issues surfaced on the PNU side, where politicians that intended to run in the 2013 elections started stirring up tensions to mobilize supporters.<sup>59</sup> Although ethnic tensions remain a problem in Kenyan politics, Khadiagala does not clearly explain the origins of said tensions, nor does he sufficiently apply his coalition-building theory to the power sharing period in Kenya, which creates unclarities around the topic. After reading his article, it remains questionable why Kenya has not been

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<sup>53</sup> Ibid, pp 470.

<sup>54</sup> Cheeseman and Tendi, “Unity Government”, pp 204.

<sup>55</sup> Khadiagala, “Political Movements and Coalition Politics in Kenya: Entrenching Ethnicity”, *South African Journal of International Affairs* 17:1 (2010): 66.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid, pp 67.

<sup>58</sup> Ibid, pp 78.

<sup>59</sup> Ibid, pp 79.

able to create political parties that exceed ethnic lines. Emma Elfverson and Anders Sjögren also research ethnopolitical hostility in Kenya, even though they combine an analysis of the local experience of power sharing with national politics. By examining two cases in Kenya in two different counties, they investigate how local power sharing affects ethnopolitical hostility on a local level.<sup>60</sup> They focus on two towns in the Rift Valley, where tensions between Kikuyus and Kalenjin were the highest during the 2007-PEV. They conclude that in one of the cases, in Nakuru, the provisions made by the power sharing agreement, such as equal resource allocation, has stabilized relations between the two communities.<sup>61</sup> In the other town however, Uasin Gishu, the situation remained hostile due to the absence of a structured commitment. In addition, national politics derailed local peace processes as important political figures, such as Ruto, called for continuous resistance against the Kikuyu community.<sup>62</sup> This demonstrates that although power sharing provisions were made on both national and local levels, the effects did not run deep. Below the surface, ethnic divisions create lingering hostility, both on local and national levels. However, neither article further examines the provisions of the power sharing agreement to understand where the continuous hostility comes from or could be addressed.

Jacqueline Klopp is a well-known scholar in the field of Kenyan politics. She has done extensive research into Kenya's political system and the implications of historical legacies on contemporary politics. Her contribution to the power sharing literature on Kenya has been carried out mainly through research from the perspective of justice reforms. In her article, she reflects on the contents of the National Accord and its ramifications in the years following the signing of the agreement. She is incredibly sceptic of the power sharing agreement as she notes that the key culprits of Kenya's violence are now safely entrenched into the highest levels of government and in charge of reforms.<sup>63</sup> However, she notes that that is the usual course of events in power sharing settlements. Her article centers around the question on whether Kenya can transform and overcome the deep divisions that were caused by the violence. She also ponders whether Kenya's population can prevail over their highly corruptive politicians.<sup>64</sup> Klopp points out that one year after the signing of the agreement, little has changed, despite promises that reforms would be implemented one year after signing. She argues that Kenya's

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<sup>60</sup> Emma Elfverson and Anders Sjögren, "Do Local Power-Sharing Deals Reduce Ethnopolitical Hostility? The Effects of 'Negotiated Democracy' in a Devolved Kenya", *Ethnopolitics* 19:1 (2020); 49.

<sup>61</sup> *Ibid*, pp 55.

<sup>62</sup> *Ibid*, pp 56.

<sup>63</sup> Jacqueline Klopp, "Kenya's Unfinished Agenda's", *Journal of International Affairs* 62:2 (2009): 143.

<sup>64</sup> *Ibid*, pp 144.

government has not managed to address the humanitarian crisis that followed the violence; rather, the government has only exacerbated the crisis by violently removing IDPs from refugee camps into hostile communities.<sup>65</sup> In addition, she points out that the government has done little to nothing to address long-term issues such as land reforms and political accountability. Multiple corruption scandals after the mediation illustrates that even after the Accord, politicians use the government as a “site of eating” and aim to maintain political control through patronage practices.<sup>66</sup> Klopp argues that the only way to achieve reforms in Kenya is through continuous third-party support and incentives.<sup>67</sup> However, this is fairly unrealistic as the international community tends to lose its interest when a certain state of peace is achieved whereby violence is largely absent. Also, Klopp’s article was written in 2009, when power sharing had only been in place for one year. Analyzing the full period of power sharing up to 2013 will give a more complete picture of the impact of power sharing on the country’s long-term issues. Sadiki Koko argues that a power sharing agreement as a result of a mishandled electoral process impairs the pursuit of justice and the advocacy for human rights.<sup>68</sup> He claims that the Government of National Unity (GNU) was detrimental for democracy and represented a major setback for Kenyan democratic processes, as he argues there was significant democratic maturity demonstrated during the 2002 elections.<sup>69</sup> Koko criticizes the various commissions that were set up after the signing of the agreement that were to research human rights abuses as “half-baked jobs”.<sup>70</sup> However, it is too simplistic and unfair to blame these commissions for not producing enough details in his opinion, as the commissions were continuously opposed by the Kenyan government and had to carry out their research under extreme political heat. In addition, Soko fails to explain why power sharing agreements specifically impair the pursuit of justice; from his article it appears that any dysfunctional state would undermine justice. It is not clear why he blames power sharing governments specifically.

Lastly, a number of scholars analyzes the power sharing agreement from a constitutional point of view. Ever since independence, Kenya has struggled with tensions around constitutional reform, as the constitution negotiated during independence ensured a highly centralized

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<sup>65</sup> Ibid, pp 148.

<sup>66</sup> Ibid, pp 150.

<sup>67</sup> Ibid, pp 155.

<sup>68</sup> Sadiki Koko, “The Tensions Between Power Sharing, Justice and Human Rights in Africa’s ‘Post-Violence’ Societies: Rwanda, Kenya, and the Democratic Republic of the Congo”, *African Human Rights Law Journal* 13 (2013): 254.

<sup>69</sup> Ibid, pp 275.

<sup>70</sup> Ibid, pp 276.

presidency with little accountability.<sup>71</sup> Former presidents Kenyatta and Moi made recurrent amends to the constitution to increase the power of the executive. Calls for a new, more democratic constitution became central to political opposition and Kenyan elections.<sup>72</sup> Westen Shilaho argues that the violence in 2007 opened up opportunities for change. The power sharing cabinet created circumstances for constitutional reform. As a result, Kenyans finally voted for a new constitution in 2010 during a referendum, after decades of campaigning.<sup>73</sup> With 67,25% of Kenyan citizens in favor of the new constitution, the draft was approved. For the first time in Kenyan history, the constitution made provisions to address skewed resource allocation and ethnic polarization.<sup>74</sup> Although Shilaho mentions that power sharing provided the opportunity for reforms, he does not elaborate on this notion, nor does he go into detail what reforms he implies. Henry Amadi, a Kenyan lecturer teaching political science at the University of Nairobi, feared that Kenya's grand coalition would be an obstacle to constitutional reform. Since his article was written before 2010, it does not include the 2010 constitutional reform. However, it is included in this literature review as it demonstrates how many scholars described the dysfunctional nature of the unity government and the skepticism amongst Kenyan scholars regarding the creation of a new constitution. Amadi asserts that the discussion regarding constitutional reform was continuously undermined by unending bickering between the parties about the distribution of power and wealth. Moreover, he argues that constitutional reforms were stalled because both parties feared the crippling effects of the campaigning for the referendum on their general position in government.<sup>75</sup> In addition, he notes that Kenyan politicians continue to be led by their selfish interests protecting their own interests, rather than the interests of Kenyan citizens.<sup>76</sup> It is for these reasons that he claims that constitutional reforms had not been addressed. Since constitutional reforms were promised to be carried out within one year after the signing of the agreement, he obviously makes a valid point. Kenyan politicians deliberately stalled the process of constitutional reforms. However, to many people's surprise, they eventually managed to create a new constitution. This indicates that there are more dynamics at play, which the majority of scholars ignore.

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<sup>71</sup> Mwangi wa Githinji and Frank Holmquist, "Reform and Political Impunity in Kenya: Transparency without Accountability", *African Studies Review* 55:1 (2012): 59.

<sup>72</sup> Bruce Berman, Jill Cottrell and Yash Ghai, "Patrons, Clients, and Constitutions: Ethnic Politics and Political Reform in Kenya", *Canadian Journal of African Studies* 43:3 (2009): 464.

<sup>73</sup> Westen Shilaho, "The Paradox of Kenya's Constitutional Reform Process: What Future for Constitutionalism?", *Journal for Contemporary History* 41:2 (2016): 187.

<sup>74</sup> *Ibid*, pp 195.

<sup>75</sup> Henry Amadi, "Kenya's Grand Coalition Government – Another Obstacle to Urgent Constitutional Reform?", *Africa Spectrum* 44:3 (2009): 150.

<sup>76</sup> *Ibid*.

This literature review has reviewed literature from the four different perspectives that were mostly discussed in the scholarly literature. Power sharing in Kenya is generally studied from a viewpoint of elite politics, as described by Cheeseman and Mehler. However, these scholars do not narrate the origins of elite alliances and completely neglect the ethnic identity perspective. Khadiagala and Elfversson and Sjögren do discuss the ethnic side of power sharing in Kenya. Both the articles note that power sharing did not appear to run deep and hostilities were boiling on both national and regional levels, but neither article examines the power sharing agreement into depth to explain this phenomenon. Klopp and Koko both argue justice has not been adequately pursued by the coalition government. Although reforms were supposed to be made one year after the signing of the Accord, none of the promised changes were realized. Nonetheless, Klopp only analyzed the situation in 2009 and not for the full extent of the power sharing agreement. Lastly, Shilaho and Amadi reflected on constitutional reforms. However, like Klopp, Amadi wrote his article in 2009, before the new constitution was introduced. Shilaho does not trace back the constitutional reforms sufficiently to the power sharing cabinet. After all this research, a gap can be determined in the literature. None of the scholars sufficiently combine different perspectives but tend to focus on one angle, even though perspectives are often intertwined. Therefore, this dissertation aims to fill that gap by combining different variables together. Moreover, even though the power sharing agreement was the result of an intense six-week mediation, the mediation is barely mentioned in the literature in relation to power sharing. However, the power sharing agreement dictated the course of the power sharing cabinet. Therefore, this thesis aims to fill the gaps in the literature by researching how the mediation affected power sharing in Kenya.

### 3. Theoretical framework

The purpose of this chapter is to introduce the theoretical framework. This dissertation uses the theoretical framework regarding power sharing as developed by Alexandre Raffoul. Raffoul is a researcher at Swiss Peace, which is a practice-oriented peace research institute in Switzerland. This chapter will give a short overview of Raffoul's research into power sharing and mediation, followed by an explanation on how this dissertation will apply his framework. Raffoul has developed five variables to examine the success of power sharing. In addition, he has created five variables that focus on mediation to research the effect that mediation can have on the performance of power sharing. These variables need to be combined one on one for each section to answer the research question. The first section of this chapter, which elaborates on power sharing, will also describe the five variables regarding power sharing. The last section, which centres around mediation, will include the five variables on mediation. In the conclusion, a roadmap to this dissertation's analysis will be provided.

#### 3.2. The power sharing dilemma

In his article on the power sharing, Raffoul centres his research around the issue of the power sharing dilemma, which he describes as “whilst the promise of power sharing might be necessary in the short-run to secure the adherence of the conflict parties to a peace agreement, power sharing tends to create problems that thwart peacebuilding and reconciliation in the long run”.<sup>77</sup> According to him, the literature identifies the power sharing dilemma quite extensively, however, it provides limited understanding on how it can be addressed.<sup>78</sup> He starts his article with unpacking power sharing. He argues that, although there are differences in institutional design, all power-sharing systems base decision-making on the practice of consensus, rather than majority, which is the case in democracies. For that reason, in any power sharing agreement, the performance of power sharing institutions relies on the presence of cooperation between former enemies at an elite level.<sup>79</sup>

The durability and “success” of a power sharing agreement is a topic that is heavily debated in the power sharing literature. What can be achieved with a power sharing agreement – for example sustainable peace, a cessation of violence, or an openness to compromise – remains

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<sup>77</sup> Alexandre Raffoul, *Tackling the Power Sharing Dilemma? The Role of Mediation* (Bern: Swiss Peace, 2019): 7.

<sup>78</sup> *Ibid*, pp 2.

<sup>79</sup> *Ibid*, pp 8.

open to debate. There is no one definition as to what the success of power sharing entails in the academic literature. Also, whereas power sharing agreements were initially primarily used to settle civil wars, they are now regarded as the fastest way to settle various political crises on the African continent, therefore expanding the definitions of the application and durability of the agreements.<sup>80</sup> Various authors point out the possible benefits of a power sharing agreement as an interim agreement. Timothy Sisk mentions that power sharing appears the most durable when the consociational model is used, as it secures the principles of democracy. Sisk notices that for mediators, the “success” of power sharing agreements is directly derived from a “stop of the killing” and the security guarantees an agreement offers.<sup>81</sup> However, Sisk argues that in the long run, power sharing agreements, including the consociationalist model, have long-lasting negative implications for sustainable peace as ethnic lines become deeper entrenched in the society<sup>82</sup>. Hartzell and Hoddie analyze the success of power sharing by researching the likelihood of a society to return to civil war. As such, they equal the success of power sharing as a lack of violence in the society previously at war. They argue that by creating multi-faceted power sharing agreements that address security concerns are the most successful in preventing civil war in the long run.<sup>83</sup> Mehler’s arguments regarding the success of power sharing are much in line with Sisk’s assertions. He notes that the success of a mediation, which usually leads to elements of power sharing in a peace agreement, is different for everyone involved. Those at the negotiation table usually find solace in a power sharing agreement, as it offers everyone at the table a piece of the pie. Negotiators tend to push for power sharing agreements, as those are regarded as the fastest way to stop the violence. However, citizens might prefer finding long-term solutions to underlying problems.<sup>84</sup> As a result, in the short-term power sharing agreements may be regarded as “successful”, as they can bring an end to violence in the short term. However, in the long-term, the success of a power sharing agreement remains largely debated.

Raffoul argues that the durability of a power sharing settlement relies on elite cooperation. He Raffoul argues that joint decision-making can act as an indicator of the performance of power sharing. The act of power sharing is in itself a paradox, as elite cooperation between former

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<sup>80</sup> Andreas Mehler, “Introduction: Power Sharing in Africa”, *Africa Spectrum* 44: 3 (2009): 4.

<sup>81</sup> Timothy Sisk, “Power-Sharing in Civil War: Puzzles of Peacemaking and Peacebuilding”, *Civil Wars* 15:1 (2013): 10.

<sup>82</sup> *Ibid*, pp 11.

<sup>83</sup> Hartzell and Hoddie, “Institutionalizing Peace”, pp 330.

