

MEDIATION: A VIABLE MECHANISM IN AFRICA'S POLITICAL CRISIS - A CASE STUDY OF KENYA'S POST-ELECTION CRISIS 2008

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Abstract

The post-election violence following the December 2007 Kenya's General elections had almost brought what had been one of Africa's most stable countries to the brink of civil war. Over 1000 people were killed and 100,000 to 350,000 were internally displaced in the violence that followed the outcome of the election. As the situation escalated with murders, rapes, burning of properties, looting and the displacement of thousands of people throughout the country, the International community was poised to intervene and hence engaged in mediation efforts by team of eminent African personalities led by Kofi Anan, the former United Nations Secretary-General. The outcome of the mediation efforts witnessed the enactment of The National Accord and Reconciliation Act 2008 which is meant to be implemented and enforce the power sharing agreement deal between the two parties to the conflict. This paper examines the role of mediation which was favored against other legal means to reach resolution of political crisis. This study places reliance on both primary and secondary sources material relating to the topic of this discourse. Opinions expressed by various stakeholders in the crisis and civil organizations such as human rights groups and academies are utilized in accessing the role of mediation as a mechanism for amicable resolution of political dispute.

Keywords: Conflict, Conflict Resolution, Disputed General Election Results, Post – Election Mediation, Mediation Outcome

I. Introduction

Kenya has been in the international spotlight following the contested December 27, 2007 presidential election that led directly to 1000 deaths - plus 350,000 internally displaced people and extensive damage to property. The swiftness with which widespread hostility erupted demonstrates the crucial importance of credible political conflict prevention mechanisms especially in countries with tribally divided electorates and closely contested winner-take-all elections.

The violence in Kenya was brought under control in approximately six weeks, but such comparatively rapid de-escalations are the exception. Once violence starts it is tremendously difficult to stop. The conflict was resolved in part due to Kenya's relatively broad based economy, seemingly peaceful political culture, and firm international pressure. However, negotiations between President Kibaki and the then opposition leader Odinga were particularly volatile. Without the skilled mediation efforts of former UN Secretary General Kofi Annan and Tanzanian President Jakaya Kikwete most likely a political settlement and cessation of hostilities would not have been reached in such a timely manner.

II. Constitutes Of Conflict

The word conflict is derived from the Latin word "*concligere*" meaning to strike together.¹ Realistically, the ubiquity of conflict cannot be underestimated. It comes in many forms and involves vastly different kinds of parties, ranging from individual persons to large macro units such as nation-states.

There are several definitions for the term conflict. It originally has a physical rather than moral connotation which means two or more different things moving to occupy the same space at the same time.² Through a review by various literatures, Hubert M. Blalock Jr. Provides a comprehensive illustration of what the term conflict means, he describes conflict as follows:

"A situation of competition in which the parties are aware of the incompatibility of potential future positions and in which each party wishes to occupy a position that is incompatible with the wishes of the other".³

"A struggle over values and claims to scarce status, power and resources in which the aims of the opponents are to neutralizes, injure or eliminate their rivals."⁴

"Purposeful struggles between collective actors who use social power to defeat or remove opponents and to gain status, power, resources and the other scare values."⁵

¹ John Burton and Frank Dukes (eds), *Conflict: reading in Management and Resolution* (London: The Macmillan Press L.t.d, 1990) p.16

² Ibid

³ Hubert M. Blalock Jr, *Power and conflict: Toward a General Theory* (United states of America: SAGE Publications, INC, 1989) P 8-9

⁴ Ibid. P 8-9

All these definitions have elements of commonality. Generally, conflict arises as a result of differences over goal, values, motives, ideals and resources. More specifically, a conflict process is a situation in which at least two actors or their perceptions of mutually incompatible goals by undermining, directly or indirectly, the goal-seeking capability of one another.⁶

Aspiration for “potential future position” claims for power and resources and the use of “social power base” for struggles are very central to the outbreak of conflict. In situations where there are no sufficient structures that can facilitate the realization of the wishes of people to assume positions of power, dissatisfaction many evolve into conflict.

Political systems that do not provide smooth transfer of power to the most able in the society are more incubators for trouble. It is worst when there are differences of people in terms of their culture and identity.

