

# FORTY DAYS AND NIGHTS OF PEACEMAKING IN KENYA

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We are ready to go the extra mile to achieve peace. Today, we take the first step. My party and I are ready for this long journey to restore peace in our land ... We urge our people to be patient as parties work day and night to ensure that negotiations do not last a day longer than necessary.

Raila Odinga, leader of the Orange Democratic Movement  
(*East African Standard* 25 January)<sup>1</sup>

Kenya is a vital country in this region and the international community is not ready to watch it slump into anarchy.

Norwegian Ambassador Hellen Jacobsen  
(*East African Standard* 15 February)

I will stay as long as it takes to get the issue of a political settlement to an irreversible point. I will not be frustrated or provoked to leave. It is in the interest of the men and women of Kenya, the region, Africa and the international community to have a new government.

Former UN Secretary-General Kofi Annan  
(*Daily Nation* 16 February)

## ABSTRACT

*Recent studies on resolving civil conflicts have focused on the role of external actors in husbanding durable agreements. The contribution of authoritative parties is vital to the mediation of conflicts where parties are frequently*

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<sup>1</sup> In the interests of avoiding repetition citations will carry the date and month only unless the year is anything other than 2008.

*too divided and where the stakes are too high to allow bilateral solutions.<sup>2</sup> In the wide-ranging conflicts that convulsed Africa throughout the 1990s mediators helped the combatants to reach ceasefires and find constitutional structures that restored a modicum of stability and civility to tattered polities. More recently, electoral conflicts in Africa have emerged as new sites of external intervention, attracting multilateral and regional actors. The much-publicised cases of Kenya and Zimbabwe are instructive in this regard and constitute interesting areas of research into how external parties have tried to influence the trajectories of coalition governments.*

*This paper reviews the peacemaking process in Kenya after the contested and violent outcome of the December 2007 elections. After a series of false starts in early January the mediation process stabilised around an African Union (AU) Panel of Eminent African Personalities, comprising former United Nations Secretary-General Kofi Annan, former Tanzanian President Benjamin Mkapa, and Mozambican luminary Graça Machel. In about 40 days the panel steered the parties toward a power-sharing agreement that was signed on 28 February 2008. In tracing this process I am interested in the issues, the personalities who animated the negotiations, and how the mediators (alongside other external actors) produced the power-sharing outcome. The analysis begins with a background to the conflict, furnishing brief insights into the questions that sparked the violence. This is followed by discussion of the various people who attempted to mediate the conflicts before the emergence of the panel. Subsequent sections address how the mediators engaged the parties and the process of reaching the agreement. The paper concludes with a brief discussion of the role of mediators and lessons for other conflicts.*

## BACKGROUND

The elections of 27 December 2007 were the fourth electoral exercise in Kenya since the inauguration of the multiparty era in the early 1990s. They were momentous because of the large voter turnout, reflecting a yearning to achieve a better future through the ballot box.

They also symbolised a learning process through which, after three elections of varying competitiveness and openness, the electorate had begun to be acclimatised to the perception that it could make a decisive difference through the vote, whether in local, parliamentary, or presidential elections.

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2 For a summary of some of these studies see Maundi 2006 and Khadiagala 2007.

In previous years multiple efforts by civic organisations had endowed Kenyans with an adroit sense of agitation and education that resulted in the electoral triumph of 2002, when the National Rainbow Coalition (NARC) managed to mobilise across ethnic and class lines to put an end to the sloth and decay the government of Daniel arap Moi had visited on the nation for 24 years. Civic education began to create an engaged and informed citizenry that stood firm when the elected government of Mwai Kibaki procrastinated about instituting genuine constitutional reforms and lapsed into corruption and ethnic provincialism. In the 2005 constitutional referendum the government was soundly defeated when it supported a constitutional draft that fell short of national expectations.<sup>3</sup>

After the constitutional referendum disenchanting members of NARC who had fallen out with the Kibaki government formed the Orange Democratic Movement (ODM), a multi-ethnic alliance of mainly the Luo, Luhya, Kalenjin, and Coastal groups under the leadership of Raila Odinga. Remnants of NARC and a collection of other parties constituted under the Party of National Unity (PNU), led by Kibaki, drew support among the majority Kikuyu and their ethnic allies in Central Kenya.

An ODM splinter group, ODM-Kenya, led by Kalonzo Musyoka, was exclusively composed of the Kamba ethnic group. Although these tripartite blocks seemed to present a picture of ethnic polarisation in reality they dovetailed more or less with the ethnic balance of forces across the country. Given the history of ethnic mobilisation political parties in the multiparty era tried to forge alliances with some semblance of a national outlook, even though their primary organisational base remained solidly ethnic and regional.

Since the successful multi-ethnic alliance that had produced the NARC victory in 2002 the major challenge facing Kenya was whether such alliances would translate into predictable and principled organisations or whether they would remain momentary instruments for electoral contestations. The latter proved to be the case when, barely a year into the Kibaki administration, the NARC alliance unravelled and elites retreated back into ethnic cocoons.

In addition to the salience of ethnicity, the lead-up to the December 2007 elections was characterised by profound disenchantment with the Kibaki administration. With the government's defeat in the constitutional referendum the ODM coalesced around a reform agenda of constitutional change, anti-corruption, and anti-cronyism. Rightly or wrongly, the Kibaki administration was perceived throughout the campaign period as the major impediment to constitutional reforms that would decentralise power away from the imperial presidency.

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3 For analyses of the 2007 and previous elections see Branch & Cheeseman January 2009; Barkan 2004; Khadiagala 2008.

On the other hand, the ODM was successful in galvanising the masses around a renewed sense of expeditious constitutional change. Similarly, the opposition campaigned vigorously against corruption, pointing to the multiple corruption scandals that had emerged on Kibaki's watch. All these grievances were attributed to the fact that Kibaki had surrounded himself with cronies from Central Kenya (*Economist* 10 January).

The high voter turnout, the PNU's loss of major parliamentary seats, and the defeat of half the members of President Kibaki's Cabinet all seemed to indicate a decisive win by the ODM. In the parliamentary contest the ODM won 99 of 210 seats against the PNU's 43. But the triumphant mood soon dissipated with the inordinate delays in the announcement of the results of the presidential vote in many constituencies.

Between 28 and 30 December the final tabulation of presidential votes from constituencies descended into chaos as the Electoral Commission of Kenya (ECK) sought to allay fears of massive rigging in favour of Kibaki. The ECK's credibility was dented when its chairman, Samuel Kivuitu, admitted in the course of the counting that some key constituencies had doctored the presidential results. At the end of a politically charged waiting period and behind closed doors the ECK hastily named Kibaki the winner after the media and observers had been hounded from the counting centre.