<sup>84</sup> Mehler, “Introduction”, pp 4.

enemies is incredibly hard to accomplish because of a history of violence, but at the same time necessary for power sharing to perform satisfactorily.<sup>85</sup> Therefore, Raffoul defines the durability and success of a power sharing agreement as the ability of the elite to cooperate, but notes five common barriers to elite cooperation in war-to-peace transitions: problems relating to the balance of power; inside spoilers; outside spoilers; problems relating to identity and political accountability; and credible commitment problems. The following section explains all five variables into detail.

*Balance of power* problems arise when there is an imbalance in parties' preferences; some parties might favour a military victory, whereas others support power sharing agreements. Peace agreements are adopted when all parties to the mediation are assured that their future participation in governance is properly captured. In power sharing agreements, this means that the balance of power is levelled within political institutions to guarantee all actors access to decision making on the highest political level.<sup>86</sup> However, Raffoul points out that problems might arise after signing the agreement, when changes in the power equilibrium occur due to alterations in the demographic, economic or military structure in the country.<sup>87</sup> When shifts occur post-agreement in the power equilibrium, they can function as an incentive for the more powerful party to seize the opportunity to challenge an agreement that does not accurately reflect the power share they are convinced they are entitled to.<sup>88</sup>

*Inside spoilers* emerge when parties sign the agreement without being fully committed as a result of excessive external pressure or as a tactic.<sup>89</sup> Leaders or parties that are convinced that the signing of a peace agreement threatens their interests or power pose a great risk to peace making, as they may resolve to undermining peace endeavours.<sup>90</sup> Inside spoilers sign the peace agreement but yet fail to commit to the obligations of the agreement. Inside spoilers often

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<sup>85</sup> Ibid, pp 8.

<sup>86</sup> Raffoul, "Power Sharing", pp 9; Donald Rothchild, "Reassuring Weaker Parties after Civil Wars: The Benefits and Costs of Executive Power-Sharing Systems in Africa", *Ethnopolitics* 4:3 (2005): 248.

<sup>87</sup> Ibid.

<sup>88</sup> Ian Spears, "Understanding Inclusive Peace Agreements in Africa: The Problems of Sharing Power", *Third World Quarterly* 21:1 (2000): 110.

<sup>89</sup> Raffoul, "Power Sharing", pp 9.

<sup>90</sup> Stephen John Stedman, "Spoiler Problems in Peace Processes", *International Security* 22:2 (1997): 5; Marie-Joëlle Zahar, "Reframing the Spoiler Debate in Peace Processes" in *Contemporary Peacemaking*, ed John Darby and Roger Mac Ginty (New York: Palgrave Macmillan, 2008): 159.

employ covert methods, as they want to keep their threat hidden. As such, inside spoilers generally aim to keep violence to a minimum.<sup>91</sup>

*Outside spoilers* can arise when excluded actors disagree with the peace-making process and decide to derail the process they are not part of.<sup>92</sup> Outside spoilers are either banned from the peace negotiations or exclude themselves, and resort to violence to undermine the peace process.<sup>93</sup> Peace negotiations that tend to exclude certain parties to the conflict are more likely to experience spoiler problems, as they may regard peace as a threat.<sup>94</sup> Secondly, actors are more likely to become spoilers when they perceive power-sharing agreements as rewarding violence. This can incentivize rebel groups to splinter and to resort back to violence, thereby becoming outside spoilers.<sup>95</sup>

*Identity and political accountability* problems emerge from the often-emotional discourse that surrounds identity issues, which makes identity conflict extremely hard to resolve.<sup>96</sup> Power sharing in ethnic conflicts is introduced to ensure that minor groups are not excluded from governance in the post-conflict period. However, in the long run, power sharing tends to contribute to deepening wartime divisions in ethnically divided societies and impede reconciliation between former opponents.<sup>97</sup> Power sharing tends to create incentives for ethnic leaders to become hardliners and to escalate the conflict, marginalizing moderates in the process. In addition, power sharing institutions can become weapons, as ethnically focused politicians can use institutions to block elite cooperation.<sup>98</sup>

*Credible commitment* problems arise because of distrust between parties; parties tend to be reluctant to sign the agreement as there are risks of defection from the enemy.<sup>99</sup> Power sharing agreements are designed to resolve credible commitment problems as they focus on an equal distribution of power to prevent exclusion from political power in the post-war society. By

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<sup>91</sup> Raffoul, "Power Sharing", pp 8.

<sup>92</sup> Ibid.

<sup>93</sup> Stedman, "Spoiler Problems", pp 5.

<sup>94</sup> Raffoul, "Power Sharing", pp 9; Zahar, "Reframing": 161.

<sup>95</sup> Raffoul, *Power Sharing Dilemma*, pp 9.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid, pp 8.

<sup>98</sup> Philip G. Roeder, "Power Dividing as an Alternative to Ethnic Power Sharing", in *Sustainable Peace: Power and Democracy after Civil Wars*, ed. Philip Roeder and Donald Rothchild (Ithaca: Cornell University Press, 2005): 57.

<sup>99</sup> Barbara Walter, *Committing to Peace: The Successful Settlement of Civil Wars* (Princeton: Princeton University Press, 2002): 26.

dividing and balancing power amongst all groups, power-sharing ensures no one group becomes dominant and starts threatening the security of others.<sup>100</sup> However, Raffoul notes that credible commitment problems are likely to arise in the post-agreement phase. Post-conflict institutions are often too weak to instil confidence in the parties, which can hinder post-agreement elite cooperation.<sup>101</sup> In addition, power sharing agreements may contain ambiguities or unresolved issues, which can also contribute to credible commitment problems.<sup>102</sup>

### 3.3. Power sharing performance and mediation

Raffoul notes that differences in the durability of power sharing imply that the severity of the power sharing dilemma is not consistent across different cases. He argues that although the literature attributes this to institutional design matters<sup>103</sup>, this explanation does not fully satisfy the argument, as even institutional design results from elite bargaining between different actors. In addition, after signing peace agreements, institutions are generally weak and unable to provide guarantees to mistrustful parties.<sup>104</sup> The second stream of literature that aims to provide an explanation for the variations in the performance of power sharing that Raffoul distinguishes looks at the role of third parties in the process of sharing power. Third parties are often found to play key roles in applying pressure onto parties to adopt and implement power sharing agreements. They are also present in addressing problems during the implementation phase.<sup>105</sup> However, Raffoul points out that external pressures and incentives can create problems in terms of the legitimacy of the agreement, the commitment of parties to the agreement or the dependence of the success of the agreement on third party pressures.<sup>106</sup> Nonetheless, he suggests that the third party argument can be viewed from a different perspective, as third parties not only exert power and apply pressure, but also establish channels of communication between the culprits, who would have otherwise not have been in a position to negotiate a settlement. Mediators support parties by creating a minimal level of trust necessary to create peace and help the belligerents establish mutually acceptable agreements.<sup>107</sup> Therefore, he

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<sup>100</sup> Raffoul, "Power Sharing", pp 9; Hartzell and Hoddie, "Institutionalizing Peace", pp 319.

<sup>101</sup> Ibid; Spears, "Informal Power-Sharing", pp 40.

<sup>102</sup> Raffoul, *Power Sharing Dilemma*, pp 10.

<sup>103</sup> The debate meant is the discussion around consociationalism and centripetalism. In consociationalism, institutions provide parties to the conflict with guarantees against exclusion, whereas in centripetalism institutions provide incentives for elite cooperation (Raffoul 10).

<sup>104</sup> Ibid, pp 10.

<sup>105</sup> Ibid, pp 11.

<sup>106</sup> Ibid; Kyle Beardsley, "Agreement Without Peace? International Mediation and Time Inconsistency Problems", *American Journal of Political Science* 52:4 (2008): 723

<sup>107</sup> Raffoul, "Power sharing", pp 11.

argues that if the capacity of elites to collaborate in the post-agreement phase is restricted by the re-emergence of war-to-peace transition problems, then the long-term performance of power sharing is contingent on the ability of political leaders to successfully bargain solutions to the problems that arise in the post-agreement phase. Vice-versa, the collapse of power sharing agreements can be traced back to the inability of elites to renegotiate solutions to these problems.<sup>108</sup>

This dissertation uses Raffoul's framework to examine how Annan's mediation in 2008 has affected power sharing in Kenya from 2008 to 2013. Raffoul has established five variables through which he analyses the performance of power sharing as mentioned before, namely: problems relation to the balance of power, inside and outside spoilers, problems relating to identity and political accountability and credible commitment problems. To research each variable, he has created five variables concerning mediation that can be linked to the variables regarding power sharing, to research the effects that the mediation had on power sharing. These five variables that examine mediation are: the use of leverage; horizontal inclusivity; relationship building; vertical inclusivity; and content of the agreement. The following section elaborates on the variables that concern mediation and explains the link to the variables on power sharing.

The first variable is the *use of leverage* by the mediating team. Many scholars and mediation practitioners assume effective mediation relies on the mediator's leverage and political power.<sup>109</sup> Mediators can use the so-called "sticks and carrots" to pressure the fighting parties into an agreement. Bercovitch argues that power diplomacy, in which the mediator uses leverage to reach a cessation of violence, is more effective than soft diplomacy, in which the mediator takes on a more accommodating approach.<sup>110</sup> However, Raffoul points out that these notions are flawed, as for example mediators without access to leverage but with a considerable amount of integrity and moral stature achieve exceptional results, such as the World Council of Churches in Sudan in 1972.<sup>111</sup> Mediators tend to try to accelerate the negotiations by using

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<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Jacob Bercovitch, "Understanding Mediation's Role in Preventative Diplomacy", *Negotiation Journal* 12 (1996): 243.

<sup>111</sup> Laurie Nathan, "A Case of Undue Pressure: International Mediation in African Wars", presented at the *African Mediation Seminar*, 1998, Johannesburg.

leverage to pressure parties into an agreement.<sup>112</sup> Raffoul argues that as mediators typically do not remain involved after the crisis, these temporary effects are likely to decrease, as the mediator's influence diminishes, and the parties' positions change over time. Thus, peace agreements that are accepted due to third-party pressure are often untenable in the long-term without constant third-party reinforcement.<sup>113</sup> When parties deem an agreement unfavourable because it was created under heavy external pressures, problems relating to the balance of power can emerge, as more powerful parties seek to defect.<sup>114</sup>

*Horizontal inclusivity* can be defined as the participation of key stakeholders in peace negotiations who have the ability to implement and/or spoil peace and who represent important constituencies.<sup>115</sup> This encompasses independent actors and groups that are considered to be part of the traditional or developing post-war 'elite' and as such have social, military and/or political power and influence. These actors range from governments, militia leaders and political groups to business elites and religious authorities.<sup>116</sup> These groups that wield sufficient power to spoil the peace constitute horizontal inclusivity. Raffoul argues that horizontal inclusivity is of great importance in mediation processes as upcoming research suggests it is a critical requirement for a sustainable exit from violence. When negotiations exclude main parties to the conflict, incentives might be created to derail the process by parties not included.<sup>117</sup> As a result, outside spoilers to the peace process can emerge.<sup>118</sup>

*Relationship-building* focuses on whether or not the agreement has been too hastily accepted or with too little ownership from the parties. Raffoul points out that agreements that lack ownership or are adopted in a hurry undermine the commitment of the parties.<sup>119</sup> Whatever the specific origins of a conflict, actors tend to observe each other with deep scepticism and hostility.<sup>120</sup> Brahimi and Ahmed support this notion and note that time needs to be reserved to work out these issues so as to instil confidence and trust in the peace process and in each

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<sup>112</sup> Raffoul, "Power Sharing", pp 11.

<sup>113</sup> Ibid, pp 12; Beardsley, "Agreement", pp 723.

<sup>114</sup> Raffoul, "Power Sharing", pp 3.

<sup>115</sup> Berghof Foundation, "Feature: Inclusivity", Berghof Foundation, accessed 6 January 2020, <https://www.berghof-foundation.org/en/featured-topics/inclusivity/>.

<sup>116</sup> Véronique Dudouet and Stina Lundström, *Post-war Political Settlements: From Participatory Transition Process to Inclusive State-building and Governance*, Berlin: Berghof Foundation, 2016.

<sup>117</sup> Raffoul, "Power Sharing", pp 12.

<sup>118</sup> Ibid, pp 3.

<sup>119</sup> Raffoul, "Power Sharing", pp 12.

<sup>120</sup> Laurie Nathan, *Mediation and the African Union's Panel of the Wise* (London: Crisis States, 2005): 2.

other.<sup>121</sup> Raffoul observes that in order to facilitate implementation, mediations should focus on building trust between the parties.<sup>122</sup> Through relationship-building during the mediation process, parties can help actors develop a shared vision of a desirable future and pursue a route of mutual reassurance.<sup>123</sup> This is important as agreements that are signed without investing in building trust between parties are more vulnerable to inside spoilers, as parties do not feel committed and aim to destabilize the peace from inside.<sup>124</sup>

*Vertical inclusivity* can be defined as “the extent to which larger segments of the population have access to, and influence over, decision making – with a specific emphasis on (previously) marginalized societal sectors”.<sup>125</sup> This constitutes popular involvement in decision making and thus citizen’s participation the mediation process, thereby particularly taking into account groups that have traditionally been excluded from the decision-making process, such as women, and specific cultural or ethnic groups.<sup>126</sup> Vertical inclusion can be promoted by strengthening the “state-society” contract and empowering marginalized groups.<sup>127</sup> Raffoul notes that peace negotiations that are inherently elitist, top-down and secretive often fail to address the security concerns of the general population and therefore do not generate civilian support, which jeopardizes the political settlement.<sup>128</sup> Elite-pact negotiations do not produce opportunities for people that did not pick up arms, such as other political organizations and the general public to have a voice in forming the agreements or endorsing them. This can become a problem when the representatives included in the negotiation are not regarded as legitimate representatives of public interests.<sup>129</sup> Inclusivity of political settlements contributes to the stability and legitimacy of the state. Therefore, Raffoul advocates for multi-track diplomacy.<sup>130</sup> Vertical inclusivity is important to prevent problems of identity and political accountability, as

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<sup>121</sup> Lakhdar Brahimi and Salman Ahmed, *In Pursuit of Sustainable Peace: The Seven Deadly Sins of Mediation* (New York: Center on International Cooperation, 2008): 9.

<sup>122</sup> Raffoul, “Power Sharing”, pp 12.

<sup>123</sup> Herbert Kelman, “Building Trust Among Enemies: The Central Challenge for International Conflict Resolution”, *International Journal of Intercultural Relations* 29 (2005): 649.

<sup>124</sup> Raffoul, “Power Sharing”, pp 3.

<sup>125</sup> Dudouet and Lundström, “Political Settlements”, pp 9.