In most of the African countries, democratic principles of governance are absent. Most African countries are also homes to a diverse set of people belonging to different ethnic groups. The tendency of one ethnic group to dominate every facet of life of the country breeds discontent from the others. These discontented groups readily provide bases of power for people who aspire for “potential future position” and make claims to power. They are causes of many conflicts in Africa.

III. Causes Of Conflicts In Africa

Africa has had her share of conflicts. Like all other parts of the world, it has had conflicts between clans, tribes and kingdoms. With the dawn of independence in 1960 it was thought that the continent was entering a period of peace and development but unfortunately, this was not the case.

Africa has been plagued by conflicts. Out of the 53 countries that are members of African Union, 35 have suffered from conflicts. If we apply the preceding categorization, it is clear that the majority have been rebellions against the state, organized by groups based on region, ideology, race or ethnicity who take up arms against the state. At least 27 countries fall into this category. There is another interesting thing about the type and background of African leaders. At least 23 heads of states or heads of government came from military backgrounds including leaders who have led arms rebellion against the state.

- **Political Causes**

The right to control one’s own affairs is very much at the centre stage as the source of most conflicts in Africa. Who should rule whom? Who should form the government to manage the general affairs of the masses? Such questions are among the ongoing scenarios of politically insolvable equations that contribute to most of the conflicts in Africa.

⁵ Ibid. P 8-9

⁶ Dennis J.D Sandole and Hugo Van der Merwe (eds), *Conflict Resolution Theory and Practice*, Integration and Application (New York: Manchester United Press 1993) P 6

Power struggle competition and maneuvering among domestic groups and parties to participate in, and control the process by which the ability to control and manage the affairs and resources is achieved, have been the bases and source of influence for most violent political conflicts in Africa.⁷

Over all, a weak political institutionalization in relation to social mobilization increases the chances of instability in the state. Political institutionalization means the degree of popular support and the capacity of government to maintain stability, whilst social mobilization refers to the activism of citizens who make demands on the state as a result of dissatisfaction. If the dissatisfaction and the demands of the citizens on the state increase disproportionately with the ability of the state to satisfy their demands, then the legitimacy of the state is called into question.⁸

- **Economic Factors**

Theories such as the Relative deprivation theory, Marxist theories of rebellion, and theories of ethnic conflict, show how forces of economic inequality can generate political violence⁹. The first set of theories argue on the notion that economic inequality in a society will lead to relative deprivation for the less well off groups and individuals, and results in civil violence. The second set of theories focuses on the social contradictions that lead to economic exploitation in capitalist societies.

- **Military Coups**

Over the years, one of the most prevalent forms of political transition or transformation in Africa has been through the military coups which normally come against the will of people, suggesting the existence of the element of violence in the process. Since independence, over half of the states in Africa have had military coups. Often the coups are only the beginning of a long internal conflict.¹⁰

- **Ethnicity**

The political landscape of Africa is a configuration of diverse and heterogeneous ethnic groups. Historically, settlements in Africa before colonialism were culturally and ethnically homogenous. The aftermath of colonialism was the reverse, where settlements in the form of states now composed of completely distinct people in terms of language, culture and religion. Violent confrontation along ethnic lines is the most apparent form of conflict in most African states such as Rwanda, Burundi, Sudan and it has currently claimed over thousand lives in post election crisis in Kenya.

⁷ William Zartman, *Ripe for Resolution: Conflict and Intervention in Africa*, (New York: Oxford University Press, Inc, 1989) p. 12-13

⁸ Rajan Menon and Henrik Spruty, 'The Limits of Neo-realism: Understanding Security in Central Asia', in *Review of International Studies*, Volume 25, No. 1 January 1999, P92-93

⁹ Kurt Schock, 'A conjunctual Model of Political Conflict: The Impact of Political Opportunities on the Relationship between Economic Inequality and Violent Political Conflict', in *Journal of Conflict Resolution*, Vol 40, No 1, March 1996, P 98-130

¹⁰ Naomi Chazan, *Politics and Society in Contemporary Africa*, P 215

IV. Conflict Resolution

Many social systems, however simple, possess a range of mechanisms or procedures built in the social structure that are consciously employed to members to help in containing conflict situations that arises between entities within that society, or in limiting the destructive effects of ensuing conflict behavior.¹¹

The range of techniques employed is what is referred to as conflict management in any society. It may include; preventing the development of conflict situations, or once they have developed, preventing them from resulting in disruptive conflict behavior or once this has arisen, having the undesired conflict behavior, or removing its source through some form of settlement agreement. This is what is called conflict resolution.¹²

Conflict resolution as Mitchell writes, are techniques that “aim primarily at altering conflict behavior and then reaching a compromise solution in which the parties make ‘fair’ sacrifices of some of the goals in dispute in order to achieve others.” Conflict resolution aims at providing a solution which is generally acceptable to parties to the conflict, which they themselves have evolved and which for these reasons is self-supporting, below are some form of conflict resolution mechanisms discussed in brief.