Kivuitu announced that Kibaki had won 4 584 721 and Raila 4 352 993 votes. On the evening of 30 December 2007 Kibaki was sworn in at a private ceremony at State House. Subsequently, Kivuitu stated that the PNU and ODM-K had forced him to announce the results, even though there had been irregularities in the tallying.<sup>4</sup>

The internecine post-election violence that left 1 300 dead and 350 000 internally displaced persons (IDPs) was an outcome of the bungled election, reflecting widespread anger at the ECK's abdication of its role as a neutral arbiter of political contests. Political analysts identified three forms of violence that mutated and intensified as the conflict evolved. The first was countrywide disorganised, spontaneous protests at the announcement of the result. The second was organised militia activity, starting in the Rift Valley and gradually spreading to Central Province. In the Rift Valley militia activity, carried out mainly by the Kalenjin ethnic group against the Kikuyu, took the form of killings, destruction of property, and displacement of people.

In response, long-standing militia organisations such as the Mungiki (predominantly a Kikuyu militia with roots in the Rift Valley and Central

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<sup>4</sup> The Independent Review Commission (IREC) appointed after the conclusion of the mediation and headed by retired South African Constitutional Court judge Johann Kriegler heaped blame on the ECK and recommended that it be disbanded.

Province) re-emerged to exact revenge on ODM supporters in these regions and Nairobi's slums. The third form of violence was the excessive use of force by the government's security forces in attempts to contain the initial spontaneous protests, largely in Nyanza Province, where most of the extra-judicial killings occurred.<sup>5</sup> This is the combustible environment which the external mediators entered to try to pull the country from the brink of disaster.

#### THE SEARCH FOR A MEDIATOR: 2-10 JANUARY 2008

Studies of mediation in civil conflicts devote attention to the structural factors that compel outsiders to become participants in conflict resolution by probing the role of stalemates in forcing parties to accept outside mediation. From this perspective effective mediators are often driven by the desire to redress almost impossible situations in which combatants are incapable of finding solutions on their own.

Informed by both altruistic and pragmatic motives mediators seek to break the stalemate and to move the parties from unilateral to multilateral solutions.<sup>6</sup> Like all civil conflicts the post-electoral violence that afflicted Kenya epitomised the inability of combatants to craft local solutions.

Locked in zero-sum mentalities the PNU and ODM faced a grinding stalemate that was exacerbated by the escalating violence. With the parties short of concrete ideas about how to extricate themselves the door was opened for external mediators.

Deepening the stalemate was the attempt by both parties to lay claims to legitimacy: the PNU claimed from the outset that it had won the election while the ODM claimed the PNU had robbed it of its rightful victory. Confident that it had won the PNU asked the ODM to launch a legal challenge in the courts. The government's hard-line position was underlined by its deployment of police and security forces in major venues in Nairobi to prevent ODM-led mass protests and threats to install a parallel government.

Stalemates partly explain the necessity for external intervention but they do not explain why particular mediators intervene. African conflicts are notable for the number of mediators who converge on them. Given the competition among multiple parties it is always critical to delineate who should mediate (Maundi, Zartman, Khadiagala & Nuamah 2006).

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5 See, eg, Gabel, Kennedy & Wyly 2008. The inquiry into the electoral violence led by Justice Philip Waki and appointed after the signing of the agreement concurred with this characterisation of the violence.

6 On the role of stalemates in negotiations see Zartman 1988.

In the Kenyan context the entry of mediators was complicated by a legacy of national pride that had accumulated in the years of relative political stability. Kenya had often associated mediation enterprises with failed states. When, therefore, various mediators began to propose intervention to resolve the conflict most of the country's leaders, particularly those in government, were reluctant to countenance the intrusion of outsiders. Yet despite invocation of sovereignty the traumatic violence after the elections and the potential descent into state failure made the country a genuine candidate for external mediation.

Equally significantly, critics of mediation faced sustained pressure from powerful external players concerned about the implications for the entire region of Kenya's meltdown. From the outset Western donors harped on Kenya's strategic significance in the Great Lakes and East African region. International outrage and pressure was decisive in galvanising leverage and attention that was to produce an admixture of threats of sanctions and promises of aid for economic recovery.

Three days into the violence South Africa's Archbishop Desmond Tutu emerged as the first mediator under the umbrella of the All Africa Conference of Churches (AACC). Preliminary efforts by a group of prominent Kenyans, the Concerned Citizens for Peace, led by Bethwell Kiplagat and Lazarus Sumbeiywo, to institute a locally driven mediation process had fallen on deaf ears. Archbishop Tutu intervened at a delicate moment, when there was no communication between the parties and at the height of the much publicised burning of people in churches in Eldoret, Western Kenya, and Mathare, one of Nairobi's slums.

By means of moral suasion and appeals for decency Tutu tried to induce the parties to accept international mediation. At a meeting with the ODM on 3 January 2008 he pressed for negotiations and received a commitment that Odinga would accept international mediation (*East African Standard (EAS)* 3 January).

Coinciding with Tutu's bid were frantic diplomatic efforts led by Western countries for an African-led mediation process. On 2 January US Secretary of State Condoleezza Rice and British Foreign Secretary David Milliband joined the African Union (AU) in a call for an end to the ethnic violence and for a 'compromise' among the political leaders 'that puts the democratic interests of Kenya first' (*Daily Nation* 3 January; Kpodo 2008).

At a press conference during Tutu's visit Odinga acknowledged that British Prime Minister Gordon Brown and Secretary of State Rice had proposed the AU Chairman and Ghana's President John Kufuor, Kofi Annan, and former Sierra Leonean President Ahmad Tejan Kabah as mediators. Odinga accused President Kibaki of refusing to allow mediation, ostensibly because there was 'no crisis that warranted foreign mediators'. More poignantly Odinga ruled out power sharing with Kibaki, claiming that 'I cannot share power with a dishonest person' (*EAS* 3 January).

After two days of trying to secure an appointment with Kibaki Tutu finally had a meeting but failed to persuade the government to concede to negotiations. In an indication of the government stance Kibaki gave his first press conference since being declared winner, directing the security services to apply the full force of the law against perpetrators of violence. He also ruled out the formation of a transitional government and told those dissatisfied with the election results to 'go to court and follow the law'. Although hinting that the government was ready to hold 'dialogue with concerned parties' Kibaki insisted that he could only talk 'once the nation is calm and the political temperatures are lowered enough for constructive and productive engagement' (EAS 4 January).