<sup>126</sup> Ibid.

<sup>127</sup> Berghof Foundation, “Feature: Inclusivity”, Berghof Foundation, accessed 6 January 2020, <https://www.berghof-foundation.org/en/featured-topics/inclusivity/>.

<sup>128</sup> Raffoul, “Power Sharing”, pp 12.

<sup>129</sup> Catherine Barnes, “Renegotiating the Political Settlement in War-to-Peace Transitions (London: Conciliation Resources, 2009): 4.

<sup>130</sup> Raffoul, “Power Sharing”, pp 12.

excluded populations tend to vote for political hardliners and do not support a power sharing agreement.<sup>131</sup>

Lastly, Raffoul notes that the *content of the agreement* is incredibly important in preventing conflict relapse and is influenced by whether the agreement focuses on resolving root causes of the conflict or aims at merely bringing an end to the violence.<sup>132</sup> The peace agreement in international mediation functions as a bridge between bringing an end to war and starting the peacebuilding process. Its contents therefore deeply influence justice, power, human rights, governance and the probability for violent conflict to break out again.<sup>133</sup> The existence of unresolved issues in a political settlement heightens the risk of failure in power sharing agreements.<sup>134</sup> It is very rare for sustainable peace to occur when extremely sensitive core issues are not included in the peace negotiations and not present in the contents of the agreement.<sup>135</sup> Therefore, the content of the agreement is crucial in the success or failure of the political settlement. The content of the agreement affects credible commitment problems, as power sharing agreements regularly contain ambiguities or leave unresolved issues. This can culminate into recurring conflicts and plain hindrance in the implementation phase.<sup>136</sup>

### **3.4. Conclusion**

This chapter has laid out the theoretical framework as it was created by Alexandre Raffoul. The framework was developed because power sharing appears to work in the short run, but problems emerge in the long-term. Raffoul calls this the power sharing dilemma. He argues that power sharing depends on the ability of political elites to cooperate and come to a consensus. However, he identifies five barriers to elite cooperation: problems relating to the balance of power, inside and outside spoilers, identity and political accountability problems and credible commitment problems. He argues that the problems of power sharing are located in the mediation that precede it. Therefore, five variables regarding mediation have been explained that affect long-term power sharing. These variables will be combined one on one in

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<sup>131</sup> Ibid, pp 3.

<sup>132</sup> Ibid, pp 12.

<sup>133</sup> Laurie Nathan, "Towards A New Era in International Mediation?", *Crisis Centre* (2010): 1.

<sup>134</sup> Raffoul, "Power Sharing", pp 12.

<sup>135</sup> Piombo, "Peacemaking in Burundi: Conflict Resolution versus Conflict Management Strategies", *African Security* 3:4 (2010): 268.

<sup>136</sup> Raffoul, "Power Sharing", pp 3.

the analysis chapters of this mediation, to research how the mediation in Kenya has affected long-term power sharing, following Raffoul's theoretical framework as laid out in this chapter.

## 4. The 2007 Post-Electoral Violence

This chapter elaborates on the post-election violence that took place during and directly after the 2007 elections in Kenya. The purpose of this chapter is to first elaborate on the outbreak of violence into detail, after which a number of causes of violence are explored. The post-election crisis in Kenya entailed different types of violence: spontaneous, premeditated and state-sanctioned, all of which will be discussed in this chapter. It is important to note that there is no single clarification that explains the outbreak of violence. Rather, the fundamental issues underlying the violence are complex, diverse and interwoven. This chapter zooms in on political exclusion, land issues, the diffusion of violence, political tribalism and unemployment and poverty as causes of the tensions.

### 4.2. The election crisis

The 2007 elections in Kenya were the fourth since the re-introduction of multiparty politics in 1992. Violence has been an important element of every election campaign since 1992. In the early 1990s, over 1,000 people were killed in the Rift Valley and a quarter million displaced, as supporters of KANU<sup>137</sup> and Moi exploited state resources to instigate violence against political opponents, who mostly consisted of immigrant communities that had moved to the Rift Valley since the 1960s. Ever since, violence has become a prominent element of election periods.<sup>138</sup> In 2007, 108 parties were contending for 210 parliamentary seats, with three primary candidates at presidential level: incumbent Mwai Kibaki leading the PNU, Raila Oding leading the ODM, and Kalonzo Musyoka representing ODM-Kenya. However, after preliminary voting results it soon became clear that the presidential race would be between Kibaki and Odinga.<sup>139</sup> Following a close-fought, divisive campaign with ethnic undertones, Kenyans went to vote in record numbers. After the 2002 voting victory, in which Kenyans successfully removed Moi from power after 24 years of draconian rule<sup>140</sup>, the atmosphere surrounding the 2007 elections was hopeful. In certain regions, there were serious irregularities reported on both sides. However, the most serious actions of fraud were carried out during the

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<sup>137</sup> Kenya African National Union, a Kenyan political party in power from independence to 2002, first under the leadership of former President Jomo Kenyatta until 1978, after which President Daniel arap Moi took over.

<sup>138</sup> David Anderson and Emma Lochery, "Violence and Exodus in Kenya's Rift Valley, 2008: Predictable and Preventable?", *Journal of East African Studies* 2:2 (2008): 329.

<sup>139</sup> Elisabeth Lindenmayer and Josie Lianna Kaye, *A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya* (New York: International Peace Institute, 2009): 2.

<sup>140</sup> Susanne D. Mueller, "The Political Economy of Kenya's Crisis", *Journal of Eastern African Studies* 2:2 (2008): 185.

last stages of the counting the presidential poll, when it appears there was a last-minute attempt to manipulate the competition in favor of Kibaki under the auspices of the Electoral Commission of Kenya (ECK).<sup>141</sup> In the final hours of tallying, a lead of over a million votes for opposition candidate Raila Odinga evaporated under suspicious circumstances and reappeared as an incredibly thin victory margin for Kibaki.<sup>142</sup> This was also at odds with the previously announced parliamentary election results, in which the ODM had secured 99 seats against 43 seats for the PNU.<sup>143</sup> Confusion and public outrage followed the announcement of the results. Five electoral commissioners publicly condemned the apparent rigging and even the head of the ECK later noted that he was unable to establish who won the vote. In an attempt to avoid any challenge to his ‘win’, Kibaki had himself hurriedly sworn in without the presence of any media or spectators. International observers condemned the tallying process and the presidential election results were cast in doubts and confusion. Kenyans, eager to follow their democratic process, were denied access to the process by a nationwide media shutdown ordered by the government, which contributed to insecurity and tensions around the country. Within hours of the publication of the results, violence engulfed the country.<sup>144</sup> The violence took on different forms: spontaneous, pre-meditated and state-sanctioned. The following section will look into all three types.

#### **4.2.1. Spontaneous violence**

Spontaneous riots and protests immediately started emerging after the announcement of results. After the successful elections in 2002 it was expected that, if defeated, Kibaki would step down and give in to the people’s wishes. Anger was sparked by the tensions surrounding the declaration of Kibaki as ‘winner’, the outright rigging of elections, and the thwarted expectation that Odinga would win the elections.<sup>145</sup> Odinga had the majority of votes in six out of eight provinces and the support of the Luo, Luhya, Kalenjin and the support of the Coast, North eastern and Nairobi provinces. Moreover, the ODM won the majority seats in Parliament. It was therefore virtually impossible for the PNU to win the presidential

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<sup>141</sup> Human Rights Watch, *Ballots to Bullets: Organized Political Violence and Kenya’s Crisis of Governance* (New York: Human Rights Watch, 2008): 21.

<sup>142</sup> Ibid, pp 22.

<sup>143</sup> Lindenmayer and Kaye, “A Choice”, pp 2.

<sup>144</sup> Human Rights Watch, “Ballots”, pp 22-23.

<sup>145</sup> Godwin Muranga, *Spontaneous or Premeditated? Post-Election Violence in Kenya* (Uppsala: Nordiska Afrikainstitutet, 2011): 25.

elections.<sup>146</sup> People took to the streets to protest the results, directing their anger at government offices and property in Nyanza, setting government property on fire. In Western province, youth set up roadblocks and razed shops. In urban spaces, roads were blocked with virtually every item in sight, sometimes lighting up roadblocks to completely close off the roads. In Rift Valley trees were cut down and used to obstruct the streets.<sup>147</sup> By blocking the roads and looting, protesters hoped to pressure the government into capitulating and allowing for transparent verification of the results. Within days, all roads in Western and Nyanza were rendered impassible.<sup>148</sup> In Kisumu, government vehicles were set on fire, and businesses owned by perceived PNU supporters were destroyed. In the Rift Valley, violence occurred in the form of citizen-on-citizen attacks, largely by Kalenjin against their Kikuyu neighbours. There are multiple witness accounts that narrate Kikuyu people recognizing their attackers as their long-term neighbors. Harrowing testimonies of children and elderly people being beaten to death, raped or dehumanized emerged, the most shocking one concerning the incident at the church in Eldoret, which was set alight with women and children seeking refuge in it, killing seventeen.<sup>149</sup> The ODM capitalized on the violence,<sup>149</sup> insisting they had won the elections and demanding the resignation of Kibaki. If Kibaki would not give in, the ODM promised more protests and violence.<sup>150</sup>

#### **4.2.2. Premeditated violence**

Sadly, a lot of the violence that took place appeared to be organized well in advance of elections and it remains unsure whether it could have been prevented should Odinga have won the elections.<sup>151</sup> Organized groups, generally involved in brutal actions, behaved in a manner that demonstrated a high level of coordination that could not have been attained coincidentally or spontaneously. This type of violence included murder and ethnic cleansing and mostly occurred in Rift Valley and Nairobi. It started even before the election results were announced.<sup>152</sup> The Rift Valley exploded into large-scale inter-ethnic violence, mostly directed at Kibaki's Kikuyu ethnic group. In the days leading up to the election, local elders and ODM coordinators organized meetings in which they announced that a victory for PNU would be

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<sup>146</sup> Rok Ajulu, "Kenya's 2007 Elections: Derailing Democracy through Ethno-Regional Violence", *Journal of African Elections* 7:2 (2008): 43.

<sup>147</sup> Muranga, "Spontaneous", pp 27.

<sup>148</sup> Ibid, pp 28.

<sup>149</sup> Ibid, pp 34.

<sup>150</sup> Klopp and Kamungi, "Violence", pp 12.

<sup>151</sup> Ibid.

<sup>152</sup> Muranga, "Spontaneous", pp 32.

viewed as fraud and as a signal for war against all Kikuyus, who they claimed would be complicit to it since they would vote for the PNU. Many people in the Rift Valley mentioned later that they were coerced to attend meetings like this, and that violence was widely preached. ODMs leadership was not directly implicated in these acts, although evidence was found that William Ruto, a prominent Kalenjin member of ODM, used strong anti-Kikuyu rhetoric leading up to the elections. Nonetheless, in many cases the instigators of violence were prominent and well-known individuals.<sup>153</sup> The Kikuyu communities took violent revenge by mobilizing militia groups like the Mungiki and raising funds to pay the militia and to buy weapons, who were then sent for retaliatory attacks on Kalenjin communities. The people raising funds for these gangs were prominent Kikuyu people in Nairobi and Naivasha, many of them politicians.<sup>154</sup> Other militias, such as the Taliban, and the Baghdad Boys from the Luo community and the Saboat Land Defence Force from the Kisii group were also responsible for some of the organized violence. Hate speech on vernacular radio instigated further violence against various ethnic groups. By January 15<sup>th</sup>, over 500 people were murdered and hundreds of thousands were displaced.<sup>155</sup>

#### **4.2.3. State-sanctioned violence**

The last type of violence that was responsible for many deaths and unrest was the use of excessive force by the police. As soon as he was sworn in, Kibaki enforced a nationwide blanket ban on public demonstrations. The ban was illegal under Kenyan law, but it was used to legitimize heavy-handed police enforcement, which claimed hundreds of lives.<sup>156</sup> The police force responded differently to their difficult circumstances in different parts of the country. In ODM strongholds, officers were fast to employ lethal force to disperse protesters by firing live ammunition. However, pro-government armed militias in Naivasha and Nakuru were largely ignored.<sup>157</sup> On the evenings of December 29<sup>th</sup> and December 30<sup>th</sup> in 2007, police caused a bloodbath in ODMs center stronghold and Odinga's hometown, Kisumu. Officers drove into the slums, where they were tasked with containing people to prevent them from going to the city center to loot. However, police cars were found to drive into slums and officers arbitrarily opening fire on people that they deemed suspicious, killing innocent people and

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<sup>153</sup> Human Rights Watch, "Ballots", pp 36-38.

<sup>154</sup> Muranga, "Spontaneous", pp 37.

<sup>155</sup> Lindenmayer and Kaye, "A Choice", pp 3.

<sup>156</sup> Human Rights Watch, "Ballots", pp 24.

<sup>157</sup> Ibid, pp 25.

children in the process.<sup>158</sup> Of the 1,133 people that died in the post-election violence, 405 died of gunshot wounds. The areas that experienced most gunshot wounds were areas perceived as ODM areas. A pathologist in Nyanza corroborated that out of the 50 people shot in the region, 30 were shot from behind and 9 from the side. As a result, one can conclude that the police were more likely to pull the trigger in pro-ODM areas.<sup>159</sup> Secondly, the police handling of sexual violence during the crisis was horrific. The police demonstrated indifference to the crime, as cases are cited in which police refused to record the case, or cases in which they made the victims choose between reporting a rape or a burglary. In other instances, the police themselves were perpetrators of the horrible crime; for example, two victims from the Kibera slums recounted how they were gang-raped by seven police officers who entered their house pretending to look for weapons. Countless similar stories have emerged of the police using the chaos to force themselves on women.<sup>160</sup>

### **4.3. Causes of the 2007 violence**

The roots of the 2007 post-election violence are complicated, numerous and interconnected. Many authors have sought to comprehend the Kenyan political crisis from different perspectives. Various news outlets around the world classified the Kenyan crisis as a tale of ‘tribal warfare’.<sup>161</sup> This thesis explicitly steps away from this notion. It is indisputable that rivalry between different ethnic groups was at the heart of the Kenyan crisis. However, one should keep in mind that ethnic identities became pertinent because they came to represent societal divisions and political dissatisfaction.<sup>162</sup> As Ajulu points out, ethnic clashes are not tribal conflicts in reality, but rather politically organized battles orchestrated to attain certain political and economic privileges.<sup>163</sup> It is important to note that violence surrounding elections in Kenya was not new. The introduction of the multi-partyism in 1991 saw the emergence of violence surrounding every election as incumbent President Moi was using violence to ensure his win.<sup>164</sup> However, the post-electoral violence that took place in 2007 was extreme in many

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<sup>158</sup> Ibid, pp 28.

