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Mediation for peace

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March 2011

the numbers

Women's Participation
in the Kenya National
Dialogue and
Reconciliation

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Acknowledgements:

The HD Centre is grateful to those women who shared their experiences with us in developing this study.

The HD Centre would like to thank the following women for their generous time and participation in the Kenya Women at the Table Roundtable and those who offered their time and insights during interviews in the course of the research:

Mrs Graça Machel, Member, AU Panel of Eminent African Personalities;

Agnes Leina, Coalition on Violence against Women (COVAW);

Atsango Chesoni, Vice Chair, Committee of Experts on the Constitution;

Belinda Obura, News Anchor, Citizen TV;

Catherine Mumma, Former Commissioner, Independent Review Commission;

Debra Okumu, Executive Director, Women's Political Caucus;

Dekha Ibrahim, Former Convener, Concerned Citizens for Peace;

Esther Passaris, Chairperson, Adopt a Light;

Fatuma Dullo, Commissioner, Kenya National Human Rights Commission;

Florence Mpaayei, Executive Director, Nairobi Peace Initiative;

Gladwell Otieno, Executive Director, Africa Centre for Open Governance (AFRICOG);

Grace Kimani, Executive Director, Federation of Women Lawyers;

Hon. Njoki Ndung'u, Former MP and Leadership Kenya Director;

Jessica Nkuuhe, Executive Director, Urgent Action Fund;

Josephine Ojiambo, Member, the Women's Democracy Network;

L. Muthoni Wanyeki, Kenyans for Peace, Truth and Justice (KPTJ) and Executive Director, Kenya Commission on Human Rights;

Leah Wangechi, Executive Director, Centre for Rights Awareness and Education;

Lisa Karanja, Deputy Director, Transparency International Kenya;

Margaret Shava, Commissioner, Truth, Justice and Reconciliation Commission [TJRC];

Mary Chepkwony, Rural Women PeaceLink;

Mary Wandia, Gender Justice Lead, Oxfam GB/Pan African Programme;

Mildred Ngesa, Director, Peace Pen Communications; Njoki Karuoya, Columnist and Editor, Standard Media;

Patricia Nyaundi, Chief Executive Officer, TJRC;

Rosemary Okello, Executive Director, African Women and Child Features Service (AWCFS);

Saida Ali, Executive Director, Young Women's Leadership Institute;

Tabitha Njoroge, Executive Director, Women in Law and Development;

Carole Ageng'o, Senior Programme Officer, Open Society Institute;

Sarah Wikenczy, Advocacy Project Director, Open Society Institute;

Amel Gorani, Programme Officer, Africa, Open Society Institute;

Ann Njogu, Chairperson, Centre for Rights Awareness and Education;

Mary Njeri, Executive Director, COVAW;

Rukia Subow, Chairperson, Maendeleo ya Wanawake;

Hon. Millie Odhiambo, Kenya Women Parliamentarians Association Member and Nominated ODM MP;

Njeri Kabeberi, Executive Director, Centre for Multi Party Democracy;

Harun Ndubi, Human Rights Lawyer;

Daisy Amdani, Former Party of National Unity [PNU] Women's League Member;

Hon. Phoebe Asiyo, Former Member of Parliament;

Julie Gichuru, Group Business Development Manager, Royal Media.

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The Centre for Humanitarian Dialogue (HD Centre) is an independent mediation organisation dedicated to helping improve the global response to armed conflict. It attempts to achieve this by mediating between warring parties and providing support to the broader mediation community.

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1 | Introduction

Since the end of the Cold War, much international attention has focused on identifying which factors within a mediation process contribute to sustainable peace. Research by academics and practitioners alike has identified several important areas. These include the ripeness of the conflict; the skills, strategies and tactics of the mediator; and the nature of the parties to the conflict. Importantly, inclusion of civil society and participation of women in peace mediation has featured prominently as an element in the sustainability of peace agreements.¹ However, despite growing recognition of the importance of inclusion, most mediation processes offer limited scope for the voices and representation of women or for civil society more broadly. Women have been found to strengthen peace accords by increasing attention to women's priorities such as human rights concerns and promoting reconciliation and security on the ground.²

Despite the passage of UN Security Council Resolution 1325 (SCR 1325) on Women Peace and Security a decade ago, not enough progress has been made to increase women's participation in conflict prevention, peace processes and post-conflict recovery. Women signatories to peace agreements account for less than 2.4% in 21 peace processes reviewed since 1992, and the United Nations has yet to appoint a woman as a lead mediator.³

Recent discussion around women's participation in mediated peace processes has led to a more nuanced debate, which can be divided into two distinct areas: the participation of women in peace processes, and the inclusion of issues of importance to women in the substance of the talks. While these aspects are closely linked, increased participation of women does not immediately lead to addressing gender in the substance of mediation processes. Specific expertise and attention, in addition to participation, is required. Both will have an impact on the sustainability of a peace agreement, and both require attention and a specific set of strategies. This distinction is brought into sharp relief with an examination of the Kenya mediation process after the crisis following elections in December 2007. While the Kenyan process has been hailed as an example of good practice due to the high level and high profile of women involved, this does not tell the full story – of both the successes and the challenges of addressing gender issues in the mediation process.

The Kenya National Dialogue and Reconciliation (KNDR), under the auspices of H. E. Kofi Annan and the African Union (AU) Panel of Eminent African Personalities, sought to resolve the violent dispute over the results of the presidential elections of December 2007. After 42 days of negotiations, President Mwai Kibaki and Hon. Raila Odinga signed a power-sharing agreement, bringing an end to the violence and political stalemate. The mediation process then went on to negotiate a series of agreements on the longer term issues at the root of the conflict.

1 Bercovitch J. Anagnoson et al. "Some Conceptual Issues and Empirical Trends in the Study of Successful Mediation in International Relations" *Journal of Peace Research* Vol.28, No.1, Special Issue on International Mediation (Feb, 1991) pp.7–17 and Wanis-St. John Anthony "Peace Processes, Secret Negotiations and Civil Society; Dynamics of Inclusion and Exclusion" in the *International Negotiation Journal*, Issue 13, (2008) pp.1–9; See also World Bank World Development Report 2011, forthcoming.

2 Koppell, Carla, *Supporting Women in Negotiations: A model for elevating their voices and reflecting their agenda in peace deals* (Washington D.C.: Institute for Inclusive Security, 2009).

3 See UNIFEM, *Women's Participation in Peace Negotiations: Connections between Presence and Influence*, (New York, UNIFEM, 2009).

The representation of women within this process was high by previous standards of formal mediation processes. One in four of the members of each negotiating team (25%) were women. Mrs. Graça Machel was one of three eminent persons on the Panel, and a number of the senior advisors from the United Nations and the AU in the Panel's mediation team were women. One of the two staff seconded to support the mediation by the Centre for Humanitarian Dialogue was also a woman, as was the advisor on Transitional Justice. As such, the Kenya process represents a strong example of inclusion of women in mediation processes. However, this focus only on the numbers, rather than how representation of women's issues played out, serves to reduce the complexities of women's representation.

This publication therefore seeks, through an examination of the Kenya dialogue, to reflect on the Kenyan example and unpack the more generalised focus on women's participation in such a formal process. It aims to understand the structural and political dynamics that impact on how women participate in processes. It also considers what this means for women's participation in, and for addressing women's and gender issues in, the substance of peace talks. Through this, the publication will review the mandate, process and structure of the Kenya National Dialogue and Reconciliation, and how these factors influenced women's participation. It will look at the participation of women in the room, and of women in civil society who were working on the margins of the mediation process.

While recognising the multiple layers and channels through which dialogue and peacebuilding took place during the mediation process and since, this publication seeks to confine its analysis to the formal mediation process itself. This is an attempt to draw on the area of focus of the HD Centre itself, as well as enabling a more specific discussion of how gender and women's issues can find their way into this more formal sphere. Further studies on the broader roles of women in peacebuilding in Kenya since the 2007 elections will be important to develop this discourse in the future.

2

Inclusion and Women's Participation in Formal Peace Processes

Prior to looking at the Kenya example, it is important to lay out the conceptual foundation around the participation of women, and the broader inclusion of gender issues, in mediation.

Women's Participation in Peacemaking – International and Regional Norms

International norms play an important role in a mediators' considerations – around inclusion as well as many other factors in a mediation process. There is increasing recognition that international norms and standards can offer a framework of accountability and important guidance for internationally or regionally-led (or sanctioned) peace processes. This means that these mechanisms have become more central for mediation practitioners in recent years. In this context, there have been a number of important advancements around the issues of women's participation as well as on the issues affecting women, peace and security over the last decade.

In October 2000, the unanimous passage of Security Council Resolution 1325 highlighted the recognition, by UN member states, of the role played by women in peace and security. This ground-breaking resolution attempted to correct the disproportionately low representation of women in formal peace processes, and the road leading to the passage of the resolution saw unprecedented influence from civil society.