Although Tutu's initiative was unsuccessful his presence demonstrated international attention to Kenya's plight and helped lay the groundwork for subsequent initiatives. While it secured the ODM's commitment to mediation Tutu's moral authority had no impact on the government, which was growing increasingly confident that it would overcome the post-election strains.

Part of this confidence stemmed from recognition by Uganda, whose leader, Yoweri Museveni, was the only president to congratulate Kibaki on his re-election. Wearing the hat of chairman of the East African Community (EAC) Museveni had initially tried to intervene as a mediator but the government had rejected the move. In addition, with the media reporting that Museveni had sent an army to Western Kenya to bolster the government's defences the ODM denounced him as a meddler (Bogere 2008). The government's position was also boosted by a leaked memo from World Bank Country Director Colin Bruce, reportedly endorsing Kibaki's claim to victory and dismissing as 'not thorough and precise' statements by the EU observer mission that the election had been riddled with irregularities. On 8 January 2008 Bruce wrote:

The considered view of the UN is that the ECK announcement of a Kibaki win is correct. Upon receiving the complaints from the opposition about irregularities last Saturday, the ECK spent 24 hours, in the presence of observers, reviewing each concern. On balance, they determined that there were more irregularities of consequence on the Odinga side than on the Kibaki side. For example, ECK considered reported turnout above 90 percent to be a red-flag for irregularities. Data available so far indicates that the highest reported turnout in a Kibaki stronghold was 90 percent; in the Odinga strongholds, there were 6 heavily populated areas with reported turnout of between 102 to 116 per cent.

Ndegwa, Fortunate, Ratemo & and Ogutu 2008; Muriuki 2008; Kareithi 2008

Although the United Nations office in Nairobi subsequently disowned Bruce's memo it lent some legitimacy to a government that was increasingly facing condemnation from some of its key Western allies. As a sign of the government's growing confidence Kibaki named a 17-member Cabinet on the eve of the arrival of AU President John Kufuor.<sup>7</sup>

President's Kufuor's arrival was delayed by mixed signals from the government, typified in the statement of Foreign Minister Moses Wetangula that: 'We did not invite him and there are no plans to invite him because we did not see the need to do so since the current crisis emanating from the elections is a Kenyan issue that can be resolved by Kenyans' (Cheboi 2008).

After some hesitation the government relented and welcomed Kufuor on 7 January. Kufuor's intervention took place alongside mounting pressure from the Bush administration for the United States to play a more active role. The presence in Nairobi of the US Assistant Secretary of State for African Affairs, Jendayi Fraser, from 4 January underlined the US administration's sense of the urgent need to expedite the negotiations.

In almost 10 days of meetings with the two principals Fraser pushed for an end to the bloodshed and for international mediation. When the government remained obdurate Fraser suggested that there could be no 'business as usual' between the US and Kenya as long as the post-election stalemate persisted. Later, at the AU summit in Ethiopia, Fraser issued the first threat of forceful action against the feuding Kenyan parties, warning that: 'We'll find an international mechanism if they can't find it internally' (see Lobe 2008).

Prior to Kufuor's visit Odinga moderated his hard-line stance demanding Kibaki's resignation, saying he would negotiate with the government in the presence of international mediators. The government, too, shifted its position on mediation, welcoming Kufuor. Kufuor's engagement, unlike that of Tutu, drew on the broader institutional anchorage of the AU and the international community. He was expected to use this broad-based power to arrange a meeting of the two leaders to map out the cessation of violence and an agenda to begin the talks. The task was made more urgent by warnings from relief agencies of a looming humanitarian emergency among tens of thousands of displaced civilians across the country. In addition a new front had opened up in the ethnic violence in Central Kenya as the Mungiki militia forced the exodus of non-Kikuyu from the region.

Shuttling between the two leaders from 8 to 11 January Kufuor found them to be hostile and uncompromising antagonists. While the ODM showed

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7 In the words of a British diplomat in Nairobi, by naming the Cabinet Kibaki essentially slammed the mediation door in President Kufuor's face: 'The situation is indeed getting desperate and it is up to Kufuor to defuse it now. How he will do it is unclear because, by naming the cabinet, the government told him, thanks for coming, but no mediation please.'

readiness for negotiations and called off mass action across the country it demanded negotiations leading to the formation of a transitional government which would help organise new presidential elections. On the other hand, the government leaned towards incorporating key ODM figures in the Cabinet Kibaki had announced.<sup>8</sup>

The government also demanded direct talks with the ODM, a position the latter described as ‘public relations gimmickry’ (BBC 9 January). Kufuor tried to reconcile these differences by drawing on the collective pressure of Western diplomats in Nairobi and the presence of Assistant Secretary of State Fraser, but hopes for a direct meeting between the ODM and the PNU faded amid accusations of bad faith by both sides. On the final day of Kufuor’s engagement Odinga’s party distributed the text of an agreement to re-examine the flawed elections and hold fresh polls, but the government disowned it (Munene & Namunane 11 January; Voice of America 11 January).

In the aftermath of Kufuor’s intervention a government minister belittled the initiative, charging that Kufuor had come to Nairobi ‘to have a cup of tea’ with Kibaki (Cheboi 29 December 2008). Although Kufuor failed to persuade the two leaders to meet, his shuttle diplomacy yielded a concession by the parties to break the political impasse. Before he left Nairobi Kufuor had extracted from both Kibaki and Odinga an unconditional commitment to dialogue and the use of constitutional means to resolve the conflict. More importantly, Kufuor announced that:

The parties agreed to work together with a panel of eminent African personalities headed by Mr. Kofi Annan ... towards resolving their differences and all other outstanding issues including constitutional and electoral reforms. Both sides agreed there should be an end to the violence and they also agreed there should be dialogue.

Al Jazeera 11 January

Kufuor’s personal engagement played a critical role in the breakthrough but it also illustrated the shortcomings of presidential interventions in mediated processes. Presidents and other heads of state have potential clout as mediators, but they seldom have the time or the attention span to sustain protracted mediation processes.<sup>9</sup>

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8 Early indications of the government’s unwillingness were captured in a statement from the presidential press unit noting that Kibaki had ‘assured President Kufuor that he had already initiated a process of dialogue with other Kenyan leaders to find a sustainable solution to the current political situation.’

9 Graça Machel underscored the fact that President Kufuor’s mediation had not failed, observing that: ‘He realized that time is needed to build bridges and to find common ground. And being Head of State he could not have much time to remain in Kenya’ (Cheboi 29 December 2008, p 8).