<sup>159</sup> Muranga, “Spontaneous”, pp 44.

<sup>160</sup> Ibid, pp 46.

<sup>161</sup> For example, see Adrian Blomfield, “Inside Kenya: The Tribal Slaughter”, *The Daily Telegraph*, 4 January 2008, and Jeffrey Gettleman, “Disputed Vote Plunges Kenya into Bloodshed”, *New York Times*, 31 December 2007.

<sup>162</sup> Daniel Branch and Nic Cheeseman, “Democratization, Sequencing, and State Failure in Africa: Lessons from Kenya”, *African Affairs* 108:430 (2008):3.

<sup>163</sup> Ajulu, “Elections”, pp 34.

<sup>164</sup> Steven Levitsky and Lucan Way, “Beyond Patronage: Violent Struggle, Ruling Party Cohesion, and Authoritarian Durability”, *Perspectives on Politics* 10:4 (2012): 879.

ways. The 2007 crisis does not have one definable cause; rather, it was an interplay of different variables that turned out to be an explosive combination. Due to time and space constraints, this thesis will highlight a number of issues that research points out were some of the most crucial in precipitating the violence. These are land issues, the diffusion of violence, ethnic manipulation and Kenya's increasingly weaker political economy.

#### **4.2.1. Land issues and displacement**

Land issues constitute a structural factor underlying political violence in 2007. To many researchers, historical injustices relating to access and ownership of land comprise one of the main causes of conflict. Colonialism established and legitimized extreme inequality and exclusion through its land governance system by assigning a small group of white settlers the most fertile land in Central Kenya. As mentioned earlier, Africans were confined to "homelands". As such, Africans native to the Central Highlands were pushed out and placed in reserves. These land-associated injustices triggered violence during the anti-colonial war by the Mau Mau fighters.<sup>165</sup> Resolving the land question informed the politics of the transition to independence. Towards the end of colonialization, the colonial government succumbed to African demands and started returning the Central Highlands to Africans by settlement schemes and land purchase programs.<sup>166</sup> During independence, the colonial government transferred its state structures to a conservative, rural, African elite that was under the leadership of Jomo Kenyatta. The colonial land legacy was not transformed during independence; rather, it was a shift in leadership but a continuance in policy. This allowed the President's circle to hand out land on a rather arbitrary basis.<sup>167</sup> In addition, the post-colonial government introduced various 'willing-buyer, willing seller' schemes aimed at settling smallholder farmers on former white settlers' land. As pressure arose from former Mau Mau combatants, most land was sold to Kikuyu's. When land turned out to be too little, Kikuyu's were settled in Rift Valley districts, where Kalenjin's saw their land given away. These settlement schemes and their ethnic dimension caused tensions between Kikuyu's and other communities. This in turn contributed to disillusion with the government as elites sought to acquire more land, and gave rise to tensions between different ethnic communities, but also the

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<sup>165</sup> Jacqueline Klopp and Odenda Lumumba, "Reform and Counter-Reform in Kenya's Land Governance", *Review of African Political Economy* 44:154 (2017): 581.

<sup>166</sup> Karuti Kanyinga, "The Legacy of the White Highlands: Land Rights, Ethnicity and the Post-2007 Election Violence in Kenya", *Journal of Contemporary African Studies* 27:3 (2009): 329.

<sup>167</sup> Klopp and Lumumba, "Reform", pp 582.

rich and the poor. Land issues therefore, have inevitably become a focal point around which political events revolve.<sup>168</sup> Land-based ethnic grievances and tensions caused by the political exploitative elite fueled the election violence in 2007. Land was a crucial topic in the 2007 presidential campaigns. Long-standing Kikuyu resentment was used by ODM to introduce the promise of land reform for Rift Valley. This resonated with especially Kalenjins, who felt their land was stolen by Kikuyu's.<sup>169</sup> ODM argued that the long-abolished practice of *majimboism*<sup>170</sup> should be utilized to achieve economic equality for the less-developed regions, so as to gain support from the economically marginalized. By doing so, politicians fueled ethnic tensions with misinformation by pitting the Kikuyu against all other groups. Therefore, displacement became an integral component of the 2007 presidential campaign.<sup>171</sup>

#### 4.2.2. The diffusion of violence

Mueller argues that Kenya's political system even before the 2007 violence was bound to implode due to decades of political and economic mismanagement. As a result of this mismanagement, Kenya's government did no longer control violence in the country; institutions were weakened due to years of corruption and kleptocracy, and the political elite was increasingly fragmented. The closely contested elections accelerated the process of Kenya's implosion. The government had lost the monopoly of violence during Moi's era, when the former President agreed to multiparty elections in Kenya. As Moi actually despised the idea of multipartyism, he was willing to use violence to ensure his win. He introduced Kalenjin gangs to murder and uproot opposition voters from other ethnic communities, while his civil servants turned a blind eye, forcing his electoral win. This sparked the creation of gangs from other ethnic groups, most of them directed by influential politicians during election times in the 1990s. Over time, these gangs disappeared into the slums of Nairobi and rural areas in Central Kenya, where they became gangs for hire. Every election since, gangs were involved. Politicians were no longer able to fully control the gangs, and as a result, the state increasingly lost the monopoly of violence. By the time of the 2007 elections, gangs were lying in waiting, ready to be called upon, which is precisely what took place.<sup>172</sup> The prevalence of violence as a political tactic is one of the most compelling elements of Kenyan politics. Indeed, violence has

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<sup>168</sup> Kanyinga, "Highlands", pp 331.

<sup>169</sup> Klopp and Kamungi, "Violence", pp 13.

<sup>170</sup> A controversial ethnic form of federalism which was abolished in the 1960s.

<sup>171</sup> Kagwanja and Southall, "Introduction", pp 270.

<sup>172</sup> Susanne Mueller, "Dying to Win: Elections, Political Violence and Institutional Decay in Kenya", *Journal of Contemporary African Studies* 29:11 (2011): 103.

become so normalized that it is observed without any expectation of prosecutions or other consequences. Every presidential candidate has a gang that represents them, and a culture of complete impunity has been established.<sup>173</sup> This prevalence of violence in Kenya limits the ability of the state to govern effectively and encourages violent attitudes regarding elections.<sup>174</sup>

#### 4.2.3. Political tribalism

Kenyan politics has been closely intertwined with ethnic identities since long before independence. The trajectory of ethnicity relating to political participation in Kenya was established during the colonial era. Although Kenyans did have different cultural backgrounds before colonial times, they were never profoundly articulated or regarded as divisive. However, when the British settled in Kenya, they created borders in line with language and culture as a strategy to control and overpower their colonial subjects. They called different communities “tribes”, and different “homelands” were created. Each “homeland” was appointed to a “tribe” and people were rarely allowed to leave the land appointed to them. As a result, divisiveness and hostility between groups was created. Towards the end of colonialism, the creation of political parties by Kenyans was legalized. Naturally, most of these parties were organized along ethnic lines.<sup>175</sup> This trend continued after independence: ethnic mistrust deepened by colonial policies and independence struggles has had bitter consequences on Kenyan social and political society.<sup>176</sup> Ethnicity became a political resource used by elites to manipulate ‘their’ people whilst distributing patronage structures and client-patron relationships. It grew into a strategic instrument for making claims to the power and resources of the state. Ethnicity was appropriated for nation and regime building by the incumbent regimes; first under Jomo Kenyatta, and then under his successors Moi and Kibaki.<sup>177</sup> Ethnic mobilisation was used as form of both protection against resentment from other ethnic groups (for example by the Kikuyu community after the assassination of Tom Mboya) and aggression (i.e. when the Kalenjin community pushed other ethnic groups out of Rift Valley in 1961). It needs to be noted that ethnic mobilisation only takes place under certain historical circumstances; under

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<sup>173</sup> Anderson and Lochery, “Exodus”, pp 338.

<sup>174</sup> Murunga, “Spontaneous or Premeditated?”, pp 10.

<sup>175</sup> Felix Ngunzo, “Ethnicity: The Jinx to Kenyan Politics and Economic Development”, in *Citizen Participation in Decision Making: Towards Inclusive Development in Kenya*, ed Kimani Njogu (Nairobi: Twaweza Communications Ltd, 2013): 73.

<sup>176</sup> Ibid, pp 80.

<sup>177</sup> Elisa Stephen Atieno-Odhiambo, “Hegemonic Enterprises and Instrumentalities of Survival: Ethnicity and Democracy in Kenya”, *African Studies* 61:2 (2002): 231-232.

“normal” circumstances Kenya’s various ethnic groups live together peacefully. However, the relationship between ethnic mobilisation and conflict is evident.<sup>178</sup>

Kenya is a country of ethnic minorities rather than explicit ethnic bifurcation such as in countries like Rwanda. Since independence, the struggle for the state and power has evolved around the four biggest ethnic communities: the Kikuyu, the Luhya, the Luo and the Kalenjin. Kenya’s other 38 ethnic groups go back and forth between political tribalism – when they are mobilised into other ethnic alliances during election periods – and “moral ethnicity”.<sup>179</sup> As a result, ethnicity has become the most important and most productive instrument of political mobilisation in contemporary Kenyan politics.<sup>180</sup> Since the introduction of a multi-party system in 1991 politicians have drawn even heavier on ethnic ties as the basis of their political support. Politics is regarded as a winner-takes-all ethnic game in which the government and its resources are the prize. Different ethnic groups claim that it is now ‘their turn to eat’, as it is common knowledge in Kenya that leaders of certain ethnic group will ensure that their ethnic community is well-treated and looked after. Since institutions are weak, politicians are viewed as personal distributors of goods. The leader of the winning coalition is regarded as the boss ethnic in charge and therefore his group will profit most from him being in power. Losing signifies being excluded from access to state resources.<sup>181</sup> To win an election, the weight of the vote of an ethnic community is crucial, as is building alliances with other ethnic groups.<sup>182</sup>

Kenyan political parties are hardly differentiated by ideology or political programs. They are merely ethnic coalitions that change according to the alliances of the people in them. Kenyan politicians very easily leave and join other parties when the interests of said politician can be advanced by joining another alliance, even if this implicates aligning with an all-time enemy.<sup>183</sup> Ethnic hate speech and violence in elections can be traced back to the early 1990s, where politicians whipped up ethnic hatred as a means to mobilize support. This has been the case for every general and presidential election in 1992, 1997, 2002 and also 2007. Ethnic disputes are often at the centre of elections, as different political leaders aim to scapegoat another ethnic

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<sup>178</sup> Ajulu, “Elections”, pp 46.

<sup>179</sup> Kagwanja and Southall, “Introduction”, pp 266.

<sup>180</sup> Ajulu, “Elections”, pp 46.

<sup>181</sup> Mueller, “Dying to Win”, pp 105.

<sup>182</sup> Jeffrey Steeves, “Presidential Succession in Kenya: The Transition from Moi to Kibaki”, *Commonwealth and Comparative Politics* 44:2 (2006): 215.

<sup>183</sup> Steeves, “Presidential Succession”, pp 215.

group in order to gain support from their own ethnic base. This has contributed to a zero-sum mentality in Kenyan politics.<sup>184</sup> As political victory in Kenya is defined by the ability of the winning party to win the support from the majority of the four biggest ethnic groups (Luo, Kikuyu, Kalenjin and Luhya), elections are high-risk and generally have profound consequences for the stability in the country. The 2007 election was so closely contested that it was the most volatile and high-risk election the country had seen to date, as both sides scrambled for support. The ODM built its campaign on anti-Kikuyu rhetoric by underscoring the domination of Kikuyu's in virtually every aspect of the economy and maybe even more important, in land ownership. ODM campaigned for a more even distribution of wealth and opportunities, which attracted the Luo, Kalenjin and part of the Luhya communities.

#### **4.2.4. Poverty and demographics**

When Kibaki first came to power, his administration witnessed an incredible economic success as economic growth accelerated from 3.4% in 2003 to 7% in 2007. National poverty levels fell considerably and for the first time since the late 1980s the country per capita income rose. Kibaki kept true to his promise of free primary education for all and introduced impressively effective macroeconomic measures. However, at the same time, political management did not equal economic decisions. Even though anti-corruption measures were created, they had little effect in reality. A judicial commission was established to examine the Goldenberg scandal, a scandal dating from the Moi area in which government officials embezzled more than US\$ 800 million by creating fake diamond exports. Despite the commission's findings being publicly announced in 2006, implicated government representatives went unpunished. In addition, the Kibaki government was involved in corruption scandals itself; for instance the Anglo leasing scandal, which saw hundreds of millions vanish from state funds. Moreover, the Kibaki government did not start the process of constitutional reform, even though it was promised ahead of the 2002 elections, which alienated Kenyan society.<sup>185</sup> In addition, the economic growth experienced at the top did not trickle down to the general population. Even with these economic reforms, Kenya consistently had a Gini coefficient of above 0.5 and most of the time even 0.6. This means that the top 20 percent of the population earned more than 50 per cent of the income. On the other hand, the bottom 20 per cent of the population earned less than 2 per cent of the total income. As a result, even though there was economic growth, the welfare of

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<sup>184</sup> Kagwanja and Southall, "Introduction", pp 267.

<sup>185</sup> Ibid, pp 264.

the poor barely improved and Kenyan society remained highly unequal.<sup>186</sup> This contributed to rising instability. Combined with skyrocketing unemployment and enough idle youth ready to struggle for change, an explosive cocktail was created.<sup>187</sup>

#### **4.4. Conclusion**

This chapter has explained the dynamics of the 2007 post-election violence in Kenya. The background to the election process of 2007 has been explained, as well as the problems that arose during the tallying of the votes. After Kibaki declared himself president after an obvious fraudulent election, violence broke out. This chapter has differentiated between three different types of violence to present the full dimensions of the conflict. After this, a number of causes of the violence were explained to give an overview of the complex dynamics that underpinned the violence.

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<sup>186</sup> Mwangi wa Githinji and Frank Holmquist, "Kenya's Hopes and Impediments: The Anatomy of a Crisis of Exclusion", *Journal of East African Studies* 2:2 (2008): 346.

<sup>187</sup> Murunga, "Spontaneous", pp 12.

## 5. Mediation in the 2007-2008 post-election violence

The objective of this chapter is to first give a short overview of the mediation process in 2007-2008 post-electoral violence to explain the actors involved, how the process was initiated, what the main points of the peace talks were and how an agreement was reached. After this, the five variables as developed by Alexandre Raffoul regarding mediation, namely the use of leverage, horizontal inclusivity, relationship-building, vertical inclusivity and the content of the agreement, will be applied to the mediation process in Kenya to thoroughly analyze the process.