SCR 1325 calls for implementation of women's participation in five thematic areas:⁴ in the normative framework and areas of policy; in promoting participation of women in leadership positions in peacekeeping and peacemaking; increasing resources for women and girls to protect themselves against gender-based violence during and after the conflict; increasing efforts to support women's role in conflict prevention, especially through local women's initiatives; and in promotion of equal access to aid in relief and recovery efforts.

One challenge to note that has impeded effective implementation of SCR 1325 is the lack of an effective accountability mechanism at the international and national level. This challenge inspired civil society organisations and governments to lobby the UN Security Council for greater accountability mechanisms for crimes related to sexual violence and accountability around the effective participation of women. This culminated in the passage of Security Council Resolutions 1820 (2008), 1888 (2009) and 1889 (2009). Specifically,

4 United Nations Security Council, "Women, Peace and Security Report of the Secretary General" (New York: United Nations, 2010)

SCR 1820 (2008) focuses on conflict-related sexual violence, and builds upon SCR 1325 to make conflict-related sexual violence a crime against humanity. It calls on governments and the International Criminal Court to prosecute perpetrators of violence who use rape as a weapon of war.

UN Security Council Resolutions 1888 and 1889 expanded SCR 1820 and SCR 1325 respectively. SCR 1888 tasks the UN Secretary-General to appoint experts to monitor and advise the Secretary-General in situations of conflict-related sexual violence. The SCR 1889 reaffirms SCR 1325 calling on member states and the Secretary-General to develop a strategy, and concrete indicators, to increase the participation of women through training and the appointment of women to support the SG's good offices. This resolution also calls for a reporting mechanism in which the Secretary-General must submit a report on progress made within 6 months. These important developments have deepened the international tools available and have increased the momentum for women to engage more fully, and effectively, in formal peace processes.

Regionally, the African Union (AU) has committed to advance gender equality through a number of frameworks including: the Solemn Declaration on Gender Equality (2004); the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol 2003); the AU Commission Gender Policy; and the African Union Constitutive Act (2001). The Solemn Declaration and the Maputo Protocol are the most substantive in terms of advancing women, peace and security concerns. The Solemn Declaration reaffirms the AU's commitment to SCR 1325:

*“Ensure the full and effective participation and representation of women in peace process including the prevention, resolution, management of conflicts and post-conflict reconstruction in Africa as stipulated in UN Resolution 1325 (2000) and to also appoint women as Special Envoys and Special Representatives of the African Union”.*⁵

5 African Union Solemn Declaration on Gender Equality in Africa, AU, January 2004.

Additionally, the Maputo Protocol reaffirms commitment to SCR 1325 in its preamble and calls on member states to implement the resolution in three articles. These articles call on states to advance the right to bodily integrity and security of women, the right to peace and the right to protection of women in armed conflicts respectively.

Furthermore, the AU's Protocol relating to the Peace and Security Council stresses the importance of participation from civil society women within the AU organs. Operationally, the AU constituted the African Women's Consultative Forum which advises the AU summit on Peace and Security concerns. The Year 2010 has been designated by the AU as the Year of Peace and Security and it is hoped that women's peace and security concerns will gain momentum as integral to sustainable peace efforts in the continent.

Participation and Inclusion

Research shows that broader inclusivity in formal peace processes, of civil society as well as of women, increases the credibility of the process and contributes to the sustainability of the agreements reached.⁶ Peace processes characterised by heavy involvement of women have been found to be more legitimate and sustainable compared to those with little or no women's involvement.⁷ Civil society members, and indeed women, in peace processes serve as important counterweights to what are, often, political or military interests.

Despite this growing consensus on the importance of women's participation, many challenges still remain. These vary from the cultural acceptability of having women participate; the focus on the participation of formal fighters and political decision-makers; to the perceived lack of capacity of women who could be effective representatives within a formal process. Interestingly, in the Kenya case, these traditional challenges were considerably less than in other cases studied.⁸

While a great number of studies have documented the value of the participation of women in peace processes, greater attention needs to be paid to the many different ways that women participate – via civil society inclusion, as well as political representatives, within the negotiation teams; as members of the mediation teams; and (though rarely) as mediators.

Participation also raises another conceptual question – of representation – that must be considered. Discourse around the participation of women in mediation processes has not delved far enough into the challenge of women's representation. It is a different thing to call for specific women's representatives to be part of a peace process (often drawn from civil society, as in Liberia), compared to pushing the parties to include women in their delegations (as we see in the case of Kenya) mandated to represent the interests of the given political party or armed group. In many cases, women who are appointed by a political party or armed group as a representative may be bound by the policies of the party and therefore constrained in their focus on women's issues at the table. It is also important to note that, in some cases, female representatives of political parties to a conflict will not necessarily view their primary role as being that of a representative of women. However, women in these political spheres play important roles themselves. They are often able to raise issues during internal party discussions in preparation for mediation, and deliver messages around women's issues that will best be heard from a political "insider".

It is, therefore, not only important to consider women's participation from both angles – civil society representation and representation of women within political/armed groups – but also to understand further how these two do, or do not, link. This is needed in order to understand women's participation, and representation in peace processes.

6 Wanis-St. John, 2008, and World Bank World Development Report 2011, forthcoming.

7 Potter, Antonia, *Gender Sensitivity, Nicety or Necessity in Peace Process Management?* (Geneva, Centre for Humanitarian Dialogue 2008) pp. 55-65.

8 Anderlini, Naraghi Sanam, *Peace Negotiations and Agreements* (Washington, D.C.: Institute for Inclusive Security, 2009)

It is also important to note that women's issues and women's views around a given conflict are never monolithic. Women's views of their own society and its politics will be as complex as anyone in the community. Understanding the plethora of women's views is critically important when grappling with the question of women's participation. What this often requires is a greater degree of consultation built into the mediation process to draw out these diverse views. It may even require reconciliation among women to enable them to address divisions among themselves to come to a unified approach on women's issues within a mediation process.

Related to this, women's leaders and civil society more broadly will often be viewed as taking a political position within a conflict. As such, it is often not a simple matter for a mediator to leave a chair open at the table for civil society. Some groups, as was the case in Kenya, can be viewed as spoilers by one political party because of perceived affiliations with the other party. Understanding these perceptions, and divisions, which will naturally exist within the broader civil society community, is important when considering mechanisms for their inclusion.

Women's issues and women's views around a given conflict are never monolithic.

However, in many cases members of civil society and women's representatives are well placed to contribute specialised and specific knowledge on issues such as natural resources, constitutional issues, election-

related issues and women's participation in the context of the conflict. Women's organisations, specifically, can help to ensure groups that are traditionally excluded from government such as women, youth and other minorities are represented in negotiations.

Given the, often overwhelming, dependence on women in post-conflict societies (with an increase in female-headed households, and women taking on additional responsibilities with the deaths of husbands and fathers during the conflict), women play a key role in the implementation of peace agreements. Representation of women in the peace process can draw these resources in at an early stage, shaping the process and contributing to its sustainability.

Conflict prevention and the role of women and civil society in supporting the opening of space for mediation are also important when considering participation. Civil society can bring together actors to the conflict prior to a formal mediation process. Women's organisations, particularly those with broad grassroots networks, are often uniquely placed to assist in detecting early warning signs for conflict prevention. Women identify these early warning signals in a very different context from men. For example, women notice trigger indicators such as an influx of weapons in a community, refugee migration, rape, abductions, trafficking, hoarding of goods, sale of jewellery, reward for "masculine" behaviour related to the conflict, and increased propaganda before a conflict.⁹

⁹ Makumi M and Okello O. (Eds), *Rethinking Global Security; An African Perspective*, (Nairobi: Heinrich Boll Foundation, 2006) pp.86-104.

10 Mottiar, Shauna and Van Jaarsfeld, Salome (Moderators), *Mediating Peace in Africa, Securing Conflict Prevention: Strengthening the Mediation and Conflict Prevention Aspects of the African Peace and Security Architecture* (Durban: ACCORD, 2009)

11 Wanyeki, L. Muthoni, *The Role of Kenyan Civil Society in the Kenyan Crisis* (Unpublished Paper, 2010)

12 Lanz, David, *Inclusion and Exclusion in Peace Processes* (Unpublished Paper, 2010)

13 Wanis-St. John, Kew, Pfaffenholz, *Civil society and Peace Negotiations; Why, Whether and How they could be Involved* (Geneva: The Centre for Humanitarian Dialogue, 2006)

14 See Celia McKeon in “Civil Society: Participating in Peace Processes” in Paul van Tongeren et al., *People Building Peace II* (London: Conciliation Resources, 2005) available at <http://www.c-r.org/resources/occasional-papers/civil-society-participating>

15 Montenegro, Nineth, *The Challenge of Women’s Political Participation in Guatemala*, (Stockholm: IDEA, 2002) and Celia McKeon (2005).