The choice of Annan and his team thus came at an opportune moment to build on the gains of the high-profile engagement of Kufuor and the Western envoys. Although he had expected to arrive in Nairobi on 14 January 2008 illness delayed Annan's visit for a week.

#### ENTER KOFI ANNAN'S PANEL OF MEDIATORS 22 JANUARY TO 4 FEBRUARY

The invocation of African solutions to African problems stems partly from the use of former heads of states and other prominent personalities to mediate in cases of civil conflict. Since the 1990s the practice of using elder statesmen as mediators has become widespread, demonstrated by the involvement of Nelson Mandela and Julius Nyerere in Burundi, Joaquim Chissano in Northern Uganda, and, more recently, Olusegun Obasanjo and Benjamin Mkapa in the eastern Democratic Republic of Congo (DRC).

In most of these cases elder statesmen have mediated as individuals supported by a wide array of local and international institutions (Khadiagala 2007). The Kenyan case, however, was the first in which the AU had requested the collective efforts of three elders in a diplomatic engagement that drew on the varying strengths and experiences of the mediators. The panel epitomised collective power – the coalescence of diverse diplomatic and moral skills that would exploit the momentum generated by Kufuor's limited breakthrough.

In taking over the leadership of the mediation from Kufuor Annan became a symbol of continuity. Given his impeccable record in diplomacy and conflict resolution Annan's strength was grounded in broad international structures of authority and leverage. His global stature and continental credibility have given him the critical mediation skills – patience, persuasion and tenacity – necessary to navigate the Kenyan quagmire. He also had the mettle to shame, threaten, and harangue the parties at decisive moments in the negotiations.

As a former president of Tanzania Mkapa represented the power of geographical proximity; he was also familiar with the principal parties, an important ingredient in winning their respect. Although soft spoken Mkapa brought firmness and forthrightness to the negotiations.

The woman in the team, Machel, who has a solid international reputation and experience in managing difficult situations, lent feminine stamina and sharpness and succeeded in disarming the parties at crucial phases of the mediation.<sup>10</sup>

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<sup>10</sup> Glimpses of the personalities of the mediators are captured in Scott Baldauf's three articles in the *Christian Science Monitor* on 8 August 2008.

An additional element that worked in favour of the panel was that it was acceptable to both parties. This acceptability was to prove vital when the Kibaki government rejected the inclusion of South African industrialist Cyril Ramaphosa because of his alleged links to Odinga and the ODM.

The mediators faced an ODM negotiating team made up of James Orengo, William Ruto, former vice-president Musalia Mudavadi, and Sally Kosgei. The PNU team comprised mostly lawyers – Justice Minister Martha Karua, Minister of Foreign Affairs Moses Wetangula, and Mutula Kilonzo. The Minister of Education, Sam Ongeru, was the only member of the PNU without a legal background. In the immediate aftermath of the contested elections these three lawyers had emerged as the most consistent supporters of the Kibaki government and had developed a reputation as hardliners.

Overall, as Baldauf (8 August 2008) observed:

Together, these eight men and women were Kenya's brightest and most ambitious. And over the next five weeks, their debates on arcane points of constitutional law would form the sophisticated counterpoint to the images of vicious street fighting that were redefining Kenya in the eyes of the world.

The composition of the PNU delegation deepened the perception that the government had not entirely conceded the importance of a negotiated settlement. Furthermore, statements by other hard-line government ministers before the start of Annan's mediation underlined the intransigence about negotiations. For instance, even as Kibaki assured EU Commissioner Louis Michel on 20 January that he was ready to meet Odinga to jumpstart the negotiations John Michuki, a staunch Kibaki ally, contended that Kibaki had won and the government had no interest in inviting mediators: 'We did not invite the former presidents and Ghanaian President John Kufuor. Even Kofi Annan has not been asked to come by us. We have not complained to anybody. How can we call somebody after winning an election?' (Otieno 15 January; Ohito 20 January).

In the preparatory phase of the mediation Annan established three critical elements that would underpin it. First, he sought assurances from Western and African leaders that there would be no competing mediators, a problem that perennially confronts African mediators. As he pointed out at the end of the talks: 'I said we have to make sure there is just one mediation process. Otherwise you have the protagonists trying to bottom shop, looking elsewhere if they don't like what you are offering. You get diplomatic tourism and that is not good' (Cohen 3 March; Preston-McGhie August; Kelly 16 August). The freedom from competitive mediators allowed the panel sufficient room to manage the negotiations by

establishing the broad agenda that helped the parties frame the issues and search for mutually acceptable solutions.

Secondly, the mediation team embarked on a wide consultative process with multiple constituencies in Kenya to foster public dialogue and create confidence in the negotiations. Annan met for several days prior to the talks with leaders from religious, human rights, and business groups. There was also a deliberate effort to involve the media through regular briefings. Broad-based consultations, Preston-McGhie (August) notes, were an

important means by which the Panel and the mediation raised public confidence in the process ... Civil society provided well organized briefing papers and presentations to the Panel. Their high level of organization made these early meetings particularly useful. This also had an impact on the wide, sustained public support that the Panel enjoyed through the process as they felt that they had been heard and had a stake in the process from the outset.

As part of its engagement with the public the Annan team visited IDP camps in the Rift Valley, where violence continued to rage (*Daily Nation* 25 January; Bii & Ngetich 25 January).

Finally, Annan evolved a dual mediating strategy whereby he met with the key negotiators from both sides as well as consulting regularly with Kibaki and Odinga, the principals in the conflict. This strategy put a participatory stamp on the process by committing all the key players to major decisions, but it also became vital towards the end, when the talks deadlocked, a situation only the principals could resolve.

In a major breakthrough that initiated rapport between the principals Annan brokered a handshake between Kibaki and Odinga on 24 January. Annan took the opportunity to commit them to expeditious negotiations and respect for the final outcome. In addition, he reiterated the importance of their leadership in ending the crisis.<sup>11</sup>

When the negotiations began on 29 January the mediation team defined the crisis in political terms that required political solutions. Sidestepping the

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11 Throughout the negotiations Annan reiterated the theme of the responsibility of leaders to get the country out of the crisis. For instance, at a press conference on 8 February, he chastised the leaders: 'You have heard the business community talk about what this crisis is doing to the economy. 49 000 people have already lost their jobs and more may be on the way. Farmers can't get to the farm to till their land; some cannot get their produce to the markets. Women, children and men are displaced in the open sun. Is this what leaders are put in the office to do? So they realize they have a responsibility ... They know they have a great responsibility and they know what the people and the nation expect of them.'

contentious question of who won the election Annan tried to get the parties to think positively about the road to peace. Sensing a stalemate he encouraged both parties to contemplate a power-sharing solution that would benefit the country. As he remarked later:

Kibaki's team kept saying, 'We won it fair and square', as Odinga's countered, 'You stole it fair and square'. Kibaki ... talked of 'accommodating' the opposition; Odinga ... bridled. If pushed, he would form 'an alternative government'. It took a while to convince them that there was no way either side could run the country without the other, that it was a perfect political gridlock.