As soon as violence in Kenya erupted, numerous actors stepped up in an attempt to reason with the two party leaders, Odinga and Kibaki, to accept a mediation process. Both leaders were caught in a zero-sum mentality, as Kibaki denied the existence of a crisis and Odinga ruled out a power sharing construction “with a dishonest person”. However, after Desmond Tutu flew down to Kenya and tried to persuade both parties to accept international mediation, the ODM agreed. Kibaki was nonetheless still very opposed.<sup>188</sup> After that, President Museveni attempted to mediate between the parties, but he was rejected by Odinga, as he was known as Kibaki’s long-term ally. Coinciding with these attempts were frantic efforts by Western countries to set up an African-led mediation, pressuring the then chairman of the AU, President Kufuor of Ghana, to intervene. On the second of January 2008 the African Union sent out a message condemning the violence and calling for a compromise between the leaders. President Kufuor then went on a three-day shuttle diplomacy to Kenya and eventually managed to extract a promise from both parties to break the political impasse, even though both parties refused to be in the same room together.<sup>189</sup> Using targeted sanctions, mainly travel bans for government officials, the international community finally managed to get both sides to finally agree to an AU-led mediation under the auspices of Kofi Annan.<sup>190</sup>

The mediation process, which started on the 22<sup>nd</sup> of January 2008, three weeks after the beginning of violence, was led by the AU’s Panel of Eminent Personalities that existed out of Kofi Annan as Chairperson, former Tanzanian President Benjamin Mkapa and Graça Machel from Mozambique.<sup>191</sup> The Panel was tasked with assisting the parties to the conflict to make

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<sup>188</sup> Khadiagala, “Forty Days” pp 9.

<sup>189</sup> Juma, “African Mediation” pp 413.

<sup>190</sup> Stephen Brown, “Donor Responses to the 2008 Kenyan Crisis: Finally Getting it Right?”, *Journal of Contemporary African Studies* 27:3 (2009): 393.

<sup>191</sup> The Office of the AU Panel of Eminent Personalities, *Back from the Brink: The 2008 Mediation Process and Reforms in Kenya* (Addis Ababa: African Union, 2014): 21.

sure that an escalation of the conflict was prevented and that sustainable peace was re-established as soon as possible. The mediation was mandated by the AU and had the technical support of the UN, as well as worldwide diplomatic backing.<sup>192</sup> Although Annan had expected to arrive in Nairobi a week earlier, an illness delayed him for a week as he needed to be hospitalized.<sup>193</sup> During his time in the hospital, Annan mobilized international support for the mediation from organizations such as the AU, the EU, the UN, and countries such as the US, as well as the assurance that this mediation would be the only one.<sup>194</sup>

The Panel arrived in Kenya on the 22<sup>nd</sup> of January, after which the Panel immediately had separate meetings with both Kibaki and Odinga. Two days later, on the 24<sup>th</sup> of January, Annan managed to bring the two leaders together in a closed meeting, after which Odinga and Kibaki shook hands publicly for the first time since the onset of the crisis and promised to engage in dialogue. However, each step forward was accompanied by conflicting dynamics and tensions.<sup>195</sup> Therefore, on the 1<sup>st</sup> of February, Annan created a roadmap to the mediation in close consultation with the parties consisting of four core components. Agenda One aimed at bringing an immediate stop to the violence and restore human rights; Agenda Two intended to address the humanitarian crisis and to promote reconciliation; Agenda Three focused on solving the political crisis and Agenda Four aimed at developing long-term strategies for durable peace. The parties agreed that the first three items would be settled in seven to fifteen days from the start of the mediation, whereas the fourth would be given a one-year timeline. The parties also agreed to refer to the mediation as the Kenyan National Dialogue and Reconciliation (KNDR).<sup>196</sup>

The first two Agenda Items were relatively easy resolved. Agenda One was agreed upon on the same day, and Agenda Two was addressed on February 4<sup>th</sup> by the KNDR issuing statements that set out measures to address the items. These included for example advice to citizens to refrain from provocative statements, support to the Kenyan Red Cross for the return of IDPs and the promise of the establishment of a truth and justice commission.<sup>197</sup> However, the atmosphere in the mediation room was less than constructive and when reaching the third point

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<sup>192</sup> Lindenmayer and Kaye, "A Choice" pp 1.

<sup>193</sup> Khadiagala, "Forty Days", pp 13.

<sup>194</sup> The Office of the AU Panel of Eminent Personalities, "The Brink", pp 23.

<sup>195</sup> Lindenmayer and Kaye, "A Choice", pp 9.

<sup>196</sup> Khadiagala, "Forty Days", pp 16.

<sup>197</sup> Office of the AU Panel of Eminent Personalities, "The Brink", pp 35.

on the Agenda, the negotiations reached an impasse. Neither of the parties was willing to compromise or accept a power sharing agreement, as Annan had suggested. Annan called in various experts to advise the parties on the technical options, but both parties kept on backtracking on previous commitments.<sup>198</sup> To address the problems, Annan decided to hold a two-day retreat at an undisclosed location, but only after a *kamukunji*, an informal briefing of parliament, was held. The *kamukunji* created support for a possible power sharing coalition amongst parliamentarians. The retreat did not manage to create progress on Agenda Three, and upon arrival in Nairobi negotiations had reached a stalemate. However, after a talk with the then US Secretary of State Condoleezza Rice, after a suspension of talks, the parties went back to the drawing table and eventually agreed on a power sharing agreement on February 28<sup>th</sup> and signed the National Accord.<sup>199</sup>

The National Accord was captured in the constitution on the 19<sup>th</sup> of March 2008. It made provisions for the establishment of the post of Prime Minister, which had nearly the same functions as the President. After this agreement was signed, Annan left Kenya, and a Nigerian diplomat, Oluyemi Adeniji, took over negotiations regarding Agenda Four. However, the parties considered that endorsing the National Accord signified the conclusion of negotiations. Subsequently, Adeniji only supervised working out the details that had already been discussed with Annan and nothing else was added to the agreement.<sup>200</sup>

### **5.1. Use of leverage**

The international community feared that their long-term East African ally would plunge into civil war and possibly state collapse and took responsibility to avert the violence taking place. The community was unified like never before and spoke with one voice as it consolidated behind the AU. This certainly maximized the leverage the international community had over the mediation. Kofi Annan and his team served as a strong lead behind which the international actors could unite and support and pressure the process. In addition, Annan ensured that his mediation was the only one, so that the parties could not go window-shopping for a more favorable mediator. This consensus incentivized the mobilization of resources and support

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<sup>198</sup> Lindenmayer and Kaye, "A Choice", pp 14.

<sup>199</sup> Ibid, pp 22.

<sup>200</sup> Juma, "African Mediation", pp 421.

from various corners, but also punitive measures.<sup>201</sup> International pressure first and foremost aimed at bringing a halt to the violence. Donors reiterated on multiple occasions that it would not be “business as usual” in the financial assistance area until both parties reached a compromise. By mid-January, fifteen donor countries had alleged that they were reviewing financial aid to Kenya as long as hostilities continued. By the end of January some payments had been stopped. Also, on national levels various Kenyan groups and actors made an appeal to their leaders to bring an end to the violence.<sup>202</sup> By early February, the two parties had agreed to the first two agenda items: hostilities should be stopped, and the process of reconciliation and humanitarianism should start. The third point on the agenda however, overcoming the political crisis, remained a problem. Annan and his team had suggested power sharing on multiple occasions, but this remained a problem for the parties. Therefore, the international community decided to increase the pressure on the leaders once again. President Bush of the US decided to cancel his scheduled visit to Kenya.<sup>203</sup> US Secretary of State Rice had a serious conversation with the parties, making clear that it would not be “business as usual” between the US and Kenya if the parties could not reach an agreement.<sup>204</sup> By early February, the US embassy informed 13 politicians and businessmen that their visa status was being reviewed concerning their relation to the violence, as did the British, the Canadians and the Swiss. The UK government also mentioned the possibility of assets being frozen of those who decided to sabotage the mediation process.<sup>205</sup> The former and current presidents of Tanzania argued strongly for accepting a government that had both a President and a strong Prime Minister. Finally, on February 28<sup>th</sup>, the parties accepted a power sharing agreement.<sup>206</sup>

The crisis in Kenya in 2007 was not easily mediated. It took pressure from all sides and a variety of influential nations and heads of states and political figures to pressure both Odinga and Kibaki into an agreement. Especially Kibaki was unwilling to participate in an international mediation, as he claimed he was the rightfully elected President. As Odinga was the one with more to gain from a mediation, he was quick to support. However, both parties heavily resisted the idea of a power sharing agreement, a suggestion made by the mediation team. It took heavy

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<sup>201</sup> Karuti Kanyinga and Sophie Walker, “Building a Political Settlement: The International Approach to Kenya’s 2008 Post-Election Crisis”, *International Journal of Security and Development* 2:34 (2013): 8.

<sup>202</sup> Brown, “Donor Responses”, pp 397.

<sup>203</sup> Thomas G. Weiss, “Halting Atrocities in Kenya”, *Great Decisions* (2010): 23.

<sup>204</sup> Lindenmayer and Kaye, “A Choice”, pp 18.

<sup>205</sup> Brown, “Donor Responses”, pp 397.

<sup>206</sup> Weiss, “Halting Atrocities”, pp 23.

pressure from all sides and a considerable amount of punitive measures before both ODM and PNU accepted a power sharing structure. After all, the consequences of not accepting a power sharing agreement would have been considerable. Therefore, the agreement was signed as a result of extensive third-party pressure.

## **5.2. Horizontal inclusivity**

When violence started in Kenya, Kenya's civil society was crucial in constructing an environment that favoured mediation. The media informed the public accurately, but most notably stepped up against the government when it produced a ban on live broadcast, giving the government 24 hours to lift the ban and defying the ban when the government refused. In addition, a group of well-known Kenyans, the Concerned Citizens for Peace, first attempted to convince the parties to participate in a locally driven mediation process.<sup>207</sup> This was however rejected by the fighting parties. Significantly absent were the religious organizations, which had historically been very involved in Kenya's struggles for independence and democracy. Nonetheless, in 2007 religious networks were facing failing religious leadership. Both the Christian and Muslim sides were split along ethnic lines and differences in opinion regarding the solution of the crisis.<sup>208</sup> However, the National Council of Churches of Kenya did actually approach the mediation team to pledge for a negotiated solution, thereby also urging Odinga and Kibaki to participate in personal talks.<sup>209</sup>

When the process of international mediation started, it became evident that the only parties present at the negotiation table were to be the ODM and the PNU. Even though Annan consulted closely with various civil society groups, none were involved in the actual negotiations. However, the Kenyan civil society groups were key supporters of the AU-led mediation and they contributed considerably to attaining a settlement. The private sector, including major trade unions and manufacturing associations, shocked by the decline in economic activity, lobbied for a settlement. Other civil society organizations, Kenyan academics and human rights advocates presented critical analyses and proposals to the Panel.<sup>210</sup> Their submissions and meetings with the Panel contextualized the crisis and assisted in developing suitable corrective steps. Civil society advised the Panel on its agenda items,

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<sup>207</sup> Lindenmayer and Kaye, "A Choice", pp 8.

<sup>208</sup> Juma, "African Mediation", pp 411.

<sup>209</sup> Lindenmayer and Kaye, "A Choice", pp 8.

<sup>210</sup> Bridget Moix, *Kenya: Temporary Ceasefire or Lasting Peace?* (New York: FCNL, 2009): 3-4.

besides regional experts. Often, they had developed their suggestions and recommendations alongside the private sector and religious communities, which added to the legitimacy of the suggestions. In addition, civil society also lobbied extensively for a political settlement and an end to violence. They monitored the election violence and analysed the patterns of violence. They started regional community talks in order to bring people back together by creating spaces in which domestic negotiators started to “break the ice” between opponents. Therefore, Kenyan civil society was closely involved in the mediation process, however not at the negotiation table.<sup>211</sup>

Horizontal inclusivity can be regarded as including those to the mediation table that have the ability to either implement or spoil peace. Given the fact that the 2007 crisis essentially evolved around the two political parties the ODM and the PNU, it seems obvious that it was these two parties that were involved in the mediation. Kenyan political parties are comprised of political and economic elites. Political parties do not have distinct political programs but rather campaign on the basis of ethnic alliances, which are subject to change at any given time. As election times are the most important and decisive political times in Kenya, all elites were most definitely present on the political stage to defend their privileges. This approach to politics indicates that the political elites were all involved in either the ODM or the PNU at the time of the peace negotiations. In addition, Annan involved all parliamentarians during the informal *kamukunji* sessions. Therefore, it is safe to say that horizontal inclusivity in the mediation process was attained on the elite-level. However, when it comes to civil society, some side notes remain. Even though the Panel closely consulted with civil society groups at various stages during the mediation process, civil society did not have a say in the mediation. As civil society has a powerful role in implementing peace, it could have been constructive to the peace negotiations to have civic leaders present, also because the political actors got stuck in deadlocks multiple times. This would have contributed to feelings of local ownership. However, it needs to be noted that by adding more people to the table, negotiations would also have become more complex. Nonetheless, civil society has access to a large part of the population on grassroot level, a position through which a major challenge of the crisis could be tackled. Therefore, it would have contributed to inclusivity when representatives of civil society were present in the mediation.

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<sup>211</sup> The Office of the AU Panel of Eminent African Personalities, “The Brink”, pp 30-31.

### 5.3. Relationship Building

Annan faced the difficult task bringing two leaders with zero-sum mentalities together. In addition to their own reservations, both the ODM and the PNU had numerous hardliners in their parties that were unwilling to compromise on anything. For the PNU, this translated into the claim that Kibaki truthfully won the elections and as such had the right to the presidency. The ODM insisted the elections were rigged and therefore Kibaki's government was illegitimate and called for a re-election. When Annan arrived in Kenya on January 24<sup>th</sup>, he realized tensions were very high and mistrust was deep. He asked the parties to each name three representatives to start the dialogue, as direct conversation between Kibaki and Odinga would most likely lead to confrontation. The two protagonists eventually joined the official negotiations on 29<sup>th</sup> January.<sup>212</sup> This is in line with trust-building practices providing a non-committal beginning when the parties are not ready to enter official peace negotiations. This type of beginning gives the parties time to offer increasingly greater degrees of reassurance and encouragement, until they are ready to enter the official negotiations.<sup>213</sup>

The first two Agenda Items focused on bringing an end to the violence and to start the process of reconciliation. Item number three was aimed at a political solution and item number four addressed long-term issues and solutions. The mediation team sought to build trust and to create a peaceful environment by first concentrating on short-term issues. Annan hoped to get off to a swift and positive start which would create a constructive enough environment to address the thornier issues.<sup>214</sup> This appeared to work as the mediation started out smoothly and both parties quickly issued statements in early February calling for an end to the violence. However, once the mediating team reached agenda point three it became apparent that both parties were still deeply distrustful of one another and unwilling to compromise. The Panel took the parties through a list of their political options and emphasized the benefits of a political settlement. However, neither party was willing to compromise, and the mediation reached a deadlock.<sup>215</sup> Annan approached the deadlock by exerting more pressure on the parties. He did so by inviting political experts to provide technical clarifications on the negotiations, informing the Kenyan population of the progress that had been made thereby increasing the pressure on the parties, and by inviting both parties on a two-day retreat to Tsavo National Park. Annan

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<sup>212</sup> The Office of the AU Panel of Eminent Personalities, "The Brink", pp 24.

