Mediating Ethnic Conflict: Kofi Annan in Kenya

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Abstract

In late 2007, ethnic based violence broke out in Kenya in response to a fraudulent election. This article describes the international response, focusing on the Kofi Annan-led African Union (AU) mediation in early 2008, and analyzes whether the mediation should constitute success, as well as what lessons may be learned from the mediation. Despite shortcomings, the author argues the mediation was successful, as it played an instrumental role in ending the post-election violence, led to a change in behavior of the principals, and secured the creation of several mechanisms to address the root causes of Kenya’s governance crisis. The paper concludes by outlining important lessons Kenya’s experience provides for peace processes, including the need for early diplomatic intervention in the face of ethnic conflict as well as international coordination in support of one fully empowered mediator.
Introduction

On December 27, 2007, Kenyans went to vote in an election most believed would result in a peaceful handover of power. Polls predicted the main challenger—Raila Odinga—would win the election by a slight margin.\(^1\) On December 31\(^{st}\), despite allegations of voting irregularities and fraud, the Election Commission of Kenya (ECK) announced that the incumbent—President Mwai Kibaki—had won the election. Within minutes of the announcement violence broke out. While initially characterized as spontaneous, non-governmental organizations soon reported that leading members of the opposition party had organized violent militias to attack members of President Kibaki’s ethnic group—the Kikuyu’s—in the event of a fraudulent election.\(^2\) Soon, Kikuyu militia’s exacted revenge attacks against members of the Kalenjin and Luo ethnicities, which supported the opposition candidate Raila Odinga.\(^3\)

Over the next several weeks, numerous influential figures from the African continent and abroad called on the parties to end the violence, and enter into negotiations. At the end of January 2008, the parties accepted a mediation panel led by Kofi Annan. Six weeks later, President Kibaki and Raila Odinga signed a landmark power-sharing deal—the National Accord and Reconciliation Act of 2008. By signing the agreement, the parties agreed to: put an end to the violence; form a coalition government and enact a host of reforms towards resolving the underlying causes of the violence. While more than 500,000 people were displaced and at least 1,000 died\(^4\) as a result of the conflict, the power-sharing deal was widely hailed as a success.
Yet, while the mediation was instrumental in ending the violence and resolving the political impasse, the coalition government has been ineffective, perpetrators of the violence have not been held accountable, corruption is rife, armed groups are on the rise, and few of the reforms the parties agreed to have been implemented. In short, the root causes of the violence have not been resolved. Some critics say the mediation and political settlement resulted in nothing more than a temporary cease-fire amidst Kenya’s history of violent elections.

Given the fragility of the peace, should the AU-mediation in Kenya constitute success? If so, why and what made the mediation succeed? If not, why should it be considered a failure? Lastly, what lessons can be drawn from Kenya’s experience? This paper will discuss these questions in four parts. First, I will review some of the relevant literature on success in mediation, which will provide an analytical framework for the paper. Second, I will describe the origins of Kenya’s governance crisis and the mediation that followed Kenya’s disputed election. Third, using the framework described in the first section, I will analyze whether the mediation succeeded and why or why not. Lastly, I will conclude with some lessons Kenya’s experience provides for peace processes.

Despite problems with the mediation and implementation period, I conclude that the Annan-led mediation should constitute success. While there were many reasons the mediation succeeded, three elements were most important. First, the appointment of a single empowered mediation panel composed of figures of enormous stature and moral authority was critical. Second, international engagement in support of the process was important to enhancing the mediation panel’s leverage. Third, the mediation panel’s emphasis on “pragmatism over politics” helped shift the parties from focusing on “zero
sum politics” (eg. who won the election) and towards a more comprehensive solution to resolve Kenya’s crisis of governance.

**Defining Mediation Success**

Despite significant literature on mediation success, there is little agreement. While recognizing these significant differences of opinion, Touval and Zartman argue that “the conclusion of an agreement promising the reduction in conflict” qualifies as success. Bercovitch, Aganson and Willie expand upon this definition slightly by noting that mediation success constitutes “either a cease-fire, a partial or full settlement.” These definitions are both clear and definitive, but they don’t get us very far. While a cease-fire and agreement are laudable, mediation should also help prevent future violence. An agreement that fails after six months surely shouldn’t be considered a success. Durability of the agreement must be taken into consideration.