Cohen 3 March

The panel presented the parties with a programme consisting of four core components:

- Agenda One: immediate action to stop violence and restore fundamental human rights.
- Agenda Two: addressing the humanitarian crisis and promoting national reconciliation.
- Agenda Three: negotiations on how to overcome the current political crisis.
- Agenda Four: Developing long-term strategies for durable peace.

To expedite the talks the parties agreed that the first three items would be resolved within seven to 15 days from the start of the dialogue, while the fourth would be resolved within a year ('Joint Statement by the Kenya National Dialogue and Reconciliation' 1 February; Namunane 29 January; *Daily Nation* 30 January).

The talks began amid relentless international pressure, demonstrated in the decision of the EU and the World Bank to curtail assistance to Kenya. The EU Council, for instance, made it clear that its relations with Kenya would be put in abeyance until a sustainable and consensual political solution was found. Noting that the political impasse and violence had greatly affected donors' engagement with Kenya as well as EU-Kenya relations, the council warned: 'Until a legitimate solution is agreed, the EU and its member states cannot conduct business as usual with Kenya' (Otieno 31 January).

One of the programmes most affected by the suspension of aid was the Governance, Justice, Law and Order Sector Reform Program, which lost \$41-million in donor funds. Similarly, in a reversal of its pro-Kibaki stance, the World Bank announced on 28 January that it would consider suspending or cutting

some of its aid programmes if a diplomatic solution to the political crisis was not found (Redfern 28 January).

When the negotiations (dubbed the Kenya National Dialogue and Reconciliation) began at the Serena Hotel in Nairobi the mediators set a deadline of two weeks in which to reach an agreement. The focus on reducing violence became more urgent with a fresh round of bloodletting stoked by the murder of two ODM members of Parliament. With both parties conceding that the violence was no longer confined to protests against the disputed election results and afraid of losing the political ground to militias it was easy for the mediators to reach a quick consensus about the need to end the violence.

Odinga poignantly admitted that violence was out of control: 'Death and despair are everywhere. The very foundation of the state is crumbling. Violence is spiraling out of control ... Yet we ourselves have resolved to act quickly to save our nation. If we don't, there might be no nation to save' (McCrummen 30 January, p A1).

On 1 February the teams reached agreement on ending the violence with a plan to disarm militias accused of ethnic attacks in Western Kenya and the opening of roads that had been blocked by demonstrators. The agreement also required the government to investigate charges of excessive use of force by the police (McCrummen 2 February, p A11).

Thanks to a combination of appeals for calm and the clampdown by security forces violence receded markedly, enabling the parties to move quickly on negotiations about measures to restore fundamental rights and liberties and tackle the humanitarian crisis, the settlement of internally displaced people, and the promotion of national healing and reconciliation. By 4 February the parties had completed negotiations on all the issues included in the second point on the agenda (Kenya National Dialogue and Reconciliation 4 February). Agreement on these issues paved the way for negotiating the more contentious question of power sharing.

## NEGOTIATING POWER SHARING

5-28 FEBRUARY

The power-sharing negotiations proved more intractable, consuming three and half weeks of the negotiation period. The strategy of the mediation team was to avoid what Annan referred to as a 'who-won-who-lost' mentality and the invocation of 'reruns and recounts', by focusing on the idea of sharing power between equals.

Annan believed that, given the close result, a coalition government would be the best way to restore calm and create a basis for future reforms. Furthermore,

the mediation team expanded the range of constitutional issues about which the parties could negotiate to prevent the future recurrence of electoral crises. The mediators' approach was to give the parties the opportunity to make written representations stating their positions, to clear up misunderstandings, determine underlying interests or concerns, find areas of agreement, and, ultimately, to incorporate those areas of agreement into resolutions (Cohen 3 March; Baldauf 8 August; Preston-McGhie August).

Having presented a broad road map for power sharing the mediation team faced the task of convincing the widely divided parties to move toward a common position. Having survived the outcry over the appointment of the Cabinet the government felt more legitimate and in control. Consequently the Kibaki team dismissed the power-sharing proposal, claiming they could not sit in the same government as ODM leaders who had instigated violence.

One report recorded that Annan 'endured harangues from Justice Minister Martha Karua, who said she was "breathless" at how Annan was "encouraging violence and lack of respect for the rule of law" by demanding power sharing with Odinga' (Cohen 3 March). Moreover, some factions within the PNU still insisted that the ODM should take its grievances to court and pushed for a recount of the presidential votes, expressing confidence that Kibaki would win.

The ODM, for its part, tabled a seven-point proposal whose key pillars included the resignation of Kibaki to pave the way for a rerun of the presidential election and the installation of a transitional government based on the parliamentary strength of each party. The ODM team stated that in view of evidence of alleged electoral fraud by the ECK and its 'incompetence, partisan and reckless conduct' a re-tally or recount was untenable, as the integrity of the electoral material had been violated.

It further claimed that a presidential rerun was 'absolutely necessary to restore the confidence of the Kenyan people in democratic elections'.<sup>12</sup> The parties articulated these contrasting positions in two days of talks starting on 5 February. The mediation team permitted them to present evidence to support their claims.

During the third week of negotiations the parties began to move slowly away from their divergent positions. First to concede was the ODM, which dropped its insistence that Kibaki should resign ahead of an election rerun. As Odinga stated, on 7 February: 'Initially, our stand was that we won the elections and Kibaki did not; that he should resign and we be sworn in. But we are not static on that point. We are willing to yield' (Oyaro 11 February).

The PNU withdrew its demand that the ODM challenge the election in

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12 For the positions of the parties see *EAS* 6 February and *Namunane* 6 February.

court and accept a recount of the presidential vote. Despite these concessions there were serious disagreements between the parties over how to share power and the institutional arrangements that would be required to implement the agreement.

With both sides stalemated on these issues the panel consulted the principals on 8 February in a bid to expedite the negotiations, but neither side was prepared to make any concessions. Annan attempted to drum up support for a power-sharing deal by appealing directly to members of Parliament and to the two principals to 'support their negotiators and give them instructions to settle' (press conference 8 February).

Annan used his address to Parliament on 11 February to unveil his power-sharing concept, proposing a 'grand coalition' to last for two years, after which a new election would be held.

