



Synthesis Report:

# STOPPING A CONFLAGRATION: THE RESPONSE OF KENYAN CIVIL SOCIETY TO THE POST-2007 ELECTION VIOLENCE

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*The*  
**ATLANTIC**  
*Philanthropies*

# Acknowledgements

The author wishes to thank Anders Sjogren, Kwamchetsi Makokha Prisca Kamungi, and David Everatt for comments that assisted in revising the paper. The usual caveats apply: views and errors in this paper are the author's

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## Introduction

A violent conflict engulfed Kenya after a dispute over the results of the December 2007 presidential election. The dispute between the Party of National Unity (PNU) of the incumbent President Mwai Kibaki, and the Orange Democratic Movement (ODM), an opposition party, led by Raila Odinga, triggered violence and a political crisis in which over 1,100 people were killed and over half a million others were displaced. The violence began as spontaneous protests in ODM strongholds after the Electoral Commission of Kenya (ECK) declared President Kibaki as the winner in spite of a heated dispute over a flawed vote count and tallying.<sup>1</sup> The violence spread rapidly and assumed an ethnic dimension following the tracks of the affiliation for the two main political parties. President Kibaki's PNU drew membership from his Kikuyu ethnic group and related communities – the Meru and Embu communities in the Mount Kenya region.<sup>2</sup> On the other hand, the ODM of Raila Odinga had the support of the Luo in association with the Luhya in western Kenya, the Kalenjin in the Rift Valley Province, and the Mijikenda in the Coast. Support in Nairobi was divided between the two parties.

The violence spread along these ethno-regional patterns of party affiliation. In ODM areas, the youth organised attacks targeting especially those allied to PNU, many of who were Kikuyu. On the other hand, in PNU areas, militia groups quickly organised retaliatory attacks targeting ODM supporters many of who were Luo, Luhya, and Kalenjin. On the whole, militia and other gangs formed to violently

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<sup>1</sup> For details on the process of voting and tallying see David Throup. 2008. The Count. *Journal of Eastern Africa Studies* 2 No.2: 290 – 304. For details on the general electoral process see Independent Review Commission (IREC) on the 2007 elections (Kriegler Commission). Nairobi: Government Printers, 2008.

<sup>2</sup> The Kikuyu, Embu and Meru constitute what is usually referred to as GEMA or Gikuyu, Embu and Meru Association. This group, whose members live around Mt. Kenya is widely believed to be politically and economically advantaged during the first post-colonial regime of President Kenyatta, a Kikuyu. Under President Kibaki, the group again began to dominate the political and economic spheres by staffing senior and powerful public sector positions with people from the region. This exacerbated feelings of marginalisation among other groups.

evict supporters of either parties in the region they considered their territory.<sup>3</sup> The violence split the country into two in line with how each region voted: ethnic divisions deepened as anti-Kikuyu resentment spread in ODM areas. The Kikuyu resentment of other communities allied to ODM was similarly high.

International and domestic pressure resulted in the two parties agreeing to international mediation, under the auspices of the African Union's (AU) Panel of Eminent African Personalities, chaired by the former United Nations Secretary General, Kofi Annan<sup>4</sup>. Kenyan Civil Society Organisations (CSOs) and their networks generated and sustained domestic pressure to end the violence. A grouping of Kenya's finest civil society minds participated in international and regional advocacy to highlight the crisis and to ensure the international community had objective information about what caused the crisis and its consequence. They lobbied international donors and governments to bring pressure to bear on the two parties to resolve the crisis. The parties yielded to pressure and agreed to mediation, which began in mid-January 2008. On 28 February 2008 the parties signed the 'Principles of Partnership of the Coalition Government' and agreed to share political power in a Grand Coalition Government. The parties also agreed to amend the constitution and to enact the National Accord and Reconciliation Act, 2008, establishing Grand Coalition Government. The signing of the National Accord ended the violence.

**The critical role that civil society played to end the violence and their inputs into the mediation process is yet to be documented.**

Further, in the period preceding the 2002 general elections, CSOs facilitated opposition parties to form a coalition, the National Rainbow Coalition (NARC), so as to defeat the then ruling political party and begin a process of comprehensive reforms after winning the elections. In the post-2007 election violence they again made important contributions to putting out the fire. CSOs in Kenya have played what appear to be non-traditional and non-conventional roles ascribed to civil society. Their role in political leadership in Kenya's transition politics is yet to be analysed.

The new non-conventional roles that CSOs in Kenya played during the post-election violence raises a need to examine how they play such roles and what lessons can be learnt from this. This paper discusses the role that civil society played in ending the violence. The paper in particular discusses how civil society assisted in putting out the fire that was gutting the nation. This discussion therefore addresses two questions: 'How did civil society help to put out the fire' and 'What lessons are there for other African CSOs to learn'.

<sup>3</sup> The Commission of Inquiry on the Post-Election Violence (CIPEV) popularly referred to as the Waki Commission (named after Justice Philip Waki who chaired it) documented this pattern of violence in all the region. See Republic of Kenya. Commission of Inquiry into the Post-Election Violence. Nairobi: Government Printers, 2008. Muthoni Wanyeki has also filled gaps in gender-based violence; she has given an analysis of how gender based violence took place. See Muthoni Wanyeki. Kenyan Women and the Post-Election Violence. Nairobi: The Kenya Human Rights Commission (KHRC), 2009.

<sup>4</sup> The cloud of secrecy and demand for high levels of confidentiality required of the mediation process has meant that few studies have been conducted on the mediation process. Two publications, Elizabeth Lindenmayer and Josie Lianna Kaye. A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya. New York: International Peace Institute, August 2009; and Makumi Mwangiru. The Water's Edge: Mediation of Violent Conflict in Kenya. Nairobi: Institute of Diplomacy and International Studies, 2008 shed some light on what transpired.

# Civil society and democratisation in Kenya: an overview

In Kenya, and much of Africa, the meaning of civil society is a subject of debate especially because definitions tend to draw from Western tradition and experiences. The challenges of using this tradition in identifying civil society properties in Kenya and Africa in general are quite clear.<sup>5</sup>

One, this type of analysis **prevents a full appreciation of the conditions** of civil society in Africa; and two, it raises **expectations on the role of civil society in spite of the constraints posed by the dominance of the state** that continues in politics and the economy in Africa.