<sup>213</sup> Herbert Kelman, "Building Trust Among Enemies: The Central Challenge for International Conflict Resolution", *International Journal of Intercultural Relations* 29 (2005): 644.

<sup>214</sup> Lindenmayer and Kaye, "A Choice", pp 10.

<sup>215</sup> The Office of the AU Panel of Eminent Personalities, "The Brink", pp 36.

also requested to brief parliament on the progress in an informal session, the *kamukunji*, before leaving for Tsavo. In combination with international pressure on Kenya's political elite as mentioned before, and a temporary suspension of the talks due to the unproductive nature of the negotiations, the parties finally agreed on a power sharing arrangement with the positions of Prime Minister and President on the 28<sup>th</sup> of February.<sup>216</sup> Annan left the country after 41 days of negotiations, appointing Nigerian diplomat Oluyemi Adeniji to lead the last round of negotiations as agenda item four was not yet discussed. However, this change in mediator brought challenges to the process, as many members of the negotiations did not take these last negotiations seriously. Most members believed the signing of the National Accord was the end of the negotiations and were passive in approaching this last agenda point, which required legal and constitutional action. As a result, Adeniji only managed to get details worked out of what had already been agreed on under Annan.<sup>217</sup>

Annan genuinely tried to build trust between parties considering the way he started off by allowing both parties to appoint representatives to start discussions in a subtle way. He also aimed to construct a conducive working environment by first concentrating on short-term issues before moving onto the riskier problem of political settlement. However, his approach showed shortcomings as soon as the mediation became harder and more to the point. Although the mediation team attempted to re-establish the peace by organizing a retreat to Tsavo, it was not successful. It was only in combination with exerting excessive pressure on the parties and rushing the process that an agreement was reached. Therefore, there was not enough time to create a working relationship between Kibaki and Odinga. When Annan then left before an agreement on agenda point four was achieved, the negotiating parties gave up on making an effort to compromise. Sadly, it was exactly the fourth agenda point that could have prevented violence in future elections. As a result, the mediation did not foster as much trust- and relationship building as it could have done.

#### **5.4. Vertical Inclusivity**

The general Kenyan population was very supportive of the mediation effort. The mediation team commenced a wide consultative process with multiple constituencies in Kenya to promote public dialogue and to build trust in the peace talks. Before commencing the talks, Annan met

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<sup>216</sup> Lindenmayer and Kaye, "A Choice", pp 14-16.

<sup>217</sup> Monica Juma, "African Mediation", pp 421.

with different leaders from religious, business and human rights groups for multiple days to get a feeling for what was happening on the ground. On 26 January, when the parties were still not talking directly to each other but through intermediaries, the Panel visited the Rift Valley, where violence was still raging.<sup>218</sup> They came face-to-face with the scale and the implications of the violence and the destruction of lives. They talked to victims and witnessed how violence was impacting families and communities. Upon their return to Nairobi, they conducted a press conference in which they made an appeal to Kenyans to stop the violence.<sup>219</sup>

From the start, the Panel attempted to embrace a transparent communication strategy towards the general public that was developed to build confidence in the peace negotiations. It entailed regular meetings with domestic organizations and a website was created where all the agreements and press statement of the mediation were published. As the process was extremely fragile and fear was ominous amongst the general population, media communication was used to involve the people on the ground but also to keep pressure on the negotiation team. Whenever the parties reached an agreement and the agreements were signed, they were made public immediately. This was done to keep the talks moving forward and reducing the risk that some decisions might be reviewed. In addition, it reassured the Kenyan population that the process was moving forward. However, what was not shared with the general population was the constant stalling, the bickering over technicalities, and the revisiting of topics in an attempt to shield the population from negative associations with the mediation process itself. To reach more people, Tanzanian President Mkapa translated all press conferences into Swahili.<sup>220</sup> However, even though the public was informed of the agreements made during the mediation, the mediation was mainly focused on elite discussions. Arguably the most important goal of the mediation was bringing an end to the violence, which obviously concerned the population. Nonetheless, the mediation was centered around questions of governance and power-sharing, rather than involving itself with assessing root causes of the violence and possible solutions. As such, the mediation rotated around the disputes between the two contending political sides instead of accounting for the normal citizens' concerns.<sup>221</sup>

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<sup>218</sup> Gilbert Khadiagala, "Forty Days", pp 15.

<sup>219</sup> The Office of the AU Panel of Eminent African Personalities, "The Brink", pp 25.

<sup>220</sup> Ibid, pp 29; Lindenmayer and Kaye, "A Choice", pp 9.

<sup>221</sup> Kenyans for Peace with Truth and Justice and the National Civil Society Congress, "Preliminary Response to the Mediation Process in Kenya", accessed 6 January 2020, <http://africog.org/new/wp-content/uploads/KPTJ%20statement%20on%20the%20mediation%20process%20in%20Kenya.pdf>

Although the mediation team genuinely worked hard to involve Kenya's general population by giving very regular media updates, the mediation was in essence an elite talk. During the mediation, issues were discussed that regarded the political elites, the most striking one being Agenda Three. Even though the general population was regularly updated through the media and benefitted from President's M'Kapa Kiswahili translations, little was done by the parties to ensure that the concerns of the general population were addressed. Civil society groups updated the Panel regularly, but were not allowed to sit at the table, as it was reserved for the culprits. As a result, very little was done to support the general populations. Although addressing root causes was on the mediation agenda, it was only discussed after the Accord was already signed and Annan had left the mediation, which contributed to a feeling amongst the parties that root causes were not important.

### **5.5. Content of the agreement**

Kenya's Dialogue and Reconciliation process finally reached an agreement on the four agenda points on February 28<sup>th</sup> when Kibaki and Odinga signed the *Agreement on the Principles of Partnership of the Coalition Government*. The agreement, later called the National Accord and Reconciliation Act, formulates the function of Prime Minister responsible for coordinating and managing the delivery of the functions and affairs of government. It also notes that both parties are to nominate a Deputy Prime Minister. The coalition government was to reflect the relative parliamentary strength of both parties and observe portfolio balance. The coalition government can be terminated if one of the parties withdraws, if both of the parties agree to it in writing or if Parliament dissolved. It also noted that the Prime Minister and his deputies could only be expelled from office after a no-confidence vote in parliament.<sup>222</sup> The National Accord was captured in the Constitution on March 19<sup>th</sup> after consistent pressure from Odinga and on April 13<sup>th</sup>, after an incredibly painful process, Kibaki appointed a 42-member Cabinet that vowed to initiate processes of reconciliation.<sup>223</sup> In addition to the National Accord, the parties signed four agreements into existence that started the procedure of examining long-term grievances. The parties agreed to the establishment an Independent Review Commission to analyze the

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<sup>222</sup> The full text of the National Accord and Reconciliation Act and related documents are available at <http://kenyalaw.org/>.

<sup>223</sup> Khadiagala, "Forty Days", pp 26.

electoral process; a Commission on Inquiry on Post-Election Violence; a Constitutional Review Commission and a Truth, Justice and Reconciliation Commission.<sup>224</sup>

Even though the Accord was drawn up with the best intention of stopping the violence and moving Kenya forward politically, its contents were remarkably vague. Besides the notion that the position of Prime Minister was to be created, there was very little clarity on how the parties were to work together or implement reforms.<sup>225</sup> This has caused considerable difficulties in implementing the Accord and at some points even gave rise to violence again. One of the main initial challenges of the Accord was appointing a cabinet. The Accord required that cabinet should reflect the parliamentary strengths of both parties. Practically, this meant that cabinet positions had to be shared 50/50 between the PNU and the ODM. However, it was unclear how this balance throughout the government was to be achieved, as the Accord did not mention the size of cabinet or the number of ministers and their classifications. So, appointing a cabinet together was the first challenge Odinga and Kibaki faced. The agreement also did not define how functions would be distributed across ministries and how employee requirements were to be met. Tensions in the country were rising in the country as a result of intense quarrelling between the parties, who seemed to not be able to reach an agreement and were stuck in yet another stalemate. However, after 6 weeks the parties finally reached an agreement and appointed a 42-member cabinet.<sup>226</sup> In addition, there was an immense risk that one of the parties would withdraw from the agreement. The ambiguity of the agreement coupled with differing PNU and ODM interpretations of the Accord contributed to the fragility of the agreement. Indeed, the agreement specified parties can withdraw from the agreement but did not specify what would happen in such an occasion. If the PNU would withdraw from the agreement, Kibaki would still hold his position as President and the PNU would have all cabinet positions. If the ODM withdrew however, it would mean abandoning the position of Prime Minister and cabinet positions. Both parties could stall elections in the case of withdrawing. The unclarity of the agreement contributed greatly to the problems of creating a coalition government.<sup>227</sup> However, the parties did have a clear ‘to-do’ list when it came to reforms that addressed the root causes. The agreement had a number of steps incorporated that were aimed at solving some of the fundamental issues in society, such as land tenure concerns and confronting human

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<sup>224</sup> Dorina Bekoe, *Kenya: Setting the Stage for Durable Peace?* (Washington DC: United Stage Institute for Peace, 2008): 1.

<sup>225</sup> Moix, “Temporary Ceasefire”, pp 3.

<sup>226</sup> Schreiber, “Power Sharing”, pp 2-6.

<sup>227</sup> Bekoe, “Kenya”, pp 3.

rights abuses. However, none of these issues were discussed in the initial mediation which contributes to a more complicated implementation phase. To truly address the underlying factors of the crisis, the agreement should have been stronger and more detailed on the cooperation and collaboration of the two parties.

## **5.6. Conclusion**

This chapter has discussed the mediation process in Kenya by first elaborating on the circumstances the mediation came about and how the mediation was structured. Moreover, the mandate of Annan and his team was noted, and the general process of the mediation was described. After this, the five variables as developed by Alexandre Raffoul were introduced and the mediation was discussed according to each variable. Leverage was used considerably by both the mediation team and the international community. It was made very clear to both Odinga and Kibaki that a continuance of the violence would not be tolerated and as long as the situation in the country was dire, there would not be 'business as usual'. Annan tried his best to make the mediation as inclusive as he could, both vertically and horizontally, but there were still some improvements to make; for example, civil society could have been included at the negotiation table. A specific approach to improve trust-building during the mediation was adopted by for example introducing the retreat to improve the relationship between the parties. However, since time was limited and the number of issues extensive, the mediation did not completely manage to build a working relationship between Kibaki and Odinga. Lastly, the agreement itself was fairly vague and did not make proper provisions in case either of the parties would want to withdraw. In summary, the mediation managed to bring an end to violence, as was its aim, but some items could have been approached differently.

## 6. Power Sharing: Kenya's Grand Coalition

This chapter concentrates on the power sharing period in Kenya after the peace agreement. Following a short introduction of the coalition government in Kenya, the chapter continues by applying the five variables developed by Alexandre Raffoul on power sharing, as explained in the theoretical framework, to the Kenyan case. The power sharing in Kenya lasted from 2008 to 2013. Therefore, this analysis will span that timeframe.

The National Accord prescribed an equal division of government between the PNU and the ODM. As a result, the cabinet was increased with nine new ministries and enough positions to accommodate all the parties in the coalition, totalling up to 94 ministers who all earned over \$15,000 a month. This culminated in Kenya's "largest, most fragmented, ill-coordinated, incoherent and expensive cabinet in Kenya's history".<sup>228</sup> Like most power sharing agreements, by bringing an end to violence quickly and to create space for political change, the Accord entrenched the key culprits of violence in the highest levels of the state. Indeed, a power sharing agreement was accepted as it lured the opponents in through the notion of shared access to state resources. In addition, since both sides included people guilty of corruption and violence, Kenya's grand coalition had every incentive to maintain the status-quo of impunity.<sup>229</sup> Under multipartyism, Kenyan politics has been defined by cycles of elite cooperation, as elites sought alliances to win elections, and fragmentation, as these alliances rapidly collapsed after the polls. As a result of these "elite musical chairs", few political figures have not at some point or another worked as colleagues. This means that important political figures were not tied to a political party but are rather spread throughout the system. This is important to understand power sharing in Kenya, as we do not only look at the two parties, but also at individual political actors.<sup>230</sup>

### 6.1. Balance of power

Shortly after the establishment of cabinet, continuous bickering between the PNU and the ODM defined the Kenyan political sphere. The institutionalization of conflict led to numerous deadlocks and continuous fighting within the new cabinet.<sup>231</sup> Ministers constantly quarrelled

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<sup>228</sup> Klopp, "Agenda's", pp 149.

<sup>229</sup> Ibid, pp 144.

<sup>230</sup> Cheeseman and Tendi, "Unity Government", pp 213.

<sup>231</sup> Alexandre de Sousa Carvalho, *The Legacy of Power Sharing in Kenya: Literature Challenges and Research Agenda's* Visibilities (Lisbon: Centre of African Studies, 2013): 13.

over pay, seniority, and over who gets the best rooms or the best seating position during government gatherings.<sup>232</sup> Even the two party leaders were not above these quarrels; Kibaki once derailed a meeting when he was not able to sit in his usual chair and Odinga refused to attend gatherings if there was no red carpet laid out for him. In April 2009 and again in 2010, boycotts hindered the implementation of the Accord. In 2009, the ODM boycotted all meetings with the PNU when they could not agree on an agenda for a planned retreat to Kilanguni. The impasse was only broken when the Permanent Committee on Management of the Grand Coalition reached a tentative agreement on important issues. In 2010, the ODM once launched a boycott when Kibaki overruled Odinga's decision to suspend two ministers suspected of corruption.<sup>233</sup> However, there was no particular change in the balance of power between the two parties. Neither party decided to leave the coalition to challenge the agreement or to pursue more power. Rather, Kenya almost changed back to a one-party state with a cabinet in which each actor was motivated by personal greed; as such, the focus laid more on individual politicians and alliances than political parties.