Grand coalitions have served other nations well. A coalition government is an open option when a country is in a crisis and right now we are faced with a serious political crisis. The two sides come together and commit to sort out issues such as constitutional reforms and then organize an election.

Oyaro 12 February

To emphasise the importance of Parliament to the peace process Annan told parliamentarians they would be responsible for passing the constitutional, legal, and institutional reforms after the signing of the final agreement: 'You will need to work together to implement this heavy [legislative] agenda. Your active involvement, across party lines, is necessary. Without this, the Government may be paralyzed. You cannot afford to fail' (Namunane 11 February; Oyaro 12 February).

Karua denounced the mediators' proposal, maintaining that the matter had not been discussed at the talks and that the PNU's position had been misrepresented. Annan later stated that his statement represented his own views on the discussions and did not imply a formal agreement between the two parties (Press statement 13 February; see also Namunane 12 and 13 February).

Following the parliamentary briefing the negotiations moved to Kilaguni Lodge in Tsavo National Park to avoid what Annan called 'selective leaks', which were hampering the talks (Baldauf 8 August).<sup>13</sup>

In a bid to pressurise the parties to expedite the negotiations the mediation

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13 According to an observer, 'A new venue serves two purposes. It breaks the monotony of meeting in the same boardroom to discuss the same issues and it also takes the two teams away from the constituencies who may be urging each side to fight on.'

team set high expectations for the Kilaguni talks by announcing that a deal could be struck within 48 to 72 hours (*EAS* 12 February). To help with the negotiations the mediation team invited German Deputy Foreign Affairs Minister Gernot Erler to make a presentation on Germany's experience with a grand coalition government after the bitterly fought elections of 2005.

Taking the negotiating teams through a four-chapter presentation that touched on the principles of a grand coalition, preparation of a coalition agreement, the role of Parliament and conditions for the long-term success of the arrangement, Erler said: 'I told my colleagues that a grand coalition is not about love for each other, but about pragmatism. It is not easy to come together after a bruising election campaign so it is equally important to have good mechanisms in place' (Agina, Ohito & Ndegwa 15 February).

In two days of negotiations in the serenity of Tsavo National Park the teams, working in both mixed and individual groups, tried to tackle the key issues related to overcoming the political crisis. They reached consensus on the formation of an independent review committee which would have three to six months to inquire into the flawed presidential election.

The committee would also make recommendations about improving the electoral process, and its findings would be relevant to the envisaged comprehensive constitutional review. It was also agreed that a truth, justice and reconciliation commission would be established and reforms instituted to deal with issues such as reconstruction, correcting historical injustices, land reform, equity and devolution, the independence of the judiciary, and the reconstitution of the electoral commission and establishment of new constituencies (*Daily Nation* 14 February). The negotiations also put to rest a contentious issue with which the negotiators had wrestled from the start, as Annan (15 February) indicated:

Through the discussions, it became apparent that there is no viable way, either by a recount, re-tally, or any other measure, to determine the outcome of the 2007 elections in a way that would be expeditious and that would not further divide Kenyan society. All the options could only give us a quick fix to the problem but could not address the truth that we were looking for and we therefore agreed on a political solution which could involve bringing the parties together. However, the facts have to come out and Kenyans have to know what happened. We agreed that the system must be reformed so that such a crisis never happens again.

The agreement belied the deep divisions over the core of the governance arrangements. At Kilaguni the parties tabled contrasting governance proposals, the

ODM pushing for a coalition government with executive power shared among a prime minister, two deputies, the president, and the Cabinet. Such a government, the ODM argued, would be based on shared and delegated executive authority, proportionality at all levels, and balanced portfolios. It staked its claim to 55 per cent of Cabinet positions, leaving 45 per cent for the PNU and its alliance parties. Reeling from what it perceived as undue pressure from the Annan team the PNU argued that the ODM proposals were so fundamental that Parliament, on its own, could not pass them. Such far-reaching changes, the PNU contended, would require a national referendum because they entailed changing the government structure from a presidential to a parliamentary system. Instead, the PNU negotiators proposed a non-executive prime minister to serve at the pleasure of the president; further, they suggested that the president should have the prerogative to decide which members of the ODM should join the Cabinet.

The negotiations turned acrimonious and the Annan team adjourned the talks to allow the mediators to consult with Kibaki and Odinga.<sup>14</sup> In a press briefing on 15 February Annan put a brave face on the Kilaguni talks, underscoring the achievements made since the negotiations had begun in January. But he also cautioned that:

Milestones and benchmarks for the implementation of the reform agenda will be defined in our continuing discussions. I know that many of you have been eager to write the headline, 'We have a deal' on all the political issues. But I again advise patience. The issues are complex; reaching compromise is difficult. But let me assure you that there is real momentum. We are at the water's edge and the last difficult and frightening step will be taken. I am confident that, in the interests of Kenya and its people, the parties will show the wisdom, flexibility, and foresight to conclude an agreement ... On the issue of governance arrangements, the parties discussed the matter intensively and have developed a number of options, on which they have agreed to consult their principals and leadership and come back to continue negotiations on Monday [18th], with the hope that a final conclusion will be reached shortly after that. This is the only outstanding issue on Agenda Item 3 – How to Resolve the Political Crisis. In summary, we have defined the reform agenda for a new government and are now discussing the 'how' and the mechanisms required for implementation.

EAS 16 February; Agina, Ohito & Ndegwa 15 February

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14 For a summary of these positions, see *Daily Nation* 16 February.

The resumption of the talks on 18 February coincided with a high-level visit to Nairobi by US Secretary of State Rice, as part of the deepening pressure on the PNU to relax its hard-line position on power sharing.

### MOBILISING INTERNATIONAL PRESSURE AND ELICITING THE PNU'S IRE

In the aftermath of the Kilaguni talks the mediators recognised that sustained international pressure was the key to unlocking the gridlock. It was particularly necessary to pressure the government negotiators, who seemed to be playing for time in the hopes of wearing down the opposition and the resolve of the international community.

Previous coordinated international pressure, including the suspension of foreign assistance, had been critical in getting both parties to the negotiating table, but it was proving difficult to persuade the government to make new concessions on power sharing. To reinvigorate the talks Annan had to draw again on the weight of the international community in a coordinated effort to induce the government to accommodate opposition demands.

The strategy of escalating international pressure, however, carried its own risks, particularly since the government was feeling besieged by Western donors – some hardliners in the PNU were contemplating an ‘internal solution’ to the crisis. Although Western countries had concluded that Kibaki’s allies were impeding a negotiated settlement the dilemma was how to pressurise the PNU without alienating it entirely.