Although this is the case, the Hegelian liberal conception of civil society has been influential in providing a basis for identifying groups that compose civil society in Kenya. In this usage, civil society broadly refers to the realm of autonomous and voluntary associations located between the state and the household. Activities of civil society are voluntarily organised and are aimed at promoting social well-being – they are involved in public good.

Kenyan civil society is heterogeneous. It comprises non-governmental and autonomous groups organising outside of the control of the state. Operating in this space are Non-Governmental Organisations (NGOs) undertaking development work, Community Based Organisations (CBOs), Religious or Faith-Based Organisations (FBOs), Trade Unions, Professional Associations, self-help and numerous other voluntary organisations. This suggests that civil society in Kenya is heterogeneous in composition and interests. These multiple interests also imply potential for divisions, especially with regard to engagement within broader political society.

In Kenya civil society has contributed to national development and democratisation processes.<sup>6</sup> In terms of development, civil society development organisations are involved in service delivery activities, for instance, providing water, health care, and supporting community development efforts in addition to many other roles.<sup>7</sup> Not a single sector of the economy is without the presence of CSOs. The government recognises NGOs as important partners in the development process. A national policy on NGOs' role in development is also in place. The policy seeks to facilitate the work of NGOs in the development space and to improve coordination in the sector.<sup>8</sup>

<sup>5</sup> Mahmood Mamdani (1996) spells out these challenges in *'Citizen as Subject: Contemporary Africa and the Legacy of Late colonialism'*. Princeton, NJ: Princeton University Press, 1996; Peter Gibbon. *Civil Society, Locality and Globalisation in Rural Tanzania: A Forty-Year Perspective*. In *Development and Change*, Vol 32: 819-844, 2001.

<sup>6</sup> Karuti Kanyinga, Winnie Mitullah, and Sebastian Njagi. *The Non-Profit Sector in Kenya: Size, Structure and Financing*. Nairobi: Institute for Development Studies, 2007. Connie Ngondi-Houghton. *Philanthropy in East Africa: Nature, Challenges, and Potential*. London: Allavinda, 2005.

<sup>7</sup> Alan Fowler. 'NGOs, Civil Society and Social Development: Changing Rules of the Game', Geneva: United Nations Research Institute for Social Development, Occasional Paper No. 1, 2000.

<sup>8</sup> Sessional Paper No.1 of 2006 on Non-Governmental Organisations. Office of the Vice President and Ministry of Home Affairs. Nairobi: Government Printers, 2006

In the period between the early 1990s and the 2002 general elections, civil society was synonymous with the democratisation process in Kenya. From the early 1990s, civil society fiercely fought against one-party repression in the country and led intense struggles for a return to multi-party democracy.<sup>9</sup> In providing leadership in the democratisation initiatives, civil society groups acted as the training ground for opposition politics and political leadership in general.<sup>10</sup> The first leaders of opposition politics in the 1990s had a strong civil society background. This organic relationship with opposition politics continued throughout the 1990s until early 2000 when civil society urged and facilitated opposition parties that were keen on reforms to form a coalition so as to defeat the ruling party, the Kenya African National Union (KANU), which had been in power throughout the post-independence period.<sup>11</sup> Civil society and opposition parties hoped to pursue democratic governance reforms once they got KANU out of power. It is this alliance of parties and civil society that won the December 2002 general election.

The coming to power of a new government with a strong civil society backing had several consequences for civil society. Some civil society leaders were elected to parliament. The government also recruited experienced leaders from civil society. This weakened the sector. Recruitment of individuals who had sharpened skills for advocacy, lobbying and mobilising for reforms depleted the sector of experienced leadership, developed over many years.

While a much more youthful leadership took over, it **lacked experience to immediately lead the sector in the new political environment.**

Secondly, the government began implementing reforms and undertaking activities similar to those that CSOs were undertaking. The government spoke the language of rights, justice, and equality and again recruited more people from the civil society into the new human rights and governance state institutions. This hastened the formulation of several policies and enactment of legislation that would promote and protect rights. At the same time, cooptation of civil society into the new institutions reduced the sector's ability to play a watchdog role.

Many of the reforms taking place were predicated on the existence of NARC as a coalition government. But the coalition itself was fragile. It was formed for the purpose of defeating KANU. Once this goal was accomplished, conflict emerged among the parties, essentially over the sharing of power. The President's party reneged on the pre-election agreement and marginalised one of the major parties

<sup>9</sup> Some of the earlier works on the role of Civil Society in Kenya during this period include Stephen Ndegwa. *The Two Faces of Civil Society: NGOs and Politics in Africa*. West Hartford, CT: Kumarian Press, 1996. Others include Willy Mutunga. *Constitution-Making from the Middle: Civil Society and Transitional Politics in Kenya, 1992-1997*. MWENGO. Nairobi: SAREAT/MWENGO, 1999; Godwin R. Murunga and Shadrack W. Nasong'o. *Kenya: The Struggle for Democracy*. London: Zed Books in Association with CODESRIA, 2007; Makau Mutua. *Human Rights NGOs in East Africa: Political and Normative Tensions*. Philadelphia: University of Pennsylvania Press.

<sup>10</sup> Willy Mutunga has detailed the role of CSOs in constitutional reforms and shown how CSOs led other groups to constitute a reform movement from the mid 1990s. From these efforts, several leaders emerged to take up leadership of opposition political parties. See Willy Mutunga. *Constitution-Making from the Middle: Civil Society and Transitional Politics in Kenya, 1992-1997*. MWENGO. Nairobi: SAREAT/MWENGO, 1999.

<sup>11</sup> Makau Mutua provides a detailed analysis of the role played by human rights organisation and the Kenya Human Rights Commission (KHRC) in particular in forming the coalition. See Makau Mutua. *Kenya's Quest for Democracy: Taming Leviathan (Challenge and Change in African Politics)*. Boulder: Lynne Rienner, 2008

that had assisted the coalition to win the election. Factions developed and divisions widened. A new draft constitution was developed amid these differences but the side that was marginalised mobilised against the draft. Eventually the coalition split into two distinct political parties in preparation for the 2007 General Election. The split was acrimonious. The divide was similarly wide and relations between the two confrontational. Their constituencies were differentiated along ethnic as well as ideological lines. This is the context that informed the violence accompanying the 2007 General Election.