Finally, civil society, including women, can support and disseminate messages of calm during a conflict.¹⁰ For instance, in Kenya some civil society groups, such as the Kenyans for Peace, Truth and Justice (KPTJ) and the Women’s Consultative Group (WCG), maintained consistent messages of dialogue over violence throughout the Kenya Crisis.¹¹

In any peacemaking process, determining who sits at the table and who does not is a critical concern for the mediator. This is often the subject of sensitive pre-negotiations with the parties to the conflict prior to the commencement of formal talks. As a result, mediators may view pressure to include civil society representatives, or women’s representatives, at the table as unachievable in these negotiations. The mandates of the mediators often do not explicitly offer them the space to formally consult civil society as a core part of their work. This relegates such consultations with civil society, and often therefore with women, to the ad hoc sphere of the process. While many constructive engagements can, and do, take place in such settings, the lack of formalisation of these consultations can also lessen their impact.¹²

With respect to calling for women’s direct participation in the negotiation teams, mediators often face similar challenges – parties may be unwilling to identify women, or will bring “token” women’s representatives as part of their delegation. In some cases mediators have found success by offering additional spaces on the delegations to be reserved for women within the parties.

Despite the inadequate representation of women in peace processes, a number of different options exist for their engagement.¹³ These include participation through consultative mechanisms, representative decision-making and direct participation. In some processes, direct inclusion of representatives of civil society (including women’s groups) was possible, such as in South Africa where women sat at the table representing women’s interests. Women’s organisations in South Africa mobilised three million women in the consultative processes to develop the women’s agenda for the talks, thus giving them legitimacy to claim seats at the table.¹⁴

Another channel for women’s engagement can be through a parallel forum with formal consultative status to the talks, as was the case in Guatemala.¹⁵ The Civil Society Assembly of Guatemala (Asamblea de la Sociedad Civil) is an association of NGOs that was created in 1994 to advise the negotiations between the government and the Unidad Revolucionaria Guatemalteca (URNG), which ended the 36 year conflict in December 1996. Though the assembly had a voice at the table and they made recommendations to the negotiators formally, their inputs were non-binding as they did not have decision-making power in the negotiations. However, in comparison with the Kenya model, this more formal role guaranteed the participation of women, something that was left to the discretion of the mediation team in the Kenya process.

While formal mechanisms are preferable to safeguard women’s participation, women and civil society also participate through effective (though ad hoc) communication with different members of a mediation or negotiation team. This can include the mediator themselves, advisors to the mediator on specific issues such as transitional

justice, as well as the mediator's core team. Participation does not have to be direct, and can include identification of channels within the delegations of the parties to the talks by groups outside of the mediation "room". The Kenya case is an example of this and, as we will see from the reflections below, highlights the importance of these channels. Finally, direct negotiations with civil society when Track one processes have stalled do take place – we are seeing an iteration of this in Darfur.

Addressing Gender Issues in the Substance of Peace Processes

Understanding that gender is a social construct associated with being male or female (and defines roles of males and females in society and how the two interact) it is important to note that, during conflict and after conflict, inequalities that exist between men and women are often intensified using violence. Mediation as a form of peacemaking has largely been informed by the stronger position that men have in society, especially where peace and security matters are concerned.¹⁶ Since the shaping of values and norms in society is normally influenced by the male bias, peace processes have often diminished the agency of women. This is done by ignoring their views in the substance of the peace process and by inadequate representation of women in the peacemaking process. Gender initiatives during a peace process tend to focus on the advancement of women in society to correct past structural inequalities between men and women caused by discrimination. Gender justice calls for inclusion of gender issues such as affirmative action for women and gender mainstreaming in decision-making within post-conflict systems.

16 Kameri, Mbote, "Gender, Conflict and Regional Security" in Makumi Mwangi (Ed.) *African Regional Security in the Age of Globalization* (Nairobi: Heinrich Boll Foundation, 2004) pp.83-94.

While the importance of addressing inclusion and participation in peace processes must be emphasised, equally important is the question of how to most effectively address gender issues in the substance of the negotiations around a peace table. Understanding the complexities of women's participation, as highlighted above, will contribute to an environment where gender issues can find their way into the substance of the talks. However, this cannot be viewed as the full solution to addressing gender in mediation. The subtle and complex ways that different agreements will impact women and men requires the skills and attention of the negotiation teams, the mediator and his/her advisors. It also requires the understanding and commitment of the external actors in the mediation process, many of whom will have a major impact on the timing, structure and outcome of a process.¹⁷

17 See Teresa Whitfield, *Managing External Actors in Mediation Processes*, (Geneva: The Centre for Humanitarian Dialogue, 2010).

Each process is unique, with a different set of issues around the conflict, a different structure and dynamic to the talks, and a different scope around the agenda. However, there are common aspects to peace agreements that have been reviewed, and tools developed, to inform mediators and negotiation teams on the issues of concern for women and men, and possible language and provisions that can be included.¹⁸

18 See among others, *Final Report Colloquium on Conflict Related Sexual Violence and Peace Processes* (New York: UN Action, UNDP and The Centre for Humanitarian Dialogue, 2009).

19 See the full version of the Women's Memorandum at < www.pambazuka.org/en/category/features/45740>

20 For further research on these cases, see Page, Michelle, Whitman, Tobie & Anderson, Cecilia, *Strategies for Policy Makers: Bringing Women into Peace Negotiations* (Washington, D.C.: Institute for Inclusive Security, 2009).

21 Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya (The "Akiwumi" Report), 31 July 1999 (Nairobi: Government of Kenya, 1999)

22 Murunga and Nasongo, *Kenya: The Struggle for Democracy* (Dakar: CODESRIA, 2007)

23 Gettleman, Jeffrey "East Africa: The Most Corrupt Country" (The New York Review of Books, 14 January 2010) and Antony Otiemo Ong'ayo, *The Post-election Violence in Kenya: An overview of the underlying factors*, Pambazuka News Online 14th February, 2008, Issue 345 accessed at <http://pambazuka.org/en/category/comment/46094>. It should be noted that the salaries of MP's have since been raised by an additional 11.6%. (<http://www.kbc.co.ke/story.asp?ID=64983>)

24 Republic of Kenya, *Commission of Enquiry on land in Kenya (Ndungu Report)* (Nairobi: Government of Kenya, 2004)

In the Kenyan example, the Women's Consultative Group (WCG) Memorandum¹⁹ drew out the gendered aspects of the electoral conflict which informed the mediation team on gender issues. Though a gender advisor was not appointed as they advised, some gendered recommendations were included in the substance of the agreements. For example, special consideration was given to the security of women in the humanitarian efforts. However, most of the agreements had no gender-specific language and this omission continues to inform the implementation of the agreements.

In the cases of Uganda and Sudan (Darfur), mobilisation of women, both within delegations and through reference groups, helped ensure greater focus on such aspects as justice provisions around sexual violence as well as gender-sensitive disarmament, demobilisation and reintegration of ex-combatants and those associated with armed groups and security sector reform. It also ensured focus on aspects of wealth-sharing and land rights. While both of these agreements subsequently failed to be implemented, they highlight the important contributions of women to the substance of such processes.²⁰

3

The Kenyan Elections Crisis

Kenya gained independence from the British in 1963 under a negotiated constitution at Lancaster House in London. This constitution provided for an elaborate protection of private property, such as land, without reference to the history of its acquisition. The Akiwumi Report on Tribal Clashes (1999) described Kenya's first independent government, which took office in 1963, as confronting "deep rooted tribalism" whose origins were the divisive policies adopted towards the country's thirty-plus ethnic groups during the colonial period. This continued to "hamper the consolidation of Kenya into a united nation and adversely affects the political life of the country".²¹

Jomo Kenyatta, the first Kenyan President, inherited a flawed constitution which favoured the post-colonial elite and the former colonial settlers and which laid a foundation for inequality and exclusion.²² The income disparity between members of Kenya's parliament, who at the time of the Kenyan crisis earned \$145,565 a year, and the average Kenyan, who earns \$177²³ (some 187 times less) is testimony to a long history of inequality and impunity initiated at independence.