Despite the continuous bickering, political relations between the parties seemed to improve in 2010. In 2010, in a wave of political advancement, the grand coalition proposed a new constitution.<sup>234</sup> Constitutional reform had been on Kenya's political agenda for decades; however, it had always been blocked by the ruling political elite, afraid that their privileges and positions would be taken away from them. After the PEV in 2007, the National Accord made provisions for the creation of a new constitution within a year after the signing of the agreement to prevent more waves of violence and to start addressing root causes.<sup>235</sup> Nonetheless, the establishment of a new constitution was actively opposed by the government for years after the signing of the National Accord. For instance, the bodies that were crucial to the constitutional reform process, such as the IIEC and the IIBRC<sup>236</sup>, were only sworn in well into 2009. In addition, the funding that was supposed to be available to the bodies upon swearing in was heavily delayed. Furthermore, the government did not allocate any funds for a national referendum in 2009, which was necessary to get the popular approval of the new

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<sup>232</sup> Economist, "The Great Rift – Kenya's Crumbling Government", *The Economist*, 23 April 2009, accessed 13 January 2020, <https://www.economist.com/node/13527865/print>.

<sup>233</sup> Schreiber, "Power Sharing" pp 18.

<sup>234</sup> Shilaho, "The Paradox", pp 193.

<sup>235</sup> Berman et al, "Patrons" pp 500.

<sup>236</sup> IIEC: Interim Independent Electoral Commission, IIBRC: Interim Independent Boundaries Review Commission of Kenya.

constitution.<sup>237</sup> Therefore it was not until 2010 that a new constitution was proposed. However, when it was finally approved, it was supported in a popular referendum by 68.55% and by the majority of government, with the notable exception of William Ruto.<sup>238</sup>

During the phase that followed the signing of the National Accord, the differences between PNU and ODM caused continuous fighting between the two parties. However, with the creation of the grand coalition, Kenya effectively became a one-party state again as there was barely room for an opposition. Rather, the two parties ensured that all their crucial political figures were included in the cabinet, thereby creating the biggest and most expensive cabinet in Kenyan history. Each post was filled by an employee from both the PNU and the ODM. As a result, there was no clear dichotomy between the two parties, but rather between political figures, such as Kibaki and Odinga. Therefore, no one side was stronger than the other as no side was truly unified. Politicians were not only representing one of the parties, but also their personal interests. For that reason, balance of power problems did only consist of constant quarrels within government, but no renegotiation of terms was requested as both parties were equally strong even though considerable leverage was used during the mediation. After the mediation there was little to no outside pressure to find political compromise, although external forces did call for a power sharing agreement during the mediation phase. Due to this lack of external influence, Kenyan leaders were free to quarrel as they wished and political compromise was far to be seen. Nonetheless, after 2010, negotiations between parties even appeared to have improved and a new constitution was created.

## **6.2. Outside spoilers**

After the agreement was signed, violence in Kenya virtually disappeared. By May 2009, the KNDR monitoring project confirmed that political violence had generally stopped and that the areas that had experienced the most violence were calm.<sup>239</sup> Over the five years that the coalition was in power, the situation stabilized further. The Global Peace Index, which indicates more peaceful countries with lower scores, stated that Kenya improved from 133 in 2008 to 118 in

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<sup>237</sup> Henry Amadi, "Kenya's Grand Coalition Government – Another Obstacle to Urgent Constitutional Reform?", *Africa Spectrum* 44:3 (2009): 154.

<sup>238</sup> Adam Drnovsky, and Michal Mochtak, "Power Sharing and Democratization in Africa: The Kenyan Experience", *Journal of International Relations and Development* (2018): 19.

<sup>239</sup> Schreiber "Power Sharing", pp 25.

2013.<sup>240</sup> Besides Al-Shabaab activity, violence in Kenya significantly decreased. In addition, Michael Chege, lecturer at the University of Nairobi, noted that economic growth also signifies further stabilization. In 2008, as the country was engulfed by violence, GDP slowed down to a growth of only 0.2%. However, in the years from 2009 to 2013, Kenya saw an average GDP growth of 5.6%.<sup>241</sup>

The main perpetrators of violence, the gangs and militias, quickly disappeared into the cover of the general population again. Kenya has a long history of armed groups, that have emerged in the response to an anticipated threat against the community and against an increasing fragility of the state. These groups are organised by a number of stakeholders, including the regime in power.<sup>242</sup> During the 2007 elections, various gangs organized along ethnic lines, such as the Mungiki and Taliban militia groups, organized attacks against civilians and posed themselves as protectors of their respective ethnic communities. There are numerous sources that indicate a link between these militias and the state, as the militias sometimes operate by order of state officials. The government utilizes the gangs every now and then to execute extra-judicial services, specifically during election times. This ambiguous relationship between the states and the militias makes it incredibly hard to dismantle the armed groups. The very existence of the groups poses a threat to security.<sup>243</sup> After the 2007 crisis, the government cracked down hard on known gang members to regain control over the use of violence. Police “death squads” were reported to have engaged in summary executions of suspected Mungiki members. The UN Special Rapporteur stated that police murdered with impunity and under the orders of senior officers. As a result, gang members have disappeared back in the protective layers of their respective communities and no longer threatened peace.<sup>244</sup>

The mediation by Kofi Annan enjoyed mass support from the Kenyan population and the international community. These pressures from below and above eventually managed to convince both parties to sign the agreement and to engage in a power sharing agreement.<sup>245</sup> As

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<sup>240</sup> *Global Peace Index*, Institute for Economics and Peace, accessed 21 January 2020, <http://economicsandpeace.org/reports>.

<sup>241</sup> Schreiber, “Power Sharing”, pp 25.

<sup>242</sup> Nanjala Nyabola, “Militia Groups”, pp 92.

<sup>243</sup> *Ibid*, pp 98.

<sup>244</sup> Canada: Immigration and Refugee Board of Canada, *Kenya: Activities of the Mungiki Sect and Response by Government Authorities* (2009), accessed on 15 January 2020, <https://www.refworld.org/docid/4b20f048c.html>.

<sup>245</sup> Juma, “African Mediation”, pp 208.

discussed previously, the major parties to the conflict were included in the mediation. The only significant party that was not invited to the negotiation table was civil society. Nonetheless, civil society was involved in advising the Panel and showed considerable support for the negotiations. Although during the power sharing period, civil society was heavily involved on the grassroots level to promote peace and reconciliation, the organizations were not likely to ‘spoil’ the peace. Therefore, even though they were excluded during the mediation, they were not a threat to peace. The main perpetrators of violence were militias that emerged out of a necessity to protect their communities, but slowly evolved towards opportunistic gangs. The Kenyan government has historically struggled in dealing with these gangs, mainly because they are known for having ties to high-ranking politicians. However, after the 2007 crisis the government cracked down hard on known militia members, by for example ordering extra-judicial killings. Although this process was unconstitutional, it contributed to the absence of outside spoilers during the power sharing period. As a result of these processes, Kenya’s peace agreement did not experience any outside spoilers.

### **6.3. Inside spoilers**

The ODM and the PNU signed the National Accord after being heavily pressurized by the international community to come to an agreement and to bring an end to the violence. As the report from Human Rights Watch pointed out, Kibaki only agreed to a mediation and a power sharing settlement after international actors had done everything possible to pressure Kibaki into a compromise. Before that, the Kibaki administration appeared undisturbed by the violence that followed the December elections, claiming that he was the rightful winner.<sup>246</sup> After an agreement was made, it became the responsibility of Kenyan politicians to implement the agreement and protect the safety of Kenya’s citizens. They also had the responsibility to ensure that their written commitment to end impunity and to create long-term reforms became a reality.<sup>247</sup> However, it soon became apparent that Kenya’s government had very limited commitment to the agreement. Politicians displayed little willingness to implement new measures and did everything in their power to delay reforms.

The practice of power sharing created opportunities for the establishment of new alliances, as MPs explored possibilities to exploit the system for their personal gain, while at the same time

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<sup>246</sup> Human Rights Watch, “Ballots”, pp 59.

<sup>247</sup> Ibid.

shielding themselves and their allies from prosecution. Tendi and Cheeseman refer to this as “the politics of collusion”, as political enemies quickly found common ground by dedicating their energy to optimizing their own conditions of service.<sup>248</sup> Indeed, the fact that Kenya’s kleptocratic ruling elite was expected to spearhead the process of reforms brought a range of problems with it. Very few substantive reforms have been realized as Kenya’s struggle for reforms has been characterized by opportunism; as soon as actors achieve their objectives, for example being elected, resistance against reforms commences.<sup>249</sup> The establishment of a government of unity has created new opportunities for anti-reform actors to cooperate. It is through this subtle process that reforms and political change have been continuously undermined from inside out.<sup>250</sup>

The National Accord aimed at improving transparency and political accountability, however, performance was poor. During the governing period of the coalition government from 2008 to 2013, Kenya experienced multiple corruption scandals that implicated ministers from both sides of the coalition.<sup>251</sup> As a result, the final monitoring report of the implementation of the Accord harshly stated there were no substantial accomplishments in the fight against impunity.<sup>252</sup> At certain times, corruption threatened to directly derail cabinet and the reality of power sharing. For example, as early as June 2008, the finance minister was sacked because of a US\$ 60 million scandal that involved the Grand Regency Hotel in Nairobi, which was also connected to the Goldenberg scandal under Moi. This was followed in 2009, when corruption threatened to derail the management of government when two top aides to Odinga, Permanent Secretary Mohammed Isahakia and Chief of Staff Caroli Omondi were implicated in a US\$ 150.000 million maize scandal. However, both were reinstated four months later by Kibaki after an anticorruption commission cleared their names. In October 2010, the minister of higher education was suspended by Kibaki because of fraud scam that involved US\$ 1.2 million. Eight days later, the minister of foreign affairs resigned because of a US\$ 250 million corruption scandal that involved land purchase.<sup>253</sup> This demonstrates that political accountability was still a very distant objective.

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<sup>248</sup> Cheeseman and Tendi, “Unity Government”, pp 223.

<sup>249</sup> Shilaho, “The Paradox”, pp 185.

<sup>250</sup> Cheeseman and Tendi, “Unity Government”, pp 223.

<sup>251</sup> Schreiber, “Power Sharing”, pp 24.

<sup>252</sup> South Consulting, *The KNDR Monitoring Project* (Nairobi: South Consulting, 2011): 4.

<sup>253</sup> Schreiber, “Power Sharing”, pp 29.

The creation of a new constitution in 2010 was a milestone in the history of Kenya. However, even though the Cabinet in a period of cooperation produced a new constitution and campaigned in unity for its acceptance in a national referendum, it was still not fully implemented by 2013, despite the deadlines for implementation had been August 2011. By early June 2011, only three Bills had been passed into law, even though there were sixteen laws that had to be enacted.<sup>254</sup> Parliament endorsed Acts conflicting with the ideology of the constitution.<sup>255</sup> For example, MPs watered down the Leadership and Integrity Act in such a way that those involved in imminent criminal court cases could still hold elective posts; they also ensured that those seeking elective positions would not be vetted by the state, nor would they have to declare their wealth. The Commission for the Implementation of the Constitution (CIC) argued that “Parliament’s action of passing the Act in its current form is a deliberate attempt at sabotaging the enforcement of the strict ethical and moral requirements as contained in the Constitution” and filed a petition.<sup>256</sup> However, the High Court dismissed the petition by claiming the dilution of the law was not unconstitutional.<sup>257</sup>

Although Kenya’s peace accord promised a comprehensive plan for reforms and sustainable change, in reality, little has been achieved. One of the main reasons for this is that Kenya’s reforms were to be spearheaded by a corrupt elite, that had every incentive to continue the status quo. Subsequently, inside elements in the government have continuously attempted to derail the peace process by not sticking to the agreement, for example by watering down laws in order to protect themselves. As a result, reforms have been delayed or sometimes even actively opposed. Although some positive change has occurred, the majority of reforms have been lagging behind. Inside spoilers have emerged both as a means to undermine the other party, but also between individuals looking to enrich themselves. Annan tried to avoid spoilers by encouraging relationship-building, but the parties were not as susceptible as he hoped. Decades of mutual hostility and little trust prevailed the new contacts after the negotiations. This demonstrates that inside spoilers emerge due to a lack of trust in the other party, but also as a means of self-preservation. As such, the very nature of Kenyan politics adds an extra

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<sup>254</sup> South Consulting, “Monitoring Project”, pp 30.

<sup>255</sup> Shilaho, “The Paradox”, pp 197.

<sup>256</sup> Isaiha Lucheli, “Three Join CIC Suit Against Watered Down Integrity Act”, *The Standard* 11 October 2012, accessed on 23 January 2020, <https://www.standardmedia.co.ke/article/2000068128/three-join-cic-suit-against-watered-down-integrity-act>.

<sup>257</sup> Daily Nation, “CIC Loses Battle with House over Integrity”, *Daily Nation* 9 February 2013, accessed on 23 January 2020, <https://www.nation.co.ke/news/politics/CIC-loses-battle-with-House-over-integrity/1064-1688842-6ts5roz/index.html>.

dimension to Raffoul's framework, as parties are not unified blocks, but rather consist of self-interested individuals looking to circumvent agreements and the law for their own gain.

#### **6.4. Identity and political accountability**

The National Accord instructed the coalition to foster cohesion, national cohesion and reconciliation through high profile meetings in the affected areas. Three years after the initiation of this programs, data conducted by the KNRC monitoring project demonstrates that communities in those areas affected by violence have initiated multiple peace initiatives with the assistance of faith-based and community organizations.<sup>258</sup> The government established the National Cohesion and Integration Commission (NCIC), which organized a national civic education and advertising campaign that called for inter-community cohesion and peaceful elections. The NCIC, together with civil society and county governments, held various inter-communal events and meetings across the nation and urged people to keep the peace and start a dialogue. In addition, the Catholic Church initiated a number of projects under the name of a 'connector projects'. These projects have attempted to link dialogue sessions with further reaching programs, such as deepening the socio-economic dependence between communities. This strengthens the bonds of self-interests between groups as interdependency grows. Furthermore, the connector projects have tried to create more job opportunities for youth, so that young men are substantially more difficult to engage in violence.<sup>259</sup> These initiatives have assisted in rebuilding trust amongst communities.

However, national politics continuously disrupting these efforts. As politics in Kenya has always been deeply ethnicity-based, politicians rely on political tribalism to mobilize voters and supporters. Politicians made political statements and insinuations that bolstered ethnic divisions, which hindered reconciliation processes.<sup>260</sup> The first two years of the coalition government the cabinet remained fairly stable. However, as the 2013 elections drew closer, parliamentarians grew increasingly impatient as they intended to form different entities to mobilize voter support. Fractions began to appear in the ODM after a fallout between Odinga and William Ruto, pitting Odinga's Luo community against Ruto's Kalenjins. The PNU also started to experience difficulties in keeping the party together, as some politicians positioned themselves as candidates for the presidency in 2013. These fractions inevitably affected the

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<sup>258</sup> South Consulting, "Monitoring Project", pp 39.