- **Negotiation**

One possible way to resolving divergent interests and the incompatibility of goals between individuals is by the process of negotiation. The word “negotiation” can best be defined as a discussion between two or more parties with the apparent aim of resolving incompatible preferences¹³. It is a problem solving process in which two or more people voluntarily discuss their differences and attempt to reach a joint decision on their common concerns.¹⁴

The ultimate idea is to peacefully and consensually bring two or more hostile or opposing views, ideas, goals or interests of two or more parties on to a common ground of understanding that seeks to establish a solution which satisfies the parties’ competing interests. However, a common interest on the part of the opponents to avoid violence, or to put an end to it, is a necessary condition for any successful negotiation.

- **Arbitration**

In an event where parties to a conflict are unable to resolve or manage their differences between themselves through negotiation or by persuasion through the mediating efforts of a third party, they may determine that their differences be ameliorated by having a

¹¹ Kurt Schock, A conjunctual Model of Political Conflict: The Impact of Political Opportunities on the Relationship between Economic Inequality and Violent Political Conflict, in *Journal of Conflict Resolution*, Vol 40, No 1, March 1996, P 98-130

¹² Ibid, P 256

¹³ Dean G. Pruitt and Peter J. Carnevale, *Negotiation in Social Conflict* (Great Britain: St Edmundsbury Press, 1993) p.2

¹⁴ Ann Halpern, *Negotiating Skills* (London: Blackstone Press Limited, 1993) p.3

third party hear their positions and determine which side has the best case.¹⁵ This process is referred to as arbitration.

The decision to take a matter of differences to an impartial person is essentially voluntary and consensual in nature between the parties in the conflict. The parties to the conflict will then have to agree that settlement to their dispute is preferable and that settlement will be in the form of an award rather than a compromise outcome.¹⁶

- **Mediation**

Mediation is a form of third party intervention in a conflict with the stated purpose of contributing to its abatement or resolution through negotiation. In a situation where two or more parties to a conflict find it difficult to manage and resolve their conflict on their own, it may be appropriate to recommend an outsider to help in resolving the conflict situation.

Mediation differs from other forms of third party intervention in two ways. It is not based on the direct use of force, and it is not aimed at helping one of the participants to win. It involves a third party adopting a role between disputants and helping them move out of conflicts mode into a process of collaborative negotiation¹⁷. It also performs additional functions. Mediators suggest ideas for a compromise, and they negotiate and bargain directly with the adversaries. Mediation is not arbitration. Whilst arbitration uses judicial procedure and issues a verdict that the parties have committed themselves to accept, mediation is basically a political process without advance commitment of the parties to accept the mediator's ideas.¹⁸

Holsti notes that, from a bargaining point of view, third party intervention into a conflict or crisis may provide a feasible avenue of retreat for governments that wish to withdraw gracefully without appearing to back down before threat from the main opponent. A compromise yielded to a third party may be easier to arrange than withdrawing in the face of the enemy.¹⁹

¹⁵ Deborah Borisoff and David A. Victor, *Conflict Management: A Communication Skills Approach*, P. 18

¹⁶ K.J Holsti, *International Politics*, P 419-420

¹⁷ John Crawley, *Constructive Conflict Management: Managing to Make a Difference* (London: Nicholas Brealey Publishing, 1992) P. 177

¹⁸ Kenneth Kressel, *Mediation Research* (California: Jossey-Bass Publishes, 1989) P.177

¹⁹ Ibid 16, P 417

V. Kenya's Post – Election Crisis 2008

• Disputed Election Results

The Opposition party Orange Democratic Movement (ODM) held a strong lead in vote counting on December 28 2008 in Kenya's General Elections. The day after the election, the ODM declared its victory. However, as more results were announced on the same day, the gap between the two candidates; Raila Odinga and Mwai Kibaki representing ODM and PNU (Party on National Unity) respectively, narrowed and with almost 90% of the votes counted (180 out of 210 constituencies), ODM's lead shrank to only 38,000 votes.