Already there was a creeping perception among government hard-liners that the mediation process had become a device by which the opposition, abetted by the West, would force its way into government through the route of an unelected executive prime minister. Even though Annan assured the parties that the mediation would not impose a solution, the increasing fear in government of Annan’s bias towards the ODM burst into the open.<sup>15</sup>

After the Kilaguni talks Karua blamed Western donors for interfering in Kenya’s domestic affairs: ‘It is unfortunate to note that some diplomats are abusing Kenya’s hospitality by giving their unsolicited views on the mediation talks ... I would like to remind them we are not a colony ... I urge them to refrain from such behaviour and adhere to the diplomatic convention of not interfering with sovereign states’ (*Daily Nation* 14 February).

International pressure was galvanised by the visit in mid-February of the Secretary General of the United Nations, Ban Ki-Moon. Underscoring support

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<sup>15</sup> For an excellent summary of the PNU’s view see Gaitho 19 February.

for the Annan mediation Ban warned Kenyan leaders that they bore 'a particular political responsibility for the future of Kenya'.

I stressed to all Kenyan leaders the need to stop the unacceptable violence and killings and to resolve their differences through dialogue and the democratic process. I also appealed to all the political leaders to think beyond their individual interests or party lines, and to look to the future of Kenya as one country.

*EAS 12 February*

At the same time, the EU warned that it would sever trade and bilateral links with Kenya if political leaders do not move rapidly to resolve the crisis: 'The electoral process had a negative impact on the country, and until there is a willingness in the two opposing factions to work things out together, it will not be business as usual as regards EU member countries.' The warning was directed at 'any party or individuals' who sabotaged the Annan-led talks. Furthermore, the EU contended that 'Kenya is a vital country in this region and the international community is not ready to watch it slump into anarchy. If we allow it, other countries in this region would be affected and this will be a threat to the stability of the African continent' (Nyasato & Saulo 15 February; Bartoo 12 February; Otieno 16 February).

Sending Rice to Nairobi in mid-February US President Bush indicated that her mandate was to support the Annan effort and 'deliver a message directly to Kenya's leaders and people: there must be an immediate halt to violence, there must be justice for the victims of abuse and there must be a full return to democracy' (Otieno 16 February). During extensive consultations with the parties and the mediators on 18 February Rice came down strongly on the side of a grand coalition government: her mission seemed targeted at putting more pressure on Kibaki to accept a power-sharing deal. As she put it:

It cannot be an illusion; power sharing must be real. To the president, President Kibaki, I will say power sharing means real power sharing and the US as a friend of Kenya expects that power sharing to take place to show that you can make the electoral and constitutional reforms that frankly should have been made several years ago. To Mr. Odinga, I will be saying that we understand that the election was problematic, the United States has said that, but again power sharing does need to take place. An agreement really needs to be concluded. There needs to be a governance arrangement that will allow real power sharing that will allow a coalition, a grand coalition, so that Kenya can be governed.

*Rice 18 February; see also Namunane 24 February*

Rice reported that the US government had drawn up a list of Kenyan leaders (most of them from the PNU) who would be barred from entering the US because they were impeding the search for a negotiated settlement. The British ambassador also hinted that his government would freeze the assets of those targeted by the visa ban (Mwaura 16 February).

In the aftermath of Rice's high-profile intercession the negotiations resumed on 19 February but on a sour note, with Karua escalating the accusations against Annan and charging that the mediators favoured the ODM. She also accused Annan of trying to engineer a 'civilian coup' by proposing that Odinga should be made prime minister and be given substantial executive powers.

When Karua blamed the international community for 'pushing an agenda that had led to the loss of lives and the destruction of property' Annan complained that her comments were 'unfair and insulting to the international community and African leaders who had come forward to help Kenya' (Cohen 3 March).

Karua's combative tone set the pace for the discordant negotiations that followed. Although the mediators helped the parties establish a legal committee to work on the contentious power-sharing provisions and draft a preliminary agreement PNU negotiators were steadfast on the issue of the appointment of the prime minister, his powers, and constitutional standing.

The government insisted that the prime minister be appointed without the need to alter the Constitution, but, smarting from the experience of 2003 when the Kibaki administration revoked the pre-election Memorandum of Understanding (MoU) with Odinga's faction of NARC as soon it came to power, the ODM demanded the position be enshrined via a constitutional amendment (Obonyo 24 February; Inter Press Service 24 February; *EAS* 25 February). With the parties engaging in brinkmanship Annan decided to postpone the talks and appeal directly to Kibaki and Odinga.

### BACK TO THE PRINCIPALS

After five weeks of inconclusive talks Annan decided that the stalemate could be broken only if Kibaki and Odinga personally and directly negotiated an agreement. As he explained it:

Given the way the talks are going and the negotiators are relating to each other, I believe it is important that I suspend the negotiations, not as an act of desperation or giving up, but suspend the negotiations and take the matters up with President Mwai Kibaki and the Honourable Raila Odinga. The leaders have to assume their responsibilities and become directly engaged in these talks. Because

the way it is going now, if I do not get them to engage, and get them to give the instructions or negotiate directly with me, the process might take longer.

26 February

The decision to engage the principals at this crucial point was momentous because the negotiators seemed incapable of resolving the impasse. But it was also possible to appeal to the two leaders directly because, from the start, they had been included in the negotiations through briefings and consultations. More vitally, the strategy of meeting the principal players directly allowed the mediators to isolate the hardliners on both side of the political divide who had resorted to brinkmanship and prevarication as the talks reached closure. The appeal to Kibaki and Odinga was further facilitated by the fact that the two had evolved a functional working relationship of respect and understanding in the course of the negotiations.

The mediators' strategy was to have a series of separate talks with Kibaki and Odinga to sound them out on the outstanding issues. In two days of shuttle diplomacy, Annan confronted hardened positions on power sharing. After meeting Annan on 27 February Kibaki issued a press statement announcing that he was ready to appoint a prime minister in a 'coalition government' but that most of the pending issues would be addressed under the existing Constitution.

Odinga responded immediately, claiming that the ODM was interested in a power-sharing agreement or a transition government that would immediately embark on constitutional reforms: 'We are not merely interested in power sharing for the sake of it. We want a transitional government that will embark on legal, institutional and constitutional reforms. We will share power in a government that is reform geared' (Ohito 28 February).