## The post-2007 general election and violence

Kenyans went to the polls on 27 December 2007 to vote for civic, parliamentary and presidential candidates. This was the fourth election since the return of multi-party democracy in 1991. The polling day was peaceful with isolated incidents of violence and generalised tension. Opinion polls had consistently shown ODM slightly ahead of PNU but the issues the two parties campaigned around had an equal appeal to the voters. This, combined with the tradition of ethno-regional pattern of voting pointed to a close election; observers expected a fiercely fought contest.<sup>12</sup> The two parties mobilised around different ideologies. The issues they campaigned around reflected certain important values and resonated with their two constituencies in an equal manner.<sup>13</sup>

Vote counting began after the close of polling on 27 December. In the initial vote count, ODM led. The party maintained this lead throughout 28 December when over half of the votes had been counted. In the afternoon of 29 December and with the arrival of ballots from some PNU strongholds, the gap between the two parties narrowed. This narrowing of the gap caused anxiety. By this time ECK had completed the tallying of parliamentary results. ODM had acquired half of the 210 parliamentary seats. PNU had less than 50 seats. Other parties, some of which were affiliates of PNU, shared the remaining seats. To some ODM supporters, this was an indictment of irregularities in the presidential vote count; it was enough evidence that ODM would also win the presidential election. ODM supporters questioned how the party would win half of the parliamentary seats and have its lead in the presidential election narrowed suddenly.

As anxiety built, **allegations of irregularities surfaced.**

In some constituencies, total votes for the parliamentary election differed significantly from the total votes cast for the presidential election in the same constituency. Voting for civic, parliamentary and presidential election took place simultaneously and therefore the total votes cast in each of these

<sup>12</sup> Thomas P. Wolf. 'Poll Poison'? Politicians and polling in the 2007 Kenya Election. *Journal of Contemporary African Studies*, Vol 27 No. 3 July 2009: 279-304.

<sup>13</sup> PNU campaigned on an economic recovery platform while ODM campaigned on a platform of political reforms. The government had resuscitated the economy from about 1 percent to 7 percent growth rate. If re-elected, the party argued, growth would soon trickle down to reduce poverty levels. On the other hand, ODM argued that PNU practised 'politics of exclusion' and had marginalised several communities from the centre of power. The party campaigned on a political reforms platform. In addition, the party argued for generational and political change. The party argued that PNU leadership was in the hands of a group of old men short of ideas and innovations; they were keen to ensure dominance at any cost. These issues divided the country. The divisions also took ethnic dimensions.

elections should not have shown major differences (and historically had not done so). This caused concern, and a dispute over the vote count began in earnest. ECK added to this anxiety. ECK raised concern about delays of the results from some centres in the PNU stronghold not far from Nairobi. This concern, communicated to the public through the media by the chair, caused apprehension as the gap narrowed.

ODM revealed cases of alleged irregularities including cases where ECK results differed from those reported by their agents. On its part, PNU raised concerns about abnormally high voter turn-out in ODM areas. These allegations fed into an anxious and highly apprehensive nation with obvious consequences: increased resentment against the government and PNU in ODM strongholds that included about six of the country's eight regions. By the beginning of 30 December, the country was essentially polarised. Allegations of fraud continued to build amid new evidence as results from the remaining centres trickled in. ODM requested verification of results, which went on for hours without consensus. The verification exercise revealed results from many places had been delivered without the mandatory signature of election officials. Others showed results had been altered but no one countersigned the alteration. International and domestic observers added new evidence of anomalies. The results for some constituencies announced at the local level differed from the ECK figures at the central tallying point showed. Again these discrepancies fed into the anxiety of the nation.

These irregularities and protests against flawed vote tallying were not resolved. **The gap continued to narrow and to close in tandem with rising tension and anxiety throughout the country.**

The electronic media, TV and radio, stopped all live broadcast of the election results. Further, the police forcibly threw out the media, observers and members of the public from the tallying centre following angry protests and shouting by those in the hall. This added to the anxiety. At 17.39 on 30 December, amid this anxiety and without resolving the dispute over results from some constituencies, ECK declared Mwai Kibaki of PNU the winner of the presidential election. At 18.24, or about 45 minutes later when darkness was setting in, the Chief Justice swore in Mwai Kibaki as President in a hurriedly organised ceremony attended by his political allies and security chiefs.

The sudden announcement of President Kibaki as the winner against a background of irregularities unlocked the pressure that had built for two days. The pressure burst out in the form of spontaneous protests with people demanding justice. The protests later turned violent and spread across the country threatening the existence of Kenya as a nation state.

# Patterns of post-election violence and displacement

The first form of violence broke out as spontaneous protests.<sup>14</sup> This spread widely in areas where large numbers of ODM supporters were present. Parts of Nairobi, Rift Valley, Nyanza, North Eastern, Coast, and Western Province (six of Kenya's eight regions witnessed this form of violence). The widespread perception in ODM areas that the government/PNU stole the election contributed to attacks on government property and institutions. The youth directing the violence began targeting PNU supporters who in many cases were Kikuyu or members of communities originating from the Mt. Kenya region.

The second form of violence was organised. ODM supporters drove away hundreds of thousands of people perceived to be supporters of PNU in areas where ODM had a strong presence. Many of them were Kikuyu; they were evicted from their homes and farms. Anti-PNU/Kikuyu attacks attracted resentment in Central Kenya, the home area of the Kikuyu. This gave rise to the third form of violence - organised retaliatory attacks targeting ODM supporters. These began around the third week of January 2008 and were confined in areas such as Naivasha and Nakuru of Rift Valley where the Kikuyu presence is strong. Well-organised Kikuyu youth directed the attacks. The attacks targeted perceived ODM supporters who happened to be of Luo, Luhya, and Kalenjin. These attacks demonstrated that the Kikuyu could retaliate with similar force. How they organized also indicated that they had a rich resource base - violence requires logistical support and resources to be maintained. The youth used in these attacks comprised members of Mungiki, a well-known outlawed grouping of Kikuyu youth formed in the 1990s. The group has many youth members. It is widely known for its criminal extortionist activities and political engagement with senior Kikuyu politicians.