The Electoral Commission declared President Kibaki the winner on December 30 placing him ahead of the Opposition by about 232,000 votes. According to the opposition, as many as 300,000 votes for President Kibaki were falsely included in his total votes scored.²⁰ Meanwhile, supporters of President Kibaki maintained that discrepancies had actually worked in favor of the Opposition, arguing that discrepancies between polling station tallies and Electoral Commission results meant that Opposition had gained 53,000 votes while President Kibaki had lost 106,000²¹.

The Opposition accused the ruling party of fraud, urged the President to concede defeat, and called for a recount arguing that they would not take the matter to the court because the institution is under the control of the government.

Following the Commission's declaration of his victory, President Kibaki was promptly sworn in for his second term on the same day, calling for the "*verdict of the people*" to be respected and for "*healing and reconciliation*" to begin²². Within minutes of the Commission's declaration of President Kibaki's victory, tribe-based rioting and violence, primarily directed against particular tribe broke out across the country. The Opposition pointed that "a clique of people around The President" sought to rig the election, unless stopped; the "ruling clique" could rig the next election in five years as well.

The Chairman of the Electoral Commission, Samuel Kivuitu did consented that there were some problems in the vote counting, noting that in one constituency the reported turnout rate was more than the total number of registered voters, and such irregularities were matters for the court to decide and not of the Electoral Commission.²³

According to the European Union's head observer in the election, Alexander Graf Lambsdorff, the election was "flawed" and the Electoral Commission failed to establish "the credibility of the tallying process to the satisfaction of all parties and candidates." They however said that in some places EU observers were not allowed to see vote tallies

²⁰"*Kenyan's riots after rigged elections*", AFP (theage.com.au), December 31, 2007.

²¹ Barney Jopson, "*Kenyan Police try to block opposition rally*", Reuters (*Financial Times*), January 3, 2008

²² Stephanie Mc Crummen, "*Incumbent Declared Winner in Kenya's Disputed Election*", The Washington Post, December 31, 2007

²³ "*Kenya election results expected today*", SABC News, December 30, 2007

until the Electoral Commission announced them making it impossible to compare the tallies to the Electoral results.

The United Kingdom's Foreign Secretary David Miliband said that his country had "real concerns" about the election. While the United States initially congratulated President Kibaki and called for the results to be respected, in a twist of events, on January 2nd through the United States State department spokesman declined to confirm U.S recognition of President Kibaki's victory. The Opposition announced its intention to hold a ceremony on December 31 in which Mr. Odinga would be declared the "*people's president*", which was then delayed²⁴, but called for a million-strong rally on January 3rd and for the supporters to wear black armbands as a show of mourning.

ODM's stand was that it would *not negotiate* with The President unless he resigned, because to do so would mean acknowledging his legitimacy. For his part, The President emphasized the importance of peace, stability, and tolerance in his 2008 New Year's message, speaking of the election as a concluded event and warning that law-breakers would be punished.²⁵

VI. Mediation Processes Under The Panel Of Eminent African Personalities

Mediation process was considered inevitable in Kenya's political crisis when both parties realized that what they needed was a political solution to the crisis and neither side would have proceeded on its own. Judicial process was no longer an option as the legal time limit for resolving the issue had elapsed while other options became the only way out. Besides, the inordinately slow pace of dealing with election petitions was given as the reason for subjecting parties into extra-judicial attempts to broker political justice.

The Mediation Process began with Nobel laureate Archbishop Desmond Tutu meeting with both President Kibaki and Mr. Odinga with hopes of encouraging the leadership to take action that would stop violence that had caused 300 death and as many as 75,000 people internally displaced by then²⁶. On the other hand British Prime Minister Gordon Brown appealed to Ghanaian President and the then African Union chairman John Kufuor and Head of the Commonwealth's electoral observer mission former sierra Leonean President Ahmad Tejan Kabbah to intervene.