Rather than reforming the flawed colonial system, under the Kenyatta administration the system developed further in favour of the ruling class. It was an almost imperial presidency surrounded by an elite who captured the state and annexed resources such as quality land leading to scarcity, marginalisation and the exclusion of Kenyans along ethnic, class, geographic and gender lines. Kenyatta's regime also sowed the seeds of a culture of corruption, exclusion and impunity as noted in the Report by the Commission on Inquiry on Illegal/Irregular Allocation of Public Land of 2004.²⁴

Kenyatta died in 1978 and was succeeded by President Daniel Arap Moi (1978–2002). He institutionalised corruption and deepened competition over positions, political power, land, and opportunities, especially after the attempted 1982 coup. Public pressure on Moi’s government led to an opening of political space and the first multi-party elections in 1992. Under Moi’s regime a new phenomenon also emerged in the form of electoral violence in the 1992 and 1997 elections. Both elections were technically flawed and characterised by high levels of tension, violence and displacement.²⁵ Significantly, however, the mechanisms of the state were not directly threatened by the violence that developed and the violence only started and ended before the voting.²⁶ This was dramatically different from the events of 2007–2008.

25 See, among others, Kenya Human Rights Commission, *Killing the Vote: State Sponsored Violence and Flawed Elections in Kenya*, (Nairobi: Kenya Human Rights Commission, 1998)

26 Mwangi M., *The Water’s Edge, Mediation of Violent Electoral Conflict in Kenya* (Nairobi: University of Nairobi, 2008)

27 See, among other sources, Wrong, Michaela, *It’s Our Turn To Eat: Story of a Kenyan Whistleblower* (London: Fourth Estate, 2009); and Baird, Vanessa, “Anatomy of a Scam” in *New Internationalist*, December 2006.

28 Mwangi M., (2008).

29 Ageng’o, Carol, *Kenya: Peace and Security Imperatives for Women* (Nairobi: Pambazuka News, 2009) available at <http://www.pambazuka.org/en/category/features/60353>

30 Ageng’o, Carol (2009).

The 2002 presidential elections were considered a turning point in the country’s democracy. President Kibaki won with an overwhelming majority against former president Moi. Kibaki inherited a state with weakened institutions from Moi’s regime after 24 years of predation on state resources and the debilitating effects of the Structural Adjustment Programmes (SAPs). President Kibaki was credited with turning around the economy during his first term. However, the political challenges and divisions in the country increased with the President’s failure to honour the infamous Memorandum of Understanding (MoU) with then opposition leader Raila Odinga, in which Raila was to be made Prime Minister under a reformed constitution. Importantly, the President’s failure to address both the impunity and corruption that characterised the Kenyan state further eroded trust in the administration.²⁷

Moving into the 2007 elections and the political environment surrounding these, a number of reasons have been advanced for the causes of the 2007–2008 electoral violence. On governance, President Kibaki failed to address grievances over land as well as ethnic and regional exclusion during his tenure. Additionally, human rights violations and a culture of impunity within security forces, and other state institutions, may also have contributed to the 2007–2008 crisis. The casual nature with which electoral violence in 1992 and 1997 was addressed also set a poor precedent and reinforced a culture of impunity. Finally, the zero-sum political system in Kenya also contributed, upping the stakes and heightening political tensions. These tensions only required a trigger, such as perceived rigging, to degenerate into a violent outburst.²⁸

The electoral process is one of the means by which power relations are gauged in society²⁹ and as such the Kenyan elections crisis should also be viewed from a gender perspective. Such analysis is important when considering how women ultimately participated in the mediation of the conflict. Men and women’s experiences during the elections – in the campaigns as well as the polling and through the crisis are rooted in the social construction of their roles as women and men in Kenyan society. The different experiences of men and women were also influenced by the inadequacy of the existing laws and institutions, such as those governing political parties and elections, contributing to the unequal representation of women and men in the political process.³⁰

The experiences of men and women in the electoral process were not isolated but were rooted in unresolved grievances beyond the elections themselves, as outlined above. Unresolved ethnic and regional inequalities, or perceived inequalities, as well as the impunity of the security forces had a gendered impact on the violence meted on men and women during the elections crisis. Women were raped and subjected to other forms of sexual abuse, while men were, in addition to some cases of sodomy, forcefully circumcised to ‘teach their ethnic groups a lesson’. The Nairobi Women’s Hospital reported that they attended to 650 cases of gender-based violence (GBV).³¹ Violence and threats against women participating as candidates in the pre-election period speaks to the tensions between women and men that were coming to the fore during this period.³² The response of the government services to violence against women during the crisis is equally concerning and points to the importance of prioritising means to redress such violence during a peace process. The Waki Commission reported several cases of women attempting to report rapes to the police during the crisis and being turned away, or being told to choose between reporting burning of their houses and property, or the gang rape, but not both.³³

31 Report by the Commission of Enquiry into the Post Election Violence (Nairobi: Government Printers, 2008)

32 See, among others, Kwamboka Oyaro, “Call to Arm Women Candidates with More than Speeches” Inter Press Service, December 21, 2007 accessed at <http://ipsnews.net/news.asp?idnews=40569>

33 As reported in Ageng’o, Carol, (2009).

While this study will not delve more deeply into the gendered roots of the crisis, this aspect of the violence highlights the importance of understanding this area, particularly for prevention of such violence around future elections.

4

The Origins of the Kenya National Dialogue and Reconciliation Process

Violent electoral conflict was triggered by claims of rigging in the 2007 presidential elections. According to the Report by the Commission of Enquiry into the Post Election Violence (CIPEV, 2008) popularly known as the Waki Report, this led to the most violent conflict in Kenya’s history, amounting to 1,133 deaths and the displacement of over 300,000 people.³⁴ One of the challenges identified by the Kenya Human Rights Commission (KHRC) Report on Internally Displaced Persons (IDPs) was the lack of adequate profiling of IDPs, including the lack of data disaggregated by sex.³⁵ Reports from the United Nation’s Livelihood Recovery Programme estimated that more than 60% of IDPs were women and estimated a similarly high percentage of female-headed households as a result of the death and injury of spouses during the violence, or separation and rejection by the spouses of women who had survived sexual-based violence. It is also important to note, in the response to the crisis, the representation of women in positions of leadership in the IDP camps was disproportionate to the number of women and women-headed households that were affected.³⁶

34 Report by the Commission of Enquiry into the Post Election Violence, (Nairobi: Government Printers, 2008)

35 Kenya Human Rights Commission, Out in the Cold; The Fate of Internally Displaced Persons in Kenya (Nairobi: Kenya Human Rights Commission, 2008-2009)

36 For more detail see Media Coverage of the 2007 Post Election Violence in Kenya, a Gender Mainstreaming Perspective (Nairobi: African Women and Child Feature Service, January 2009)

37 For more on information being collected prior to the elections, see, among others, Kenya National Commission for Human Rights, *Still Behaving Badly*, (Nairobi: Kenya Human Rights Commission, 2007), and National Security Intelligence Service scenarios around the elections, as referenced in the report of the CIPEV, available at <http://www.dialoguekenya.org>

38 Kenya Human Rights Commission, *Violating the Vote: A Report of the 2007 General Elections* (Nairobi: Kenya Human Rights Commission, 2007) available at <http://www.scribd.com/doc/2223258/Violating-the-vote>

39 Kenya Human Rights Commission, *Violating the Vote*, p. 21

40 KHRC, *Violating the Vote*, pp. 21–22.

41 For more analysis of the dynamics of the election, see the *Journal of East African Studies*, Volume 2, Number 2, July 2008

Many members of Kenyan civil society, including women’s leaders, were raising warnings in the months leading up to the elections. However, the scale and intensity of the violence, as well as the inability of the state to effectively manage such instability, were still not fully anticipated by the international community in the lead up to the elections.³⁷

According to the KHRC, the pre-election violence manifested itself in different ways. It occurred, among other ways, through the disruption of rallies; theft and destruction of property; and gender-based attacks. Of the cases of violence reported to the KHRC during the campaign period, there was 1 incident of disrupting rallies, 8 incidences of theft, 12 incidences of destruction to property, and 14 incidences of gender-based violent attacks towards women. This shows the extent to which women were vulnerable to violence during the campaign period:

*On October 16, 2007, at Kibera Primary School in Langata constituency, an aspirant, said: “Wanawake endeni mkapike” (women go and cook) and “tokeni ama tutawarape” (go away or else we shall rape you). All the women present ran away. The alleged reason for the comments was the women’s support for one of the male aspirants who was opposing him.*³⁸

Violence and other forms of discrimination against women were perpetrated by men against women. These were aimed at devaluing, demeaning and de-humanising them in order to promote men’s dominance in electoral politics and influence electoral choices and outcomes.³⁹ Short Text Messages (SMS) directed at women were circulated with content which was de-humanising and demeaning towards women. Other forms of gender-based violence targeting women during the campaign period included rape; stripping and other forms of indecent assault; sexual harassment; and various unfair restrictions aimed at alienating women from politics.⁴⁰

It is now evident that the 2007 election represented the first real test of Kenyan democracy and multi-party politics. The campaign developed within a new social context in Kenya, including generational divisions and strong youth mobilisation. Widespread use of the media and opinion-polling contributed to an environment in which grievances, rooted in Kenya’s extreme poverty and pervasive marginalisation, became intimately linked to the electorate’s perceptions of the election and its conduct.⁴¹

Voting on 27 December was peaceful but the country became gripped with growing unease as the presidential ballots were counted. As results began to come in, Odinga and the Orange Democratic Movement (ODM) claimed a lead that at one point topped 1.2 million votes over President Kibaki and the PNU. Nevertheless, when the results were formally announced on 30 November, President Kibaki was awarded victory by a margin of slightly more than two percent (46 to 44 percent).