Mungiki itself has a long history. Starting first as a grouping of Kikuyu youth seeking cultural and spiritual fulfilment by practising African religion, the group increasingly recruited from the disposed and victims of the first wave of post-election violence in 1991. The group mutated into several forms. Some provided support to politicians acting as standing armies to violently disperse opponents of Mungiki allies. Others turned into criminal gangs living on extortion and fees from protection services that they forced on people in poor areas. Thus, what began as a civil society group providing a forum for cultural and spiritual fulfilment rapidly turned uncivil; they became uncivil elements of the civil society.<sup>15</sup>

Violence by the police comprised another form of violence. The police used excessive force in dispersing the protesting youths especially in ODM areas. They violently dispersed youth demonstrations and used force to seal off public places where ODM would hold political rallies.

<sup>14</sup> Muthoni Wanyeki, 'Kenyan Civil Society and the 2007/2008 Political Crisis: Towards and Following the Kenya National Dialogue and Reconciliation (KNDR), a Paper Prepared for African Research Resource Foundation, Nairobi, 2010

<sup>15</sup> For academic analysis of the Mungiki, see: Mutuma Ruteere, "Dilemmas of Crime, Human Rights and the Politics of Mungiki Violence in Kenya" Kenya Human Rights Institute (2008); David M Anderson, "Vigilantes, Violence and the Politics of Public Order in Kenya," *African Affairs* (2002) 101, 531; Peter Mwangi Kagwanja, "Facing Mount Kenya or Facing Mecca? The Mungiki, ethnic violence and the political of the Moi Succession in Kenya, 1987-2002," *African Affairs* (2003) 102, 25; Godwin Murunga, 'Mungiki and Re-Traditionalisation of society. CODESRIA Bulletin No 3&4, 2006

Related to this were other forms of violence used to intimidate ODM supporters. Sexual and gender-based violence such as rape and forced circumcision of Luo were also reported.

These different forms of violence had one important consequence. They **triggered mass displacement of people** such that by the end of February 2008 **over 600,000 people had been displaced.**

About 300,000 people were living in camps for Internally Displaced Persons spread across the Rift Valley. The Kikuyu and others perceived to be supporters of PNU were driven from their properties and land in Rift Valley, Western and Nyanza regions of the country. During the third wave of violence, the retaliatory attacks in Nakuru and Naivasha led to the eviction of perceived ODM supporters. In Nairobi, similar forms of displacement took place. In the slums people were evicted from where they were numerically smaller and their houses occupied by the youth from the evicting community. This led to zoning of slums into distinct ethnic territories. The pattern of violence and accompanying displacement continued to intensify. The potential for a more intense civil war had begun. It was at this point that international mediation under the auspices of AU began at the Serena Hotel in Nairobi. The mediation and the signing of the National Accord and Reconciliation Act through the Kenya National Dialogue and Reconciliation (KNDR) process ended the violence. Contributing to this mediation and to the end of violence, were civil society groups and leaders. They had engaged in local and international advocacy urging for an international brokered mediation and for the international community to focus on Kenya. The section that follows discusses their response to the crisis.

## Civil Society response to the crisis

The heterogeneous nature of the Kenyan civil society impacted on how the sector responded to the violence and the political crisis. The values for which many of the organisations are formed and how they articulate their concerns on important national issues also shaped their approaches toward the crisis. But the crisis was also complex. It comprised a range of interwoven issues that required equally complex responses. Significantly, the factors that contributed to the crisis continued to mutate in tandem with the deepening of the crisis. The first trigger was the flawed vote count and the subsequent hot dispute over the result. The demand to know the 'truth' about the result triggered the crisis. The second trigger then was the question of justice in two interrelated senses. First was justice for victims of violence: victims of police brutality and attacks by militia and other gangs. Victims had to get justice. Those responsible for abuse of human rights and violence had to be held accountable through the rule of law.

The second aspect of justice concerned the election result. Injustice around the flawed vote count required addressing. Electoral malpractice had taken place in both areas. ECK officials had committed irregularities leading to a flawed tallying. Despite the irregularities, ECK announced the incumbent President as the winner. Identifying and punishing those who committed irregularities was critical in this context.

## ‘Conservatives/moderates’ versus ‘progressive/radicals’

Different civil society groups **reacted to these demands depending on their values and moral persuasion.**

The choice between peace and justice/truth divided civil society thereby evolving two distinct groups distinguished by disparate ideals and desires. On the one hand there was a group that desired peace as an end in itself while on the other hand another group focused on justice and truth as a foundation for sustainable peace. Essentially, ideological inclination and convictions about how to end the crisis evolved two blocs within civil society: conservatives/moderates; and progressive/radicals. The groups were further distinguished by what they considered as the core problem that required priority attention.

This divide between the ‘conservatives’ and the ‘progressive’ was not politically neutral. The notion of conservatives and progressives is thus employed simply as a distinction of competing ideas within the civil society at the time of the crisis rather than a Marxist sense. This distinction is between those who preferred the idea of *status quo* on election results by insisting on peace as an end in itself and those who demanded actions and other forms of accountability on the election results and the violence. The conservatives preferred ending violence with little or no accountability for the allegations of electoral fraud and the violence. Curiously this position was in consonant with the government/PNU argument. The government/PNU strongly supported this position to close the chapter on allegations of electoral fraud. On the other hand, the ‘progressives’ based their belief on the need for social and political responsibility and in particular a demand for accountability over the flawed vote count and results, violence, and the state’s role in the violence itself. The progressives did not seek to be neutral or liberal with their demand. This argument, and demand for radical action, was in consonant with the ODM’s position. This led to perceptions of linkages between the ODM and progressive elements within civil society. But there were other reasons for this perception: there were people from the civil society who vied as candidates on ODM-allied parties and/or were campaigning for change through ODM. There are some also who had lost at ODM party primaries. Essentially, the progressives and radicals, as was the case in 2002, were increasingly seen as articulating the ODM position. The conservatives were perceived as supporting PNU position.