Facing another deadlock Annan convinced the principals to sit together and hammer out an agreement in the presence of Tanzanian President and AU Chairman Jakaya Kikwete on 28 February. This session, dubbed the 'Meeting of the Five', marked the endgame in the negotiations. Principals and mediators worked for almost five hours on drafts prepared by the legal team to resolve the deadlock. As one of the participants in the mediation team noted:

In preparation to meet the principals together on the 28<sup>th</sup> February, a draft of the Act was prepared with proposed compromise language. This was the basis of the five hour marathon meeting that followed. Despite protocol of previous meetings where the cabinet ministers had sat in with the President, Mr. Annan made it very clear that this was to be a meeting only of the five. This included President Kibaki and Raila Odinga, Mr. Annan, Former President Mkapa and President

Kikwete ... The Tanzanian model, with a strong Prime Minister as well as a strong President was an important example to draw on in Kenya, and therefore the presence of Presidents Mkapa and Kikwete was particularly critical.

Preston-McGhie August

Throughout the meeting Kibaki maintained that it would be unacceptable to make Odinga a prime minister with executive powers, including 'authority' over the Cabinet, because this would create another centre of power. Similarly, on the contentious issue of amending the Constitution to entrench the proposed coalition and safeguard the prime minister's post and those of his two deputies, Kibaki was adamant that all clauses of the agreement and the Act should be in line with the provisions of the existing Constitution (Namunane 28 February). It took the collective weight of those gathered to shift Kibaki from these positions.

The power-sharing agreement, the National Accord and Reconciliation Act, was signed on 28 February 2008. Although it was only one of several agreements between Kibaki and Odinga the National Accord was undoubtedly the most influential in establishing the parameters and principles of a coalition government. Its main objectives were to create the positions of prime minister and two deputy prime ministers and establish a coalition government comprised of Cabinet appointees from both the PNU and the ODM. It also granted the prime minister the authority to coordinate and supervise the functions of government and provided that the prime minister and his deputies can only be removed from office through a parliamentary vote of no-confidence.

Thanks to pressure from the ODM it was enshrined in the Constitution by means of a constitutional amendment passed by Parliament on 19 March and subsequently enacted, with Odinga as prime minister. After weeks of negotiations between the two principals over the sharing of ministerial slots, on 13 April Kibaki named a 42-member Cabinet that pledged to heal the rifts created by the ethnic animosities that had threatened to tear the nation apart.

Following the departure of Annan, Oluyemi Adeniji, a Nigerian diplomat, took over the mediation of Agenda Four, which addressed long-term issues such as the Constitution and the establishment of the Justice and Reconciliation Commission and dealt with historical injustices. But mediating long-term issues proved difficult in the light of the change of mediator and the appointment of members of the negotiating team to Cabinet positions in the grand coalition government.

Most of the members of the negotiating team believed the signing of the National Accord essentially meant the end of the mediation process. Furthermore, there was laxity in negotiating these issues because of the perception that the

coalition government would resolve most of the long-term questions through internal constitutional and legislative mechanisms. As a result the negotiators only worked out the details of the items on Agenda Four that had already been agreed upon such as the establishment of the Truth and Reconciliation Commission, the Independent Review Commission on the 2007 elections, and the Commission of Inquiry into the Post-Election Violence. By the end of June 2008 the negotiations had become moribund, with members of the negotiating team attending meetings only sporadically (*EAS* 3 March; 4 March; 8 June).

### CONCLUSION

In the aftermath of the agreement some Kenyan analysts paid disproportionate attention to the alleged clout and influence of Tanzanian President Kikwete in the final breakthrough, noting that, as chairman of the AU, he had pushed the recalcitrant Kibaki government to make the meaningful concessions that led to the historic resolution.

Annan and some members of the mediation team, however, claimed that the successful mediation epitomised the triumph of a new international practice, the Responsibility to Protect (R2P), whereby the international community is obliged to save states from descending into chaos (Oluoch 28 February; Namunane 28 February; Cohen 3 March; Preston-McGhie August).

Although both explanations have some validity they verge on single-path explanations that diminish the importance of a convergence of circumstances which seem unique to the Kenyan context. The role of Kikwete – wearing two hats: president of a neighbouring member of the East African Community and chairman of the AU – gave the AU a boost in conflict resolution after its dismal performance elsewhere on the continent. Though his intervention came at a time when the negotiations were on the brink of collapse the parties had broken sufficient ground to reach agreement on outstanding issues.

Annan's successful handling of the mediation was also not a result of a broader acceptance of R2P, a principle that the international community has failed to put into practice in much more protracted and contentious internal conflicts. The panel members' effectiveness as interlocutors inhered in their ability to manage the intricate balance between international pressure and a local context in which the parties gradually learnt the importance of mutual accommodation.

In the course of the negotiations the parties that had previously worked together stepped from the brink of disaster and sought bilateral solutions, particularly in the face of national yearning and pressure for peace. Threats of sanctions by the EU and several other countries worked in concert with that longing for peace.

Annan and the mediation team took advantage of the stalemate, but also skilfully used the international attention converging on Kenya's instability to propel an agreement with which the parties felt comfortable. Equally germane, the warming of the relationship between the two principal protagonists (an outcome of the negotiating dynamics) had the effect of easing the work of the mediators. As Sally Kosgei, a member of the ODM team, acknowledged:

Adversaries or not, we had a collective responsibility, which propelled us to upgrade our thinking to appreciate that we were not adversaries, we held divergent views, which needed to be narrowed to achieve peace. Our views of the way forward nearly converged, but not quite, that was left to the two principals to agree and sign.

*EAS 23 November*

Soon after the agreement was signed Annan was quoted as stating that he 'never doubted that Kibaki and Odinga would eventually agree to a compromise. He had been briefing the two leaders throughout the talks, and despite the obstinacy of their mediation teams, he felt they were both ready to abandon their maximum positions for the common good' (Baldauf 8 August).

Mediators of internal conflicts often confront government appeals to sovereignty, a problem Annan had to deal with throughout the negotiations. Although top government officials were uncomfortable with the involvement of foreigners in the conflict and railed against the imposition of a foreign-crafted political compromise, the government had to relent against the backdrop of international pressure and the legitimacy crisis stemming from the widespread perception that Kibaki had 'stolen' the elections.

Annan's forceful determination (backed by a unified and consistent international voice) that a political settlement would entail power sharing was crucial in undercutting the sovereignty argument.

Ultimately parties in the Kenyan conflict appreciated the work of Annan, who was feted as the saviour of the nation. Even Karua, a staunch opponent of foreign mediation, conceded the value of the agreement: 'It was a terrible process, but a worthwhile goal. At the end we were able to support it, because it restored a sense of normalcy. The agreement stopped the violence and brought back a semblance of peace. It restored our sovereignty and control over our own affairs' (Baldauf August 2008).

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