<sup>259</sup> Gabrielle Lynch, *Performances of Injustice: The Politics of Truth, Justice and Reconciliation in Kenya* (Cambridge: Cambridge University Press, 2018): 41.

<sup>260</sup> South Consulting, "Monitoring Project", pp 39.

use of ‘tribal’ language by politicians and created unrest within different communities.<sup>261</sup> In addition, the relocation of IDPs had taken an ethnic dimension, as concerns were raised that the IDPs in the refugee camps were there to steal land from the locals. Moreover, the government’s IDP resettlement program was rumored to favor certain ethnic groups, which undermined the process of reconciliation in the country.<sup>262</sup>

What further exacerbated ethnic tensions was the government’s response to the final report of the Waki Commission (CIPEV), including the involvement of the ICC. The Waki commission had been created under the guidance of the AU Panel of Eminent African Personalities to examine the post-electoral violence in Kenya. After extensive investigation CIPEV concluded that even though violence appeared to be spontaneous in some cases, in other cases of violence it became evident that they were planned well ahead of time and coordinated. According to CIPEV, the Kenyan state had failed miserably in addressing the violence and as such was guilty in itself of gross human rights violations. CIPEV advised setting up a special tribunal with the ability to prosecute to deal with perpetrators of violence and to circumvent the culture of impunity that had always surrounded Kenyan elections since the introduction of multiparty elections. CIPEV also mentioned in its final report that if the Kenyan government failed to establish a special tribunal, it would pass the names of alleged perpetrators to the ICC.<sup>263</sup> After Parliament failed twice in establishing the tribunal, Kofi Annan, head of the Panel of Eminent African Personalities at the time, passed the envelope with the names of the accused to the ICC. As a result, the ICC launched investigations into the post-electoral violence shortly after.<sup>264</sup>

The CIPEV report implicated members of the ruling political elite; therefore, it was met with resistance in the political sphere. The prospect of facing prosecution by domestic or international tribunals created anti-reform factions with compelling incentives to establish mutual protection societies across party lines. This combination of motivation and opportunity explains the emergence of the very unlikely political alliance of former bitter rivals, Uhuru Kenyatta and William Ruto. As Kenyatta hails from the Kikuyu community and Ruto represents the Kalenjins, which fought one another in some of the worst violence in 2008, they

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<sup>261</sup> Khadiagala, “Political Movements”, pp 79.

<sup>262</sup> South Consulting, “Monitoring Project”, pp 39.

<sup>263</sup> Gabrielle Lynch and Misa Zgonec-Rozej, “The ICC Intervention in Kenya”, *Africa/International Law* 1 (2013): 4.

<sup>264</sup> Muema Wambua, “Transitional Justice and Peacebuilding: The ICC and TJRC Processes in Kenya”, *African Conflict and Peacebuilding Review* 9:1 (2019):62.

were known to be bitter political rivals. However, out of fear that their names might feature in the secret envelope passed to the ICC, the two engaged in the formation of a new political alliance to deter the accusations. They were supported by the political community, as MPs refused to vote Ruto out of cabinet for alleged corruption charges. Therefore, impunity was still an everyday occurrence towards the end of the power sharing timeframe.

Although the National Accord preached national cohesion and unity, during the five years that the power sharing cabinet was in power, little changed. Nonetheless, churches, community organizations, regional governments and the NCIC initiated a number of dialogue and education sessions to bring communities closer on a grassroots level. These initiatives seemed to be successful, however, national politics disrupted the processes, as politicians continued using ethnic language and divisive rhetoric. Moreover, impunity was not addressed as government officials acted out of self-preservation and had no incentives to change the status-quo. As the mediation was mainly an elite-centered process that did not incorporate the general population's concerns, it is not surprising that communities started to follow political hardliners once again, as they perceived that politicians from other communities threatened their security. As a result, no political accountability was demanded from below and a continuance of identity politics ruled the Kenyan political arena yet again during the 2013 elections.

### **6.5. Credible commitment problems**

The main aim of the National Accord was to establish the necessary circumstances under which a unity government could initiate extensive reforms and address the fundamental issues underlying the conflict.<sup>265</sup> Following the Accord, the parties agreed to realize several reforms, such as a long-anticipated constitutional review and parliamentary, judicial, police and civil service reforms. There were to be election reviews and detailed reviews of the crisis. The government also anticipated to make land reforms, and to fight poverty, inequality, youth unemployment and regional imbalances. The parties committed to improving national cohesion and unity. Lastly, they promised to promote transparency and accountability in the affairs of government while fighting impunity.<sup>266</sup> All these issues were recognized as the fundamental

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<sup>265</sup> Karuti Kanyinga, "Hobbling Along to Pay-offs: The Kenyan Grand Coalition Government", *Political Exclusion in Africa* (2009): 11.

<sup>266</sup> Kenya National Dialogue and Reconciliation. 2008. *Statement of Principles on Long-Term Issues and Solutions*.

problems that causes the 2007 crisis in the country and that were thought to create new areas of conflict and contention in the future.<sup>267</sup>

Although the National Accord provided a clear agenda and roadmap to resolving root causes underlying the 2007 election violence, the actual implementation of the agreement was problematic. Even though the Kenyan government took a huge step forward by creating a new constitution, other fundamental issues have been largely ignored. For example, the government introduced Operation *Rudi Nyumbani* (Operation Return Home) to resettle the thousands of displaced people shortly after the signing of the Accord. However, many IDPs could not return home as most of them had lost everything and refused to leave the refugee camps. The government then used physical force to remove the IDPs from the camps and claimed that the humanitarian issue was solved. Even in 2013, the year that new elections would take place, many were still looking for a place to call home, which was also related to land issues that were yet to be solved.<sup>268</sup> Land has always been crucial to securing sustainable peace and stability in Kenya as identified by agenda item four. The National Accord made provisions for securing land reform within a year, however, the government dragged its feet. In September 2011, a number of non-governmental stakeholders pulled out of the process of preparing draft legislation, arguing that the ministry was not consulting adequately.<sup>269</sup> The ministry did create the Land Reforms Transformation Unit to implement reforms, however, many argue that the unit is weak, inefficient and not independent. As of 2012, the National Land Commission was yet to be established.<sup>270</sup> Delays in land reforms have been attributed to corrupt politicians with vested interest in the sector, that are known for grabbing land. By hindering the initiating of reforms, they are protecting their own interests.<sup>271</sup> Lastly, impunity remains a huge problem. From the signing of the Accord until the elections in 2013, few perpetrators have been held accountable. The government has not made any effort in pursuing justice for the victims, and most cases have been acquitted. In many cases, evidence has been tampered with to prevent

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<sup>267</sup> Nicole Anne Beardsworth, "A Marriage of Inconvenience: Comparing the Implementation of the Kenyan and the Zimbabwean Power Sharing Agreements", (MA diss., University of Witwatersrand, 2012): 63.

<sup>268</sup> Megan Anne Shutzer, "The Politics of Home: Displacement and Resettlement in Postcolonial Kenya", *African Studies* 71:3 (2012): 356.

<sup>269</sup> Beardsworth, "A Marriage", pp 72.

<sup>270</sup> South Consulting, *Agenda Item 4 Reforms: Long-Standing Issues and Solutions* (Nairobi: South Consulting, 2012): 24.

<sup>271</sup> *Ibid*, pp 27.

conviction. As the government protects her own, little steps have been made to eliminate impunity<sup>272</sup>.

Ever since the signing of the Accord, Kenya's politicians have showed repeatedly that they are not interested in committing to the agreement. The Accord was very ambiguous, which gave the government reasons to drag its feet, and made provisions to address root causes in the year to come. However, five years after the signing of the agreement very little has been achieved. Both the PNU and the ODM have shown credible commitment problems as neither party has demonstrated to be committed to changes. Besides the creation of a new constitution in 2010, as described in 'the balance of power', which was barely implemented in 2013, close to nothing that was agreed on in the Accord regarding solving fundamental issues had been achieved. High-ranking officials actively opposed the changes suggested in the agreement, most likely out of self-interest and self-preservation. While most tensions between the two parties settled down after 2010, tensions still simmered under the surface and high levels of cooperation enabled the re-emergence of patronage structures and systems which have collaborated to obstruct reform efforts.

## **6.6. Conclusion**

This chapter has analyzed power sharing in Kenya according to the variables developed by Alexandre Raffoul. It has explained the different dynamics of power sharing from an elite perspective and in relation to the five variables regarding mediation. It has demonstrated that the power sharing period in Kenya was far from perfect, as little of the planned reforms were actually achieved. Kenya's power sharing agreement suffered mostly from self-interested politicians that had little incentive to pursue reforms as it would endanger the status-quo. However, a new constitution was created, which was a huge step forward for Kenyan politics. Nonetheless, the power sharing period did little for political advancement in Kenya.

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<sup>272</sup> Beardsworth, "A Marriage", pp 71.

## 7. Conclusion

In a context where mediation is increasingly employed as a means of conflict resolution, and power sharing agreements have progressively been proposed as a means to end violence and restore stability in countries wrecked by conflict, it is fundamentally important to review the type of these mediations and their propensity to affect post-agreement elite cooperation in the power sharing phase. This thesis has demonstrated that the design of a mediation does impact the performance power sharing agreements. By looking at five variables regarding power sharing and combining these with five variables that analyze mediation, it has established that specific features of the mediation process have an impact on the ability of elites to collaborate in the post-agreement phase.

The use of leverage during the mediation is an important factor in influencing the success or failure of power sharing. When an agreement is accepted under intense external pressures, parties are less likely to commit to the agreement in the power sharing phase, as the agreement is less viable in the absence of continuous third-party pressure. In Kenya, both international as well as domestic actors put immense pressure on both parties to accept mediation and come to an agreement. The so-called sticks and carrots were introduced and eventually Kibaki and Odinga were pressurized into an agreement. This had consequences for elite negotiations after the signing of the National Accord, as parties did not feel obliged to cooperate and initially attempted to undermine each other. Eventually however, shared interests of self-preservation prevailed and from 2010, the coalition worked quite well together.

The grade of horizontal inclusivity during the mediation can predict the emergence of outside spoilers after the power sharing settlement. When not all actors from the main parties are included in the peace negotiations, they might attempt to derail the peace process. Kenya's peace talks were quite inclusive as the main political parties involved in the crisis were present at the negotiation table. The only influential faction not directly involved in the negotiations was civil society. However, civil society supported the mediation by providing advice to the Panel in numerous ways and updating the mediation team on events happening in the country. As a result, there were no outside spoilers that threatened to derail the negotiation process nor the power sharing settlement.

As the negotiations were understandably rushed to facilitate a quick end to violence, there was little time to create a working relationship between Odinga and Kibaki, who were bitter rivals. Although Annan attempted various relationship-building practices, such as the retreat in Kiliguni, the team was under extreme pressure to come to a solution quickly. Therefore, there was little time nor opportunity to build trust between the parties. As a result, implementation was hindered by numerous events of inside spoilers. MPs, aiming at the prevention of prosecution and self-preservation, voted for the watering down of a number of important bills. Although the National Accord promised to address root causes, little has been achieved due to continuous sabotage from within.

To involve the general public in the negotiation process, Annan gave regular updates about the progress using local press. His team member Benjamin Mkapu assisted with Kiswahili translations to reach a wider public. A few conferences were held throughout the country through which people could give suggestions. However, in the end the mediation remained an elite business that addressed mainly the fears and grievances of those in power. Although NGOs, churches and local governments encouraged dialogue and cooperation, this was undermined by national politics. Politicians and high-ranking government officials continued to use hate-instigating speech and formed alliances along ethnic lines. In addition, impunity was not addressed, and little was done to improve political accountability.

As Annan left shortly after Agenda Point 3 was reached during negotiations, both the PNU and the ODM felt like they had crossed the finish line and nothing more was agreed on regarding the tackling of root issues. In addition, the agreement was filled with ambiguities and unclear on various issues. As a result, credible commitment issues arose during the power sharing period. Promises were not kept, and government officials actively opposed reforms. Five years after the signing of the Accord, little was achieved besides the creation of a new constitution.

This study concludes that the design of a mediation does influence the performance of power sharing, and that barriers to elite cooperation in the post-agreement period can be addressed in the mediation phase of conflict to prevent future tensions. However, Raffoul's theory is not without faults. In the previous chapters, this thesis has shown that the existing political context in Kenya made the negotiations and the following power sharing period extremely difficult. The endemic elite corruption and patronage ruled and still rules Kenyan politics up to this day, thereby ensuring little change was embraced. No political agreement nor structure has

addressed this, as elites are the ones ruling these dimensions. This thesis is therefore a direct criticism of power sharing as a “one-size fits all” approach towards conflict and political crises. As cases like Kenya and Zimbabwe point out, power sharing is not necessarily the most sustainable manner to mediate the breakdown of political order. Is power sharing always the best solution to conflict and violence? Can mediation that was initiated primarily to end the violence then be steered to dealing with an entrenched political culture that would eventually derail the post-agreement implementation? As previous cases have shown in South Africa and Congo, continuous international involvement in the post-agreement phase contributes to the durability of the settlement. However, when the international community stopped investing in the implementation phase in Kenya, chaos and political impunity prevailed. This notion suggests that continuous third-party involvement is critical to the success of the implementation of power sharing agreements.

This dissertation has contributed to the scholarly literature on power sharing in general and the Kenyan case in particular. By regarding mediation as an integral process to peacebuilding and to change mediation designs when applicable, conflict can be addressed in a more sustainable way that will bring long-term benefits. Mediation can be used effectively as a conflict management tool, but as a conflict resolution tool, international negotiations and third-party involvement should continue post-agreement as to create optimum reforms. As the Kenyan mediation took place within a political context of elite politics, patronage and corruption, political actors quickly reformed the power sharing agreement into a process that benefitted them. As a result, the reforms that were expected and hoped for by the general population, were not or barely implemented.

This thesis is one of the first studies, besides Raffoul’s work, that researched the effects of mediation on the performance of a power sharing agreement. As this thesis has concluded that problems of power sharing are located in the mediation phase of conflict resolution, there is much more research to be done to further examine the link between mediation and power sharing, and specifically into mediation and power sharing in cases of political violence. It is important that more studies will be undertaken to determine the best practices in mediation to consolidate future agreements to advance to probability of success. Moreover, power sharing should only be regarded as a temporary transition process and should be mediated in a manner that strengthens political cooperation across all parties. Ultimately, power sharing should be

regarded as a continuous process in which assisted negotiations are included in the agreement to promote the effective implementation of reforms and the consolidation of democracy.

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