The conservative group comprised the Faith Based Organisations and the church in particular. **The conservatives generally advocated for peace as an end in itself.**

Their major strategy for peace was endless prayers in places of worship and in the media. They nonetheless played an crucial role in bringing to international peace makers at the out set. Informing and influencing this strategy was the church’s role in politics before the December polls. The church and religious organisations in general had taken partisan positions during the elections. Senior

clerics or their associates, directly or indirectly, supported one party or the other. Some also vied for electoral posts. Also, the political divisions that accompanied the electioneering process spilled over to the religious organisations through this route of association with the party. It weakened the church's moral authority and legitimacy to command, from the pulpit, an end to the violence. This eroded the church's social authority to provide leadership. Perceptions of bias and partiality in favour of one or the other party made it difficult for religious leaders to develop pragmatic approaches towards peace. But the church also participated in the mediation initiatives. Through the Serena mediation process, the church began to re-invent itself. The church began the journey to be born again.<sup>16</sup>

Among the conservatives, there were moderates too. The moderates were not utterly religious in their approach. They did not depend on prayers alone in their demand for peace. The moderates, nonetheless, prayed as well as lobbied the government, other parties in the conflict, and the media to assist in finding peace. The moderates comprised high profile retired senior army officers, a former diplomat and a number of peace building researchers and peace-workers. Simply put, these were conflict entrepreneurs. The soldiers and the former diplomat in the group had made a career in conflict mediation through their deployment in peacekeeping missions in Somali, Sudan, and Rwanda. The moderates prioritised achievement of peace and paid little or no attention to what happened to the election results and to the question of justice in regard to flawed vote count and other irregularities. The moderates did not prioritise connecting peace to the problem of justice and truth. Peace was an end in itself.

The moderates articulated their demands for peace through Concerned Citizens for Peace (CCP), a group they founded around 31 December 2007 just when violence was spreading in the country.<sup>17</sup> The group sought partnership with the Nation Media Group to publicize the urge for peace through electronic and print media.<sup>18</sup> Ironically, the Nation Media Group had stopped live broadcast of results as the controversy over vote tallying went on. The company allegedly lost the data and backup. In addition to media engagement and dialogue with different actors, CPP participated in the mediation process by engaging with the AU Panel of Eminent African Personalities on regular basis.

The second bloc of civil society comprised Kenyans for Peace, Truth and Justice (KPTJ), a grouping of over 30 organisations and individual academics and researchers who were assisting in monitoring the election outcome, the evolving violence, and other problems around the disputed elections. The group comprised organisations and individuals from the governance and human rights sector. The groups in this category were progressive and radical in their thinking about peace, social and political accountability. They argued that sustainable peace would be obtained only when the country resolved the question of justice and truth about the election result, truth and justice about the violence spreading in the country, and justice for victims of police brutality and the militia.

<sup>16</sup> This is not to suggest that the church has completely reinvented itself. The church is yet to regain the authority it assumed over political direction throughout the post-colonial period until 2002.

<sup>17</sup> Details of the origins of Concerned Citizens for Peace are well elaborated in George Wachira with Thomas Arendshorst and Simon M. Charles. *Citizens in Action: Making Peace in the Post-Election Crisis in Kenya – 2008*. Nairobi: Nairobi Peace Initiative – Africa (NPI-Africa).

<sup>18</sup> Wachira et al: 9

The need to link peace to justice and truth **galvanised progressive elements in civil society leading to the formation of KPTJ**. It is the significance of this linkage that saw KPTJ begin by providing strategic leadership on how to articulate this relationship.

Small groups such as Citizens for the Re-Counting of Votes and individual leaders of human rights and governance organisations joined to generate strategic synergy in the search for Peace, Truth and Justice. The statutory human rights body, the Kenya National Commission on Human Rights (KNHCR), provided the resources required, including space for meetings.<sup>19</sup> KPTJ thus emerged as a coalition of human rights organisations, KNHCR, and individuals interested in sustainable peace through promotion of justice and telling the truth about election and the violence. The organisation has since continued to monitor and engage with all mechanisms and processes arising from the crisis, with a particular focus on establishing truth and justice about the elections and the violence.

There were other civil society initiatives that complemented either the radicals or the conservative-cum-moderates. Women's organisation formed an inter-ethnic caucus known as the Vital Voices.<sup>20</sup> Ordinary citizens formed Citizens for the Recounting of Votes while the Centre for Multi-Party Democracy (CMD), a political parties formation, formed the National Salvation Forum to advise and buttress the political parties' efforts. Some of these groups coalesced around the progressives or had their efforts subsumed by the above initiatives. There were other groups that existed before the crisis. They too participated in responding to the crisis. They included the National Civil Society Congress and the Kenya Red Cross, among others.

The analysis that follows concerns the role of other groups. One point of caution: this is not a comparative analysis of the work of various CSOs. The discussion is meant to show how CSOs contributed to ending the violence. It should not by any means be read to imply a comparison of civil society actors.

<sup>19</sup> Onyango Oloo, Shailja Patel and Anders SjÖgren. A Citizens Response to the Kenyan Crisis: Kenyans for Peace with Truth and Justice (KPTJ). Nairobi: KPTJ.

<sup>20</sup> Njeri Kabeberi, 'The Role of Civil Society in Promoting National Cohesion', a presentation at the Kenya We Want Conference, June 2008

## Putting out the fire: strategies first<sup>21</sup>

Civil society began by identifying appropriate approaches to end the crisis. At the beginning CSOs, ordinary Kenyans and observers in general thought that a vote re-count or re-tallying would close the debate on who actually won the election. Many assumed that this would end the violence. KPTJ and the Congress that held this view. They preferred to address the subject of electoral fraud rather than push it under the carpet on argument that failure to address it, the issue would resurface at a later stage. Moreover, holding various people to account for the fraud and violence would set a foundation for accountability from then on. They began by holding a press conference to publicise this thinking. At the same time, they lobbied the Cardinal of the Catholic Church to talk to the President.<sup>22</sup> This approach was both strategic and political. The Catholic Church has a huge following in the country. The government would not ignore its voice. Two, the President is a Catholic. The Cardinal was an ally. It was assumed that these factors would compel the President and the government to open doors to dialogue if the Cardinal approached him. The Attorney General (AG), the government's legal advisor, reinforced this demand by also advising that a re-count be done.