Within hours of the announcement of President Kibaki’s victory on 30 December, violence sparked in Kisumu, Eldoret, and within Nairobi’s largest informal settlement, Kibera. This brought the deeper crisis in Kenya into stark

relief. ODM refused to accept the results of the election and called for mass action in protest. However, reports quickly mounted of killings, looting and the burning of property. Allegations that the police played a large role in the violence compounded the crisis. Over a two-month period an estimated 1,133 people died, and over 300,000 were internally displaced, including in Nairobi.⁴²

As the violence escalated and the political stalemate hardened, a nationally-brokered solution was quickly revealed as unviable. Endogenous and regional mediators, such as Former Ambassador Bethwel Kiplagat and Cyril Ramaphosa, responded rapidly to try and resolve the impasse, but none had the authority to do so. Messages of peace and calm were circulating from civil society networks, however this was not sufficient to quell the violence. It became increasingly clear that external intervention would be required.

A number of eminent leaders and former heads of state came to Kenya to try to begin dialogue, but without success.⁴³ With each “false start”, the public grew more nervous that the crisis would spiral out of control. Yet, while nothing concrete was achieved, these varied efforts gradually shifted the dynamic towards acceptance of a mediated solution. This emphasised, in the process, the importance of an acceptable mediator.

Gender-based violence targeting women during the campaign period included rape; stripping and other forms of indecent assault; sexual harassment; and various unfair restrictions aimed at alienating women from politics.

In the wake of these attempts, Ghanaian President John Kufuor, in his capacity as Chairman of the African Union (AU), arrived in Kenya on 8 January. Conscious of the AU’s responsibility to intervene in member states in situations of “grave circumstances”, namely “war crimes, genocide and crimes against

humanity”,⁴⁴ the objective of President Kufuor’s visit was to gain agreement by the parties to external mediation. Shortly after returning to Ghana, he announced the establishment, by the AU, of a Panel of Eminent African Personalities to facilitate resolution of the crisis. Under the chairmanship of Kofi Annan, the panel would include former President Benjamin Mkapa of Tanzania and former First Lady Graça Machel of Mozambique.

Kofi Annan and the Panel began work by seeking to bring about a public meeting of the two leaders and consulting widely before the formal launching of the mediation process. Within two days, a public handshake (and a private meeting) between Mwai Kibaki and Raila Odinga had taken place. While this was a critical and significant first step, it did not dispel tensions; the violence continued to rise as the mediation began in earnest.

While the pressure to bring the two leaders together was a main focus in the first days of the mediation, the Panel also spent several days meeting with a broad range of civil society and private sector actors to hear their concerns and grievances in preparation for the dialogue process.

42 An in depth analysis of the violence is not possible here. For more detailed analysis of the violence, see, among others, the Report by the Commission of Enquiry into the Post Election Violence (Nairobi: Government Printers, 2008); ICG, *Kenya in Crisis* (Nairobi and Brussels: International Crisis Group, 2008), Lonsdale, John, *Soil*, “Work, Civilization and Citizenship in Kenya”, *Journal of East African Studies* Volume 2, Number 2, July 2008; and Human Rights Watch, “Ballots to Bullets: Organized Political Violence and Kenya’s Crisis of Governance,” Human Rights Watch (New York: Human Rights Watch, March 2008)

43 Archbishop Desmond Tutu, President Ahmad Tejan Kabbah of Sierra Leone, former Presidents Joaquim Chissano of Mozambique, Benjamin Mkapa of Tanzania, Ketumile Masire of Botswana and Kenneth Kaunda of Zambia, leaders of the Africa Forum of Former Heads of State, and Jendayi Fraser, US Assistant Secretary of State for Africa, all came in attempts to break the deadlock.

44 Article 4 (h) of the African Union’s Constitutive Act: The African Union acts with the implicit support of the UN Charter, Article 52 (2) of which encourages regional organizations to “make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the UN Security Council”.

The Kenya National Dialogue and Reconciliation was officially launched on 29 January, 2008. The objectives of the mediation were twofold: (1) to bring about a political resolution in order to end the violence; and (2) a dialogue to address the longer term structural problems in Kenya that had enabled this level of violence and lay the basis for the reforms needed to effect sustainable peace in the country.

The dialogue took the form of an agenda of four items. The first three of these focused on the short-term objective of finding a resolution to the immediate crisis, the fourth agenda item, now commonly referred to in Kenya as **Agenda Four**, dealt with Long Term Issues and Solutions. (At the time of writing, Kenya has just passed a new constitution following a referendum held on August 4 2010). The annotated agenda document signed by the parties, was elaborated to include, inter alia, under Agenda Four:

- Undertaking constitutional, legal and institutional reform
- Tackling poverty and inequity, as well as combating regional development imbalances
- Tackling unemployment, particularly among the youth
- Consolidating national cohesion and unity
- Undertaking a Land Reform
- Addressing transparency, accountability and impunity⁴⁵

⁴⁵ Kenya National Dialogue and Reconciliation, Annotated Agenda and Timetable, 1 February 2008.

5

Women and the Kenya National Dialogue and Reconciliation

In this highly politically charged and violent atmosphere, the involvement of women in the Kenyan process took many different forms. Women were engaged as members of the Panel; as senior advisors to the mediator and in mediation support roles; as senior members of the political delegations; and as civil society leaders (both in the women's movement as well as in other sectors of civil society).

While the formal process was taking shape, as outlined above, women were mobilising in a range of ways, at local and national level. At the national level, women organised through a range of different forums. A few notable national processes were initiated by the Vital Voices Women's Group, who partnered with Burundian women to share experiences of conflict. The Kenyans for Peace, Truth and Justice (KPTJ) met everyday to discuss how to address the crisis. The Kenya Women's Consultative Group also held a one-day meeting with more than fifty women to discuss how women could pressure the two principles to meet and end the electoral conflict. This group later formed a twelve-member consultative group that presented a memorandum to the mediation team.

At the local level, a number of women's organisations, as well as individuals, initiated reconciliation in their communities while the national level dialogue was ongoing. For instance, the Kibera Women for Peace and Fairness Women's initiative was formed to address the gender-based violence (GBV) that Kibera women were facing during the 2007 electoral crisis. Rural Women Peace Link, a local NGO based in Uasin Gichu in Rift Valley, is another example of a women's organisation that initiated community dialogues for reconciliation during the height of the post-election violence.

This offers some important lessons about recognising and addressing divisions among women and supporting different forms of participation – both political and civil – in a process. Looking more broadly, it also offers lessons about how international and regional players can support more responsive structures for women's participation, and gender issues, in future mediation processes. Two important factors have been cited in promoting consideration of women's concerns during the dialogue process. The first of these was the presence of Mrs. Graça Machel, who was brought in due to her work in Kenya on the Africa Peer Review Mechanism.⁴⁶ Her level of seniority and long history around women's issues meant that she possessed the skills necessary to identify specific issues of importance. Her seniority and stature meant that she was able to push these issues and speak out in a way that few other women would be able to. Her work through the Africa Peer Review Mechanism also meant that she had a good understanding of the underlying dynamics, and strong networks to civil society, in the country.

46 Interview with Graça Machel, South Africa, February 2010.

A second important factor was the capacity for civil society to mobilise and ensure that women's issues and priorities were presented to the mediation team.⁴⁷ This was not without its challenges, nevertheless the capacity of women's organisations within civil society to come together to articulate a position for women to be brought to the mediation team was important. However, it required the impetus of Graça Machel, calling the women together, for them to overcome their own differences and divisions in order to work together to press for greater focus on women's issues in the process.

47 For an elaboration on the importance of the capacity of civil society in Kenya – and importantly how unique this level of capacity is in a conflict-affected country, see Wanyeki, L. Muthoni, pp. 1-14

These caucuses culminated in a Memorandum⁴⁸ to the Panel calling for the mediators to ensure that SCR 1325 was implemented and calling for Constitutional reform among other demands. They also advised the mediation team to second a gender advisor to the Panel to ensure gender mainstreaming, although this was not implemented.

48 See the Women's Memorandum at < <http://www.pambazuka.org>>

The role of Kenyan civil society and women in the Kenya National Dialogue and Reconciliation Process was critically important in shaping Agenda Four, which called for reforms to address the root causes of the violence. Kenyan civil Society influenced Agenda Four through the memorandums they presented through a number of different coalitions, including the Kenyans for Peace, Truth and Justice (KPTJ), Citizen's Coalition, Concerned Citizens

for Peace and the Women's Caucus. These inputs included recommendations that the team address long-standing issues such as constitutional reform, land distribution, historical inequities, and security sector reform (see Annex 1 for the specific agenda items they influenced).