President John Kufuor's intervention by meeting both President Kibaki and Mr. Odinga yielded no results and left Kenya with no deal, out of efforts to reconcile former United Nation's General Secretary Kofi Annan was considered to head a team of eminent African personalities which constituted Former Tanzanian President Benjamin William Mkapa and Former Mozambican First Lady Graca Machel to broker peace.

²⁴ "Odinga rejects Kenya Poll results", BBC News December 31, 2007

²⁵ Fred Mukinda and Samuel Kumba, "Kibaki warns law breakers of stern action," Daily Nation (Kenya), January 1, 2008

²⁶ Michelle Vu, "Tutu Begins Mediation Talks with Kenya Leaders", Christian Post Report. January 03, 2008

In his efforts to end a post- election crisis and deepening tribal bloodshed, Annan brought together President Kibaki and Mr. Odinga to launch formal mediation and confidently said that the “immediate political issues” could be resolved within four weeks and broader issues underlying the crisis within a year.²⁷

On 28th February 2008, the world watched Kofi Annan and his team and African Union chairman President Jakaya Kikwete as they brought together the two rivals in signing a historical deal which was the key to a peaceful and agreeable settlement of the post-election impasse. British Prime Minister Gordon Brown said on this occasion that Kenyan’s leaders have reached a power-sharing agreement that represents a triumph for peace and diplomacy, and a renunciation of the violence that has scarred a country of such enormous potential.²⁸

VII. Success Of Kofi Annan Mediation

In every dispute, the mediator exerts a specific degree of control over the sequence of negotiation and problem solving steps and management of individual agenda items. He must choose on the basis of the situation, the parties, and the issue in dispute whether to have limited influence and make few procedural suggestions; to be moderately influential and provide some structure over which parties have a low degree of control²⁹. Anna’s success can be attributed to his known experience which includes among others:-

- **Identity and character as a mediator**

Mediators cannot function without securing the trust and cooperation of the disputing parties. To be accepted by the adversaries and to secure their positive attitudes and disposition, a mediator must be perceived as independent and credible. Unlike in Burundi conflict where Tanzania’s former president Julius Nyerere was perceived biased in favor of the Hutu and lost some credibility due to his role as the enforcer of regionally imposed sanctions against the Buyoya regime.³⁰ The adversaries’ motivation to engage in conflict management and their confidence in a mediator will be enhanced if the mediator is seen by both sides as a knowledgeable and skilled participant in the process³¹.

Kofi Annan kept the parties at the table for 41 days while many senior advisors and constituents urged otherwise. Simultaneously he managed public perceptions through frequent impartial and optimistic statements to the press, thus urging patience and support for the process. Successful mediation depends not only on the mediator’s knowledge and skill about conflict and conflict management, but also on his prestige and authority, originality of ideas, access to resources and ability to act unobtrusively.

²⁷ “*Anna’s Role in Mediation in Kenya*”, The Journal of Turkish Weekly, 30 January 2008

²⁸ Patrick Wachira “*Finally The Peace Deal*” The East African Standard 29 February 2008

²⁹ Christopher W. Moore, *The Mediation Process; Practical Strategies for Resolving Conflict*, 3rd Edition Revised 2003.) P 382

³⁰ Dave Peterson, “Burundi Transition. A Beacon for central Africa”, Journal of Democracy P 127

³¹ Ibid 29, P 383

- **Power and skills to involve international community**

Conflicts do not occur in a vacuum. There are always other parties who know about or are concerned with the outcome, or whose influence can be brought in to mobilize and influence disputants³². Certain people wield associational influence on disputants to the extent that their opinions or actions affect the parties' attitude or behavior.

This was manifested when the US Secretary for foreign affairs Condoleezza Rice met both President Kibaki and Mr. Odinga on a mission to deliver message from President George Bush on the need to settle the lingering political crisis protracted the county. She was reported to have said that, her mission was to join Kofi Annan, who was heading the mediation talks on behalf of the African Union and the international community to help the and Kenyans leaderships to end the political crisis.

- **Expertise**

Annan followed mediation's best practices by remaining neutral, facilitating the process, not owning the outcome, engaging in effective reality testing with the leaders and their constituents, and maintaining constructive momentum by reminding parties how much had already been achieved as well as emphasizing areas of common interest.

By following such best practices the achieved accord was able to address the underlying structural causes of the conflict. He was emphatic that his team of panel of Eminent African Personalities was of the same spirit of not giving up in mediation and they cannot afford to fail in Kenya.