One point to underline also is that **civil society adopted flexible strategies.**

The crisis had its internal dynamics that continued to rapidly take on board new dimensions. Only flexible strategies would adapt to the continually changing context. This flexibility enabled KPTJ and the civil society in general to quickly abandoned its demand for a recount when the President forcefully reiterated that those unhappy with the outcome of the election should challenge the result in the courts of law if they wished to. Neither KPTJ, the Congress and other progressive groups, nor ODM would buy into this position. It was not progressive and would mean maintaining status quo, at least, or acquiescing to a government driven process in which the government/PNU would determine what would be addressed. Moreover, the President had appointed new judges during his first term in office, 2003 to 2007, with three of them appointed in the election week. Political patronage influenced some of these appointments. Critical also is that the Judiciary lacked the required political independence from the Executive. Most attempts to achieve this independence failed due to lack of political commitment on the part of the executive. The Judiciary then appeared to play a subservient role in relations with the Executive. The judges thus lacked the critical independence and objectivity required to arbitrate a dispute between an incumbent Executive, their appointing authority to whom they owed loyalty, and an opposition political party. The court strategy favoured PNU and the government.<sup>23</sup> The President became belligerent. This hard-line position and his ignoring of the AG's

<sup>21</sup> Muthoni Wanyeki (ibid) has identified about five interrelated contributions of CSOs to ending the crisis including their role in the mediation process. The role of KPTJ is again comprehensively discussed in Oloo et al (ibid). This section borrows from these papers.

<sup>22</sup> Njeeri Kabeberi. Op-Cit

<sup>23</sup> Whether to go to courts or not invited debate from academics too. There were also clear divisions among them. The most visible support for the courts came through Peter Mwangi Kagwanja's policy brief of Africa Peace Institute. See Peter Mwangi Kagwanja, Breaking Kenya's Impasse: Chaos or Courts. Africa Peace Institute Policy Brief No. 1 2008. Godwin Murunga's rejoinder was clear: Kagwanja's piece was not neutral. There was no merit going to courts, which was PNU's argument. See Godwin Murunga. The Kenyan General Elections: Troubling Propaganda or Intellectual Garb. Dakar: CODESRIA Bulletin No 1&2 2009.

advice, closed the window for a recount. It opened a window for further politicisation and mutation of the crisis. ODM also abandoned this strategy. Records of the process may have been tampered with to make it difficult to undertake a proper audit. The recount became a political, not a legal problem. Because of this belligerence, violence became more organised in opposition areas. The youth began to target PNU supporters and evict them. And as the president and allies hardened their position, the violence became ethnic: youth in ODM areas began targeting members of the Kikuyu community.<sup>24</sup>

The **president's belligerent attitude, hard-line position and the continued mutation of violence** raised the need for civil society to design new strategies.

Civil society and KPTJ in particular had to design political strategies to counter the government's and PNU's hard-line position. In the new strategy, KPTJ emphasised the need for well-researched and objective analysis of the evolving situation. This aimed to serve two purposes: developing messages for advocacy locally and internationally; and sending the government back to the drawing board by stopping the 'go to courts' argument.

The desire for social justice and accountability continually informed KPTJ position and strategies. Again KPTJ appeared to anchor this desire on ideals of freedom and rights. KPTJ argued that sustainable peace would obtain only after correcting the wrongs committed during the electoral process and ensuring the victims of violence got justice. KPTJ demanded truth and justice about elections and argued that identifying and punishing those involved in electoral irregularities as well as those behind the various waves of violence be done to enforce a culture of accountability. They demanded an end to police brutality. They called for a recount and verification of votes for the purpose of settling the question of truth and justice. KPTJ urged the parties to agree to an internationally brokered mediation and process. The group called upon aid organisations to assist those who had been displaced and refugees who had already crossed to Uganda.<sup>25</sup>

In the meantime, CCP and its associated networks urged for peace through the media. They called for restraint to allow dialogue between the parties to take place. The group established an 'Open Forum' where members and others interested in assisting to bring normalcy and peace met everyday.<sup>26</sup> The group drew in the support of international peacemakers and many others who were urging Kenyans to prevent the country from drifting to civil war. As the number of peacemakers grew within the CCP constituency, the focus on electoral irregularities and the role of the police in violating and abusing rights increasingly receded into the distance.<sup>27</sup> CCP nonetheless developed a programme strategy detailing what should constitute an agenda for peace. Some of these issues reflected popular desires for peace. The programme strategy emphasised building trust among principal actors, election

<sup>24</sup> CUIPEV report, op-cit.

<sup>25</sup> Oloo Onyango et al. Op-cit; Muthoni Wanyeki, Op-cit

<sup>26</sup> Wachira et al: Op-cit

<sup>27</sup> Those involved in the drive for peace would give flowers to the police who sealed 'open spaces' to prevent ODM from holding rallies. They were also persistently knocking on the doors of the Internal Security officials to have dialogue on police brutality.

closure, formation of a government of national unity and other initiatives that would bring peace.<sup>28</sup> In addition, CCP and networks including Concerned Kenyan Writers persistently knocked on the door of the parties pleading for dialogue. The continued media coverage of their pleas for peace and persistently imploring the leaders of ODM and PNU to enter into dialogue and accept mediation was in consonance with public mood and general support for dialogue and international mediation.<sup>29</sup> This added to the pressure on the two parties to accept mediation.

KPTJ members stepped up their media and international advocacy. They gave interviews to local and international media to counter the government's strategy of focusing on the courts. KPTJ developed several working groups through which the group collected and analysed data and developed critical messages for the local and international community. Important were the international interventions that the group made with the help of progressive donors such as Open Society Initiative for East Africa (OSIEA). Through this support, KPTJ had meetings with different international agencies and governments. KPTJ visited and made presentations to the United Nations in New York, the United Nations Office for Human Rights in Geneva, the United States Senate and Congress, and the European Commission. At the African Union (AU), KPTJ made presentations to the Peace and Security Committee and met representatives of several countries.<sup>30</sup>

The presentations urged the international community **to facilitate international mediation, ensure that all solutions focused on accountability and justice for victims, and that truth be known about what happened** to the election and those behind the wave of violence.