Mandate, Structure and Women's Participation

Despite the early recognition by Kofi Annan and the Panel of the need for a broader substantive focus for the talks, represented most importantly in the final agenda item on "Long Term Issues and Solutions", the structure and mandate of the mediation itself was more limited. The focus was on bringing the two parties to agree a political resolution to the impasse which had engulfed the country. However, by extension, these parties were then representing the nation as a whole in the larger discussions around reforms and the root causes of the conflict. Ad hoc consultations took place throughout the process with different civil society and other groups, however this was not formalised as part of the mediation.

Women's Formal Participation

The formal structure of the process was established between the political parties to the crisis, with small delegations of four members each and a liaison officer to support them. As these teams were established, Mrs. Graça Machel requested that each party ensured they had a female representative as part of their delegation.

Based on this request (but probably also as a result of the strong role these women played in their respective parties), the Party of National Unity (PNU) and ODM nominated Hon. Martha Karua and Hon. Sally Kosgey respectively. Both women were senior within their party structures and had been at the political forefront. At the time of the crisis, Hon. Karua held the Ministerial post of Minister of Justice and was designated the team leader for the PNU Coalition delegation.

These women were appointed based on their party loyalty, strength of character and negotiating abilities. Both women advocated strongly and consistently on behalf of their respective parties through the negotiations. This occasionally resulted in the deadlocking of specific issues and also created tension between these female negotiators and women's leaders in civil society who felt they should have also represented – and ideally prioritised – women's issues in the process.

Upon reflection, when discussing the issues of representation of women at the mediation table, Kenyan civil society women⁴⁹ highlighted the tension that exists in expecting women negotiators to represent women's issues when they have other representational mandates, which may constrain them from doing so. Lessons should be drawn that political representation of women, while necessary, is not sufficient. Ensuring some form of participation by representatives who are specifically tasked and qualified to represent and advise on issues of women and gender within the peace process is also required at the mediation table.

⁴⁹ Views from the Kenya Women at The Table Roundtable from 22-23 March 2010, see Women at the Table Kenya Roundtable Dialogue Report (Geneva: The Centre for Humanitarian Dialogue, 2010)

Issues around the participation of women were raised by the female representatives at the table, resulting in women being included in the composition of the Independent Electoral Review Commission and the Truth, Justice and Reconciliation Commission. However, the gendered implications of the agreements being reached was not articulated by the members of the negotiation teams.

Building Women's Consensus and Confidence

During the consultations with civil society in the early days of the mediation, Mrs. Graça Machel called women's leaders to come together and meet her to discuss the position of women with regard to the crisis. Mrs. Machel reached out to women she had previously worked with, in order to encourage them to convene so they could engage the peace negotiations with a unified voice.⁵⁰ These actions drew on her understanding of the core issue of polarization in Kenya (including among the women themselves) during the elections. Women's leaders mobilised funds for a Women's Consultative Meeting on the Kenyan Crisis on 24 January 2008. During this meeting it became clear that party affiliation and ethnic tensions, which had been brought to the fore by

Ensuring... participation by representatives who are specifically tasked and qualified to represent and advise on issues of women and gender within the peace process is also required at the mediation table.

the crisis, prevented any meaningful engagement among the women. Mrs. Machel then advised the women to sit together to find common ground. This resulted in, what became known as, the "spitting session" by the women involved. This was a session in which they raised all of the issues that were dividing them,

allowed themselves to get angry (to "spit" at one another) in order to allow themselves to move forward and find commonality in their position on the crisis.

This airing of differences, and building of confidence, subsequently enabled this group of women to constructively draft a Women's Memorandum, which was presented to the mediation team on 25 January 2008. A committee of twelve women, representing diverse organisations, was nominated by the other women involved to present the memorandum. The concerns highlighted in this memorandum helped to shape the long-term issues agreed within Agenda Four. Importantly, the Memorandum called for a framing of the violence, the crisis and its resolution, in the broader context of women peace and security, drawing on SCR 1325 and the AU Solemn Declaration. The Memorandum also sought to make visible the invisible levels of violence and impact of the conflict on women at the time.

What is clear is that the concerns women raised, while not only pertaining to women, mirror those finally agreed in the annotation to Agenda Four, as

50 Centre for Humanitarian Dialogue Interview with Mrs. Graça Machel, 10 March 2010.

well as in the final agreements. While it is always a challenge to ascribe cause directly to these submissions, and we see that these issues were also the subject of broader advocacy by civil society groups (not only women's groups), it is important to note that the women's recommendations did resonate as critical issues for the society more generally. Where further work could have been done, is around turning some of these broader recommendations into gender-responsive language within the agreements. For this, more direct gender expertise within the mediation process would have been required.

It is important to note, however, that the momentum which developed out of the "spitting session", and the development of the Women's Memorandum, did not continue to build after the crisis into a unified women's voice around the implementation of the agreements. Many women's leaders in Kenya have identified this as a weakness. Part of the reason cited for this is the lack of an agreed institution dedicated to the broader women's agenda in Kenya to take these issues forward in the post-mediation period. Many of the women involved in coming together during the crisis acted in their personal capacities. Consequently, a single driving institutional force with the purpose of continuing to advance these issues, and continuing to foster unity among women in Kenya, did not emerge from this period. Related to this, the lack of an institution limited the resources that were allocated to this specific goal.⁵¹

51 Centre for Humanitarian Dialogue interviews with various women leaders, Nairobi 2009-2010

Shaping the Agenda Through 'Shouting from the Windows'

The Women's Memorandum called for the implementation of SCR 1325. It also drew on other important regional frameworks including the African Union Constitutive Act, the Solemn Declaration and the African Charter on the Rights of Women. The recommendations highlighted the importance of looking at the priorities of the women's movement which can be found in these agreements, as well as issues that would be overtly gendered – such as calling for the appointment of a gender advisor to the mediation team. As mentioned above, this latter recommendation was not taken up during the mediation process.

The memorandum categorised the various forms of violence during the conflict and, as such, drew attention to the gender dimensions of the conflict. The memorandum recommended use of specific women's rights language in the Agenda and agreements. The memorandum also made recommendations to address the root causes of the violence such as constitutional reform, transitional justice mechanisms and strengthening of electoral bodies. The memorandum also highlighted gender dimensions to humanitarian relief for Internally Displaced Persons (IDPs). Women also recommended the representation at the table of women from civil society.

Women in civil society used various other informal strategies to influence the mediation process. They engaged the male delegates at the table who were known to them through political networks. Women worked with female leaders in political parties who helped to link them to the leadership of their respective parties. They also lobbied the wives of the party leaders, President Kibaki and Prime Minister Odinga, and held early morning sessions with members of

An Example of the Impact of the Agreements on Implementation – Gender and the CIPEV

Though the bulk of this paper has focused on the role women played during the mediation process itself, it is worth briefly highlighting some challenges that have been raised during the implementation of the KNDR agreements thus far. Understanding that a comprehensive review of all angles of the implementation of the KNDR is not possible here, this section is intended to offer some illustrative snapshots of issues that may have been affected had the mediation process included gender provisions in parts of the agreement.

Within the agreement to establish the Commission of Inquiry on the Post Election Violence (CIPEV), there was no specific reference to gender issues or gender-based violence as a particular area of focus for the Commission. The agreement did not make any mention of, or provisions for, gendered perspectives in the activities, composition and methodology of CIPEV. This omission had a profound effect on the structure of the CIPEV in three ways: CIPEV lacked women's representation in its leadership as its composition was three male jurists; mainstreaming of gender issues in the process was ad hoc as a gender advisor was hired after the commission hearings had begun; and ultimately an isolated approach was taken to the way women were represented in the report.

If gender issues had been specifically referenced from the outset, a gender advisor would have been sought as a core expert as part of the mandate of the Commission. While a gender advisor was later financed and seconded to the Commission by UNIFEM, the fact that this advisor existed outside of the formal structure of the Commission led to challenges. From a substantive perspective, gender was not formally included as a "core" part of the CIPEV's mandate. As such, the final report, rather than being fully gendered throughout with a consistent focus on the gender aspects of all elements of the violence, includes a distinct chapter on sexual violence.