VIII. Mediation Outcome

President Kibaki and Mr. Odinga signed an agreement on power sharing, which ended crippling political crisis triggered by the discredited presidential elections on 28 Feb. 2008. The agreement provides the means to implement a coherent and far-reaching reform agenda, to address the fundamental root cause of recurrent conflict, and to create a better, more secure, more prosperous Kenya for all³³.

British Prime Minister Gordon Brown expressed his satisfaction in the way and manner the protracted political crisis in Kenya was resolved through mediation. He described this as a triumph for peace and diplomacy and above all renunciation of violence that has brought enormous suffering to the people and a big threat to Kenya's evolving democracy.

To resolve the Political crisis, and in the spirit of coalition and partnership, they agreed to enact The National Accord and Reconciliation Act 2008 whose provision had been agreed upon by both parties.³⁴ The new office of Prime Minister was established with

³² Ibid 29, Page 388

³³ Agreement on the Principles of Partnership of the coalition Government Agreed on 28th February 2008

³⁴ Ibid

Power and authority to co-ordinate and supervises the functions of the Government³⁵. The office is to be occupied by an elected MP who will also be the leader of the part or coalition with majority members in Parliament³⁶. His removal and that of his deputies will only be through a vote of no confidence by majority MPs, death, resignation or ceases to be a member of the National Assembly³⁷.

Besides having political stability and resettlement of internally displaced persons, Members of the National Dialogue and Reconciliation team confirmed to have discussed and passed the draft Bills (Truth, Justice and Reconciliation, Ethnic and Race Bills) setting the stage for the formation of Truth, Justice and Reconciliation Commission and that of Ethnic and Race Relations Commission. The Two Bills will address the historical injustices and human rights violation that had rocked the country. The Bills are to be forwarded to Attorney General to be published in the gazette, paving the way for its enactment in the parliament.³⁸

On the other hand the government is preparing a conflict resolution policy for school curriculum in response to effects of post–election violence with contemporary issues shall be incorporated in the curriculum particularly in subjects that will enable pupils learn values of tolerance, problem solving, dialogue and peaceful co – existence.

The peace education manuals came in the awake of massive battering of the education sector during the post–election violence. The Ministry of Education Permanent Secretary, Prof. Karega Mutahi reported to have said in a workshop of Education officials preparing the manual to avoid the creation of a violent generation. What is needed is to embrace peace and transmit values that lead to mutual acceptance among the people.³⁹ The initiative which is first of its kind in Kenya would strengthen peace building throughout the learning process and would cost 2.4 Million Kenya Shillings.⁴⁰

³⁵ Section 4 (1) (a) The National Accord and Reconciliation Act 2008

³⁶ Ibid, Section 2 (a) and (b)

³⁷ Ibid , Section 4 (4) (a)

³⁸ Dave Opiyo, “AG, to Publish Bills on Injustice”, 30 April 2008 Daily Nation

³⁹ Samuel Otieno “Conflict Resolution Syllabus for School,” The East African Standard 30 April 2008

⁴⁰ Dr. Olivia Yambi, The UNICEF Kenya Representative, “Conflict Resolution Syllabus for Schools”, The East African Standard 30 April 2008

IX. Conclusion

Kenya's post-election crisis has shown the world that Africans should take the responsibilities of shouldering the task of resolving their internal conflict, since interventions from outside can only impose solutions that will never provide a cure to the malady. Gone are the days when Africa will wait for external assistance to put their house in order.

Donald Horowitz write, " What stands out is just how ineffective the international community has been in imposing a modicum of civility on even those small states one might have thought it was in a position to coerce: Rwanda, Burundi, Somali etc. Actually, when states themselves have taken the initiative, they have done better-which suggests that those domestic problems are best handled domestically, although they are rarely handled well at all⁴¹. African's know their problems and the causes of the problems better perceive them differently and should therefore apply their own remedies to them independently. In compendium, the resolution of political crisis in Kenya through the medium of mediation emphasized the viability of mechanism in resolving social political and ethnic problems as reflected in this discourse.

⁴¹ Timothy D. Sisk *Power Sharing and International Mediation in Ethnic Conflict* United States Institute of Peace Washington D.C (1996) P. 87

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