KPTJ also called for power sharing for a period of no more than two years during which preparations for a new election would be concluded. The group requested an end to the humanitarian crisis and restoration of fundamental rights and freedoms that the government had curtailed and which seemed to deepen the crisis.

These interventions ensured greater focus on Kenya and prevented international recognition of the new government before resolving the issues of peace, truth, and justice. KPTJ's international advocacy had immediate and important results. The result was clear; very few governments publicly recognised the new administration in Kenya.<sup>31</sup> The international community did not recognise the government – there was greater demand for truth and justice. The advocacy by CSOs at the international level attenuated the government's position on the election and prevented the international community and even African governments from recognising the administration in Kenya as legitimate. Evidence-

<sup>28</sup> Wachira et al. Op-cit.

<sup>29</sup> The public support for dialogue and mediation should be qualified. There were divisions similar to those within the civil society. Some preferred dialogue if that would assist in resolving allegations of fraud while others preferred dialogue if this would end violence.

<sup>30</sup> Onyango Oloo et al. Op-cit

<sup>31</sup> They included Uganda, Mauritania, Somalia, and, initially, the US. The US government withdrew its recognition almost immediately after allegations of fraud intensified. Uganda too clarified that it had only commended the Kenyan voters.

based analysis of the election result and the escalating violence made it clear that only international mediation would resolve the crisis. This on its own became the basis provided for discussions on political settlement.

The impact of KPTJ's analysis of issues and development of coherent messaging was also evident. The US Senate, for instance, crafted a resolution on Kenya. The Kenya Resolution borrowed extensively from KPTJ's language and analysis of context.<sup>32</sup> The resolution emphasised the need to end violence and for the two parties to agree to international mediation. It also underlined the need to hold accountable those involved in violence and human rights violations. In addition, the resolution underlined the need for a credible audit of the election results including re-tallying or re-counting. The resolution was also passed to the US Congress. In the first week of February 2008, a representative of KPTJ addressed the Congress and called for high-level intervention from the US government. Following this address, the US government sent the Secretary of State, who, upon arrival met KPTJ representatives, among other groups, for briefing. By this time, KPTJ had done further analysis of the context. The analysis revealed that the crisis was attracting several mediators. This was a problem. It was not possible to present a coherent message to warring factions when there were many mediators. Because of this, KPTJ recommended that all mediation efforts be aligned to constitute only one team of mediators and through which others would pass messages and support. From then on, the US, the EU and others began to align their efforts with the AU. In Europe, KPTJ lobbying and messaging had a similar impact. The Africa All-Party Parliamentary Group in UK lobbied the UK parliament using KPTJ language and analysis.

At the local level, KPTJ undertook to collect and analyse data on the election and the unfolding violence. This required developing an elaborate mechanism for research through which data was collected and analysed with speed in order to generate knowledge to facilitate advocacy and lobbying for certain positions with respect to peace, truth and justice. With regard to elections, KPTJ initiated an audit of the results in what appeared as controversial constituencies or areas where results released by ECK differed from those reported by other including international observers, party agents and others monitoring the elections. From this audit, and by use of various sources of data, the verdict was clear: the results were so jumbled up that it was not possible to know who won the election. But there was one important finding: the difference between total presidential votes and those for parliamentary and civic elections in some constituencies was too huge to be credible. Some had a margin difference of more than 5 percentage points. The previous elections and the 2002 General Election, which KPTJ passed as 'clean', the margin difference was around 1.5 percentage point on average. On basis of this, KPTJ concluded that anything above a 2 per cent margin was suspicious. Such cases warranted further analysis polling station by polling station. This knowledge proved useful in terms of advocacy. It is this analysis that led to the international community to listen to local voices and to remain focused on Kenya. Addressing the question of irregularities at the election, from then on, became an important factor in terms of bringing about sustainable peace.

KPTJ networks assisted in collecting data on evolving forms of violence. Analysis showed the four forms of violence discussed above.

<sup>32</sup> Onyango Oloo et al. Op-cit

The analyses revealed that **influential economic and political elites at the local level supported the youth by providing finances** so that the youth could evict 'enemies' from their midst.

This again was published through the media and the network organisations. In addition, KPTJ membership formed support groups to protect human rights workers and provided relief to those in distress. Working in collaboration with the main humanitarian agencies such as the Kenya Red Cross, the human rights networks gave assistance to many families who were evicted from their farms or homes. Through these initiatives, civil society ensured that there was objective data to inform knowledge making to support various interventions. Dissemination of such data through the media also ensured that the public was informed about the unfolding dynamics.

Significant also was the role civil society played in humanitarian efforts. Civil society interlinked with the national civil society organisation that was coordinating relief efforts: the Kenya Red Cross. Through the Kenya Red Cross, they networked with Office of Special Programmes in the Office of the President, the UN agencies, and the Office for the Co-ordination of Humanitarian Affairs (OCHA). Through this network, civil society reached displaced families and offered assistance to thousands of homeless people.

## In search of a political settlement

Civil society had created enough pressure for peace through CCP and development non-governmental groups. Civil society also created demand for justice and truth through KPTJ, the National Civil Society Congress and the Women Consortium. They had managed to lobby the international community to recognise that sustainable peace depended on justice and truth. Objective analysis of the social-political situation proved useful in advocacy and lobbying at the international level.

At the beginning of the mediation, the parties formed the Kenya National Dialogue and Reconciliation as the forum for dialogue and under the chairmanship of Kofi Annan. Civil society contributed to the dialogue in several ways. The moderates and radicals engaged regularly with the Panel of Eminent African Personalities. Again KPTJ brought evidence based analysis to inform the various positions they presented to the team. Similarly, CCP engaged regularly with the panel and like KPTJ, identified critical issues for the mediation to focus on. While CCP focused on strategies to end violence and normalise the country, KPTJ, the National Civil Society Congress and the Vital Voices (the women's consortium) underlined the importance of justice and truth. However, this time round, discussions on truth had assumed a new dimension. Civil society observed that the country was now more deeply divided than ever and therefore reconciliation and healing would only take place if issues of impunity and lack of accountability were addressed. This gave momentum to discussions on Truth, Justice and Reconciliation (TJRC).