Understanding the highly sensitive nature of the role of gender in the post-election violence reinforces the need for this to have been addressed as a central part of the Commission's mandate. Many women (and men) who refused to come forward stated that they felt that, by giving evidence, they would contribute to the disintegration of their families and communities.⁵² Also, while cases of gender-based violence towards men occurred during the violence, and some had been documented, no men were willing to come forward to testify. While not all of these challenges could have been overcome by the Commission, a stronger gender mandate could have enabled the Commission to recommend follow-up mechanisms to reach out and support these victims (who are likely to remain hidden and therefore unassisted in the post-conflict recovery period). Such unresolved issues have an effect on the sustainability of peace.⁵³

52 Centre for Humanitarian Dialogue, *Kenya Women at the Table Roundtable, Summary Meeting Report*, (Nairobi: Centre for Humanitarian Dialogue, 2010)

53 Centre for Humanitarian Dialogue *Kenya Women at the Table Roundtable, Summary Meeting Report*, p. 10.

the mediation team to advocate on gender issues. When the women's leaders had difficulty getting access to the mediation team at certain points during the negotiations, they sometimes intercepted them in the lobby of the hotel where the talks were being held to make further inputs to the talks.

The level of advocacy and the outreach of the women (and civil society more broadly) in Kenya was an important feature in their success in influencing the process. With strong regional and international networks, women and civil society were among the first to lobby at the African Union. They were also quick to testify to the US Congress and pass messages to senior figures in the UN and other capitals. This capacity is a feature that has been consistently noted as critically important for ensuring civil society messages got through to the highest levels regionally and internationally. This strength helped to offset the challenge of not having a formalised channel for civil society generally, and women specifically, to influence the mediation process. This is something that may not be easily replicable in other post-conflict settings.

Challenges and Missed Opportunities

The challenges faced by women in accessing the mediation team are related to the internal challenges of the women's movement, the structure of the mediation process and the political context at the time.

The divisions that plagued the country during the crisis also created serious challenges within the women's movement. This was reflected in the polarization among women based on ethnicity, party affiliation and age. It resulted in divisions in terms of methods for engaging the mediation team. Though (through the "spitting" session) the women were able to set aside their differences and work more coherently, this remains a challenge during the implementation.

Internally, the women's movement lacked the capacity to engage the mediation process on many of the more technical aspects of the process. This manifested itself in a greater focus on advocacy around humanitarian issues as opposed to political advocacy around the root causes of the violence.⁵⁴ This may have been a manifestation of the ability of the women to come to consensus on the humanitarian needs while they remained divided over the political aspects of the situation.

In terms of getting messages across in such a highly charged atmosphere, this polarisation also hampered engagement between many in civil society and the female representatives at the table. Women in civil society faced dilemmas about whether to articulate women's concerns through their links with the different political parties, and deal with the risks associated with possibly "politicizing" their interventions, or to maintain links only through the formal mediation team. This poses important dilemmas, as the informal channels through the parties are important mechanisms for women's concerns to find their way onto mediation agendas, but these approaches are not without risks – especially in a politically-charged atmosphere such as Kenya.

Externally, the mandates and time pressure surrounding the mediation team influenced advocacy strategies by the women's movement. The lack of a clear

⁵⁴ Views expressed at the Kenya Women at the Table Roundtable organised by the Centre for Humanitarian Dialogue, March 2010.

mandate to engage women formally meant that, while the Panel did make time to meet with women's leaders and with civil society, this remained ad hoc and additional to the political negotiations. Since the team was under a lot of pressure to stop the conflict and establish a ceasefire; women's issues such as representation and protection as detailed in SCR 1325 were not prioritised.

Considering the importance of international norms as tools to press for greater participation, the lack of a national action plan on SCR 1325 in Kenya has been referenced by many women's leaders as a gap, with one less lever of pressure to be used at the national level.

6 | Lessons

Improving participation and gender responsiveness requires fundamental structural shifts in mediation: Perhaps the most important lesson which emerges from the Kenya example is the need for mediation structures to be more responsive to the needs of women and other stakeholders in the conflict. This includes a shift in the thinking beyond crisis management to transformative mediation practice. It also requires a commitment, at the core of a mediation process, for the inclusion of voices beyond the traditional parties to a conflict. Kenya had strong representation of women in all areas, a high level of capacity among these women, and a great deal of commitment from the mediator on consultation with civil society, including women. The Kenya agenda also identified transformative issues at the core of the conflict as part of the priorities of the talks. While the Kenya process offers some instructive experiences, it is important to look forward to how the international community can establish structural norms around mediation. These could ensure that the participation and representation of women, and issues of importance to women, are safeguarded as a matter of good practice in mediation processes in the future.

The need for clear mandates in a mediation process: The lack of a clear mandate in the representation of women's issues (among others) led to a peace agreement based on the perpetrators view of justice as opposed to a nuanced view from the victims and other interest groups, such as civil society. There is a need to embrace both moral and political mandates in mediation. A political mandate is usually explicitly stated in the terms of reference of mediators or other actors in peace processes and a moral mandate depends on the benevolence of the mediator. Any successful mediation process requires both political and social mandates and the Kenyan process was lacking a political mandate for women's representation.

The need to recognise and support diverse ways for women to participate and be represented: Kenya is an excellent example of the challenges around the representation of women and women's issues. Despite strong representation of women at the table in Kenya, it was links to women outside the room (and therefore formally outside the process) that had a

significant impact on the inclusion of women's issues in the mediation process. This highlights the need for mediators to embrace the many avenues for women's participation and representation that are often needed to reflect the complexities of women's concerns in a conflict.

The importance of the capacity of civil society to engage throughout a mediation process: A vibrant civil society is critical for a sustainable peace agreement. The high level of capacity within civil society, and women's leaders in Kenya was particularly important for their ability to engage at a technical level with the issues being discussed at the table. Similarly, strong networks, organisation and outreach – particularly high-level advocacy internationally – was an important strength among the female, and civil society, leaders in Kenya. This is not always the case in other more protracted situations of conflict, and means that to support greater capacity in this regard it is important to enhance the effectiveness of civil society and women's engagement in a mediation process.

The importance of grievance and reconciliation sessions: The role of the Women's Caucus, with the advice of Mrs. Machel, to build consensus on women's human rights during the crisis was of particular importance. Due to the polarisation at the time and the challenges of building consensus, the women opted to start with the "Spitting" session. This session had a profound role in galvanising the women's movement to advocate as one group for the mainstreaming of women's human rights in the mediation agenda. Particularly important for other processes is to understand the need for such sessions – that divisions among women as a result of conflict exists and may need to be directly addressed in order to support broader participation of women in a peace process. Early support and resources for such initiatives should be considered.

The challenge of the time constraints of mediators: The pressure to reach a resolution to the crisis in Kenya, and end the violence through a political solution, meant that deadlines and pace were critical for the success of the Kenya process. However, the consequent challenge of such a pace is that certain issues do not necessarily get the level of attention that they require. Concerns were raised by members of civil society when discussions shifted from the conclusion of the political aspects of the talks to the discussions on Agenda Four. These included that more high-level attention was needed to ensure that the Agenda Four agreements laid out more comprehensive policies for reform – including addressing gender and women's issues.

The importance of resources for mobilising women: Both financial resources and leadership are critically important to enable women to organise during a peace process. During the Kenyan crisis, Mrs. Graça Machel was critical in ensuring women's participation in the mediation process. Having led the African Peer Review Mechanism (APRM) for Kenya, she had an understanding of Kenya's ethnic and political polarisation. She contacted women's leaders in Kenya and directed them to start organising women to engage the mediation process with a common platform. The Urgent Action Fund was critical in making available financial resources to move this platform forward.

55 Centre for Humanitarian
Dialogue interviews with various
women leaders, Nairobi 2009–
2010

The sequencing of the reform commissions: In considering the design of post-conflict commissions that arise out of a peace process, effective participation of victims should be a priority. The sequencing and timeframes of Commissions in the Kenya example has required some of these to operate simultaneously with huge mandates and limited time. For example, the Independent Review Commission on the elections (IREC) and the CIPEV worked simultaneously and this limited victims' from presenting their submissions due to resource and time constraints.⁵⁵ This also meant that the outreach of these commissions was limited to hearings in provincial administrative capitals, reducing the ability of some categories of victims (such as IDPs who stayed with their relatives and those in very remote rural areas) to be reached. Greater consideration to these challenges and their implications particularly for women, both within mediation processes as well as by those supporting the implementation of such processes, is important.

The institutionalisation of women's participation in the implementation of agreements: The lack of an institution in Kenya to embody the gains made by the women's movement has meant a loss of momentum and some of the gains made during the KNDR. The advances made by the women in agreeing a unified platform during the mediation process could have been developed further in the implementation period. Most of the women involved in advocating during the mediation were consultants and there was lack of follow-up by an institution after the process. Recent attempts to revive this momentum have led to the creation of the G10 Lobby Group, which is coalition of several women's organisations working on the reform agenda.