In the meantime, as the mediation proceeded, the Panel was able to reach agreement with the parties on a number of issues, which generally reflected demands by CSOs. First among these was the need to end violence and restore fundamental rights. Second was the need to address the

humanitarian crisis and begin healing and reconciliation. The parties signed to these agenda items early in February 2008 thus giving way to discussions on political settlement.

Civil society had demanded **a political settlement** arguing that **the crisis was not of a legal nature**, as the government had insisted.

Given the nature of the violence and split of the country into two blocs, they argued, neither side could govern without the other. The Panel, similarly, argued that the crisis was the result of long-standing issues that remained unaddressed.<sup>33</sup> These included failure of constitutional and institutional reforms as well as the failure to stop impunity. The mediation team concluded that these issues had to be addressed to prevent a recurrence of the violence. The parties agreed that only power-sharing would create an environment conducive to undertaking far reaching reforms in this respect. Thus the parties signed the principles for a coalition government on 28 February 2008 and agreed to have the constitution amended to allow for power sharing between PNU and ODM. This led to the creation of the post of Prime Minister and two Deputy Prime Ministers. A Grand Coalition Government was formed later in April with both parties sharing cabinet posts on a 50/50 basis.

The parties agreed to fulfil four agenda items. Agenda Item 1 concerned undertaking actions to end the violence and at the same time restore fundamental rights and freedoms. This was critical given that the government had already banned live broadcasts by the electronic media and prevented people from assembling in public spaces or even engaging in protests and demonstration. Civil society had demanded an end to this repressive decree as a means for creating a conducive environment for the dialogue. The mediation agreement also recommended an independent commission to investigate the violence and recommend how people behind the abuse and violation of human rights would be held accountable. Again this was in line with the thinking of civil society organisations.

The second agenda item concerned addressing the humanitarian crisis and promoting healing and reconciliation. About 600,000 people were displaced from their homes and were living in makeshift tents in different places away from their homes. Communities were divided along ethnic lines. Healing and reconciliation were seen as important measures to enable people to return. CSOs called for the government to support relief efforts and address underlying issues to enable people return to their homes.

Agenda Item 3 was the foundation agenda item: it emphasised the need for both parties to share power and entrench the principle of consultation and consensus as well as compromise in order to move the country forward. The mediation also recommended that an independent team audit the results of the elections and make recommendations on how to close the election chapter. The team had to comprise international representatives as well as representatives of the two parties.

Agenda Item 4 focussed on long-standing issues that had remained unresolved and which had contributed to the crisis. These included addressing constitutional, legal and institutional reforms.

<sup>33</sup> The Kenya National Dialogue and Reconciliation. Annotated Agenda found at [www.dialoguekenya.org/agreements.aspx](http://www.dialoguekenya.org/agreements.aspx).

Attention was given to Judicial and Police reforms, among others. The Agenda Item also emphasised reforms on land, and the need for policies to address poverty and regional imbalances in development, which had led to the political polarisation witnessed during the crisis. The Panel also gave attention to youth on argument that the youth had participated in the violence and therefore attention had to be paid to strategies to address unemployment among the youth.<sup>34</sup>

The mediation process considered inputs from civil society and other Kenyans. Analysis by CSOs helped in identifying critical issues for presentation to the Panel. Continued engagement with the Panel at the Serena mediation process also helped in ensuring that issues of concern to civil society were reflected in the agreement documents.

## Conclusions and lessons

The discussion has shown the challenges that faced civil society in responding to the crisis and in a polarised social-political context.

Worth noting is that **the main ethnic divisions** around which the political divisions in the country revolved **did not affect the activities of new civil society groups** that emerged to respond to the crisis.

The new differences emerging with regard to the Kenyan crisis were ideological: they were about whether to pursue peace as an end in itself or whether to pursue sustainable peace through the search for truth, justice and accountability. They were divisions about ideals for social justice and freedoms and how these would be pursued. But the differences did not prevent civil society from impacting on the mediation process; by articulating peace and articulating demands for justice and truth, civil society informed the mediation process in many ways. The language of their messages also found its way in the final agreement signed by the parties.

Civil society was also successful in both local and international advocacy. Lobbying both parties to agree to dialogue and engaging in international advocacy had important results. KPTJ's international advocacy, for instance, affected perceptions of many governments and organisations. What had really happened was understood through KPTJ's high-level analysis and coherent messaging. Many governments held up their recognition of the new administration in Kenya pending the mediation process. It is this success in lobbying and advocacy that one can draw lessons from, for engagement by civil society. Important also is that external interests converged with the civil society interests. International actors and civil society created and sustained huge demand for peace and thereby compelled the two parties into mediation.

An important lesson is the **significance of evidence-based advocacy strategies**.

<sup>34</sup> Details on all Agenda 4 items in Annotated Agenda found at the Kenya National Dialogue and Reconciliation [www.dialoguekenya.org/agreements.aspx](http://www.dialoguekenya.org/agreements.aspx)

The detailed analysis of the evolving context that KPTJ and other organisations undertook to develop messages critically influenced how the governments and international organisations reacted to the crisis in Kenya. Knowledge led advocacy, complete with objective data analysis, therefore is important for success in lobbying and advocacy. Related to this is the importance of messaging. Coherent and objective messaging helped many actors interested in resolving the crisis to identify the problem and design appropriate approaches towards a solution. But evidence-based analysis is usually difficult under conditions of crisis. This has one important implication for civil society especially in regard to how to engage in these non-conventional and non-traditional roles. Civil society groups, at the beginning of crisis, must ready themselves to collect and analyse data to inform their strategies.

Also, partnership matters. All the civil society groups worked in partnership by bringing their experiences to develop strategies for action. But differences in values can also have attenuating outcomes; the differences in values and orientations can constrain how organisations respond to a crisis. These differences should be appreciated at the outset.