7 | Conclusion

Finally, it is important to remember the diverse challenges and situations that face each mediation process at the onset of trying to bring about peace. The Kenyan process is unique for a range of reasons, and many of the specifics of the process could not easily be replicated. It is, however, instructive to consider an example such as Kenya, with the huge level of international attention and resources it received, as an extraordinary display of regional and international commonality of purpose behind a single mediation process. However, even with the strength of leadership of the Panel, top advisors from the AU and the UN, highly skilled negotiators on both sides, and a diverse and highly capable civil society in Kenya (and despite the important successes for women's participation), challenges to women's representation still remain. This offers a useful reminder of the overall constraints within which a mediation process takes place and the tensions that exist when trying to shift mediation from crisis response towards broader transformative goals.



Annexe

Inputs from the Women’s Memorandum (January 25th 2008) to Agreements Reached during the Kenya National Dialogue and Reconciliation (KNDR)

Agreements Reached by the KNDR	General Recommendations in the Women’s Memorandum to the KNDR	Gendered Recommendations in the Women’s Memorandum to the KNDR	Impact of Non-gender Specific Language in the KNDR Agreements
<p>Agenda Item One</p> <p>Immediate Action to Stop Violence and Restore Fundamental Rights and Liberties.</p> <p>(Signed 1st Feb, 2008)</p>	<p>Kenya Women’s Consultation Group (KWCG) called for:</p> <ul style="list-style-type: none"> • Restoration of fundamental rights and civil liberties such as freedom of expression – cessation of violence against civilians by police and militia. • Cessation of hate propaganda through administrative and legal action. 	<p>No specific gendered language was recommended with respect to Agenda Item One.</p>	<p>General recommendations were reflected in the agreement in the implementation of Agenda Item 4 by making Hate Speech illegal and establishing a National Cohesion and Integration Commission in 2009.</p>
<p>Agenda Item Two</p> <p>Addressing the Humanitarian Crisis and Promoting Reconciliation, Healing and Restoration.</p> <p>(Signed 4th Feb, 2008)</p>	<p>Kenya Women’s Consultation Group (KWCG) called for:</p> <ul style="list-style-type: none"> • Security provision for IDPs. • Peace education and finalisation of the Peace and Conflict Prevention Policy. 	<p>Kenya Women’s Consultation Group (KWCG) called for:</p> <ul style="list-style-type: none"> • Provision of adequate security and protection to vulnerable groups, which include women and children in IDP camps. • Provision of medical services for people in IDPs camps with a special focus on the needs of women in accordance with SCR 1325. • Ensure all-inclusive reconciliation and peacebuilding committees that include women. 	<p>Both general and gendered recommendations reflected in the Agenda Item 2 agreement.</p> <p>Agreements adopted the need for peace rallies and district peace committees.</p>
<p>Agenda Item Three</p> <p>How to Resolve the Political Crisis.</p> <p>(Signed 14th Feb, 2008)</p>	<p>Kenya Women’s Consultation Group (KWCG) called for:</p> <ul style="list-style-type: none"> • An immediate investigation to establish the truth about what triggered the violence. • End to impunity for violation of human rights and support for institutions that support democratic institutional governance such as the Electoral Commission, Judiciary, Anti-Corruption Commission and Parliament. 	<ul style="list-style-type: none"> • No specific gendered language within the memorandum in these areas. 	<p>General Recommendations reflected in the establishment of Independent Reform Elections Commission (IREC) and Commission of Inquiry into Post Election Violence (CIPEV).</p>

Inputs from the Women's Memorandum (continued)

Agreements Reached by the KNDR	General Recommendations in the Women's Memorandum to the KNDR	Gendered Recommendations in the Women's Memorandum to the KNDR	Impact of Non-gender Specific Language in the KNDR Agreements
<p>Agenda Item Three</p> <p>National Accord and Reconciliation Act.</p> <p>(Signed 28th Feb, 2008)</p>	<p>Kenya Women's Consultation Group (KWCG) called for:</p> <ul style="list-style-type: none"> • A political solution backed by law to end the political crisis. 	<ul style="list-style-type: none"> • No specific gendered language. 	<ul style="list-style-type: none"> • No specific gender language appears in the National Accord and Reconciliation Act.
<p>Agenda Item Four</p> <p>Long-term Issues and Solutions.</p> <p>(Signed 23rd May, 2008)</p>	<p>Kenya Women's Consultation Group (KWCG) called for:</p> <ul style="list-style-type: none"> • Operationalisation of the Truth, Justice and Reconciliation Commission (TJRC). • Strengthening of anti-corruption policies and institutions. 	<p>Kenya Women's Consultation Group (KWCG) called for:</p> <ul style="list-style-type: none"> • Inequality around gender, region and income to be recognised as a root cause of violence. • Selection and composition of TJRC should include seven members with gender balance taken into account. • Institutional reform of the judiciary should ensure a strong commitment to human rights and gender. 	<p>Both general recommendations and gendered recommendations informed the Agenda Four Agreement and Implementation Matrix.</p>
<p>Other Agreements in Agenda Item Four</p>			
<p>Acting Together for Kenya: Agreement on the Principles of Partnership on the Coalition of Government.</p> <p>(Signed 28th Feb, 2008)</p>	<ul style="list-style-type: none"> • No specific recommendations 	<ul style="list-style-type: none"> • No specific recommendations 	<ul style="list-style-type: none"> • N/A
<p>Long-term issues and solutions: Constitutional Review.</p> <p>(Signed 4th Mar, 2008)</p>	<p>Kenya Women's Consultation Group (KWCG) called for:</p> <ul style="list-style-type: none"> • A minimum constitutional settlement that would guarantee urgent reform of institutions that support a constitutional democracy. 	<p>Kenya Women's Consultation Group (KWCG) called for:</p> <ul style="list-style-type: none"> • A comprehensive constitutional reform process that would ensure equity, affirmative action and equal opportunities for all minorities including women. 	<p>Although the constitutional review agreement does not have specific gendered language, a number of important gains were made for women in the final constitutional draft, adopted through the 4 August 2010 referendum. These include improved advancement of women's rights through principles (such as equality and equal opportunities) and in specific issues such as participation, land ownership and citizenship rights.¹</p>

¹See among other analyses: <http://fidakenya.org/2010/11/press-statement-gains-of-women-in-the-constitution/>

Inputs from the Women's Memorandum (continued)

Agreements Reached by the KNDR	General Recommendations in the Women's Memorandum to the KNDR	Gendered Recommendations in the Women's Memorandum to the KNDR	Impact of Non-gender Specific Language in the KNDR Agreements
<p>Commission of Inquiry into the Post Election Violence. (CIPEV)</p> <p>(Signed 4th Mar, 2008)</p>	<p>Kenya Women's Consultation Group (KWCG) called for:</p> <ul style="list-style-type: none"> • An end to impunity for violations of human rights by investigating crimes and persecuting the perpetrators. 	<p>Kenya Women's Consultation Group (KWCG) called for:</p> <ul style="list-style-type: none"> • There was no gender specific recommendation on the composition or process of CIPEV from KWCG. 	<p>The agreement did not make any mention or provisions for gendered perspectives in the activities, composition and methodology of CIPEV. This had an impact in three ways: i) In its composition, CIPEV lacked women's representation at the leadership level as the Commission was composed of three male jurists; ii) the mainstreaming of gender issues in the process was ad-hoc as a gender advisor was hired after the commission hearings had begun; iii) ultimately the representation of women in the report took an integrationist/isolated approach as opposed to mainstreaming.</p>
<p>Truth Justice and Reconciliation Commission (TJRC)</p> <p>(Signed 4th Mar, 2008)</p>	<p>Kenya Women's Consultation Group (KWCG) called for:</p> <ul style="list-style-type: none"> • Transitional justice mechanisms to deal with the historical injustices. 	<p>No gender specific recommendations made.</p>	<p>The TJRC agreement has no gender specific language in its general parameters and guiding principles. However, in its composition it stipulates that the 7-member commission will take into account gender balance. This was reflected in the composition of the nominated Commissioners.</p>
<p>Independent Review Committee (IREC)</p> <p>(Signed 4th Mar, 2008)</p>	<p>No specific recommendations.</p>	<p>Kenya Women's Consultation Group (KWCG) called for:</p> <ul style="list-style-type: none"> • Importance of the rights of women to know the truth of the electoral process, as women constitute 52% of the population and they were affected by the electoral crisis. 	<p>Agreement did not contain gender specific language, or a call for women's participation on the Committee. However, the Vice-Chairperson was a woman (one of three international commissioners) and two of the four Kenyan Commissioners were women.</p> <p>Key issues emerged in the final report of the IREC around women's participation in elections as candidates, women's registration as voters, as well as issues around violence and intimidation of women around the electoral process.²</p>

² See *The 2007 Elections in Kenya: Independent Review Commission Report* (Nairobi: Independent Review Commission, 2008).

See the Kenya National Dialogue and Reconciliation official website <<http://www.dialoguekenya.org/agreements>> for the agreements referenced above.