The debate over what constitutes mediation success stems from a larger disagreement over what can be achieved in mediation. Should the mediation focus on short-term conflict management or long-term conflict resolution? As Bercovitch highlights, if one adopts a realist view that conflict is a natural part of the international system, then “resolution of conflict in any truly comprehensive manner” may not be realistic, and a short term resolution of the crisis should be the goal. By comparison, if one believes that conflict is unnatural and a result of “structural discrepancies,” then one is inclined to believe that mediation should focus on more than just a settlement. Rather, mediation should seek to provide a long-term resolution to the conflict. Bercovitch’s
analysis demonstrates that disagreements over what mediation success means stems from our uniquely disparate world-views.

As Bercovitch notes, sometimes mediation is the art of the possible.\textsuperscript{10} While peacemaking is a process, mediation is typically time-bound. The parties need to come to some sort of agreement that is manageable within a given amount of time. Furthermore, the absence of a quick settlement to a conflict that involves large-scale violence will also negatively affect civilians. Bercovitch argues “where there is destruction and violence, the first and foremost task of any mediator is to stop the violence or reduce it save lives.”\textsuperscript{11} Bercovitch’s analysis underscores the need to consider the impact of a conflict on others, as well as how a settlement (or failure to reach a settlement) will affect others.

In evaluating mediation success, Touval and Zartman argue it is important to consider whether the goals and objectives of the mediator and the parties were met in the final deal.\textsuperscript{12} Yet, this approach alone is inherently weak given that mediation rarely results in achieving all the participant’s goals. As Kleiboer observes, “goals are often vague, implicit and liable to change,” during the mediation process.\textsuperscript{13} In fact, the end goal of getting the parties to sign an agreement typically depends on the mediator’s ability to reframe the parties’ positions into interests.\textsuperscript{14}

Most agree that the notion of mediation success is elusive.\textsuperscript{15} However, Bercovitch provides the most compelling argument, when he contends that mediation success depends on a combination of fairness, effectiveness, efficiency and satisfaction of the party’s interests, with effectiveness considered the most important element.\textsuperscript{16} Bercovitch defines effectiveness as the “measure of results achieved, change brought
about, or behavioral transformation.” According to Bercovitch, “conflict management and mediation are processes of change.” Thus, in evaluating Kenya’s mediation, it is important to ask whether the process resulted in an agreement that set the country on a path towards peace and stability.

**Origins of Kenya’s Crisis**

Kenya has long been considered a haven of peace and stability in violence prone East Africa. Due to its relative stability, the East African nation has hosted numerous initiatives to resolve crises in Sudan and Somalia, served as a staging ground for humanitarian operations in the region, and enjoyed a booming tourism economy. Kenya is also a key U.S. ally.

Despite its reputation as a bastion of peace in a rough neighborhood, Kenya has its own problems. As a host to forty-two different tribes, Kenya is highly diverse. Under British colonial rule, Kenya’s ethnic diversity became highly politicized. While Kenya received its independence from the British in 1963, the colonial policies of “divide and rule” left lasting ethnic divisions in Kenya. Political parties became “champions for different ethnic blocs,” turning “electoral contests into an us-against-them battle for control of the state and the resources that come with it.” Ethnic tensions were reinforced as all three of Kenya’s presidents promoted members of their ethnic group to power, and instituted policies that favored their constituencies.

As a result, each election since Kenya’s first multi-party electoral contest in 1992 has been marred by violence and voting irregularities. Yet, despite violence and voting irregularities, each round of elections has improved, experiencing less violence and fraud
than the last.\textsuperscript{23} As a result, many Kenyans as well as the international community predicted that the 2007 elections would be free, fair and peaceful. Joel Barkan, an election observer in Kenya’s 2007 elections, notes that all “believed that Kibaki, Odinga and the ECK would rise to the occasion.”\textsuperscript{24}

On December 27, 2007, Kenyans went to the polls after an extremely tight race. While the initial stages of the election appeared free and fair, elections observers saw signs of manipulation on both sides within forty-eight hours of the closing of the voting stations.\textsuperscript{25} Due to a lack of capacity, the Electoral Commission of Kenya (ECK) proved unable to investigate the numerous claims of fraud. Out of the fear that the election was being stolen, Raila Odinga’s opposition party – the Orange Democratic Movement (ODM) – began denouncing the election before the results were even made public. On December 31\textsuperscript{st}, after mounting tensions, the ECK announced that President Kibaki of the Party of National Unity (PNU) had won the election. Violence erupted almost immediately in the slums of Nairobi, Kisumu (western Kenya), and the Rift valley (eastern Kenya).\textsuperscript{26}

While some of the violence was spontaneous, \textit{Human Rights Watch} reported that, “opposition party officials and local elders planned and organized ethnic-based violence in the Rift Valley.”\textsuperscript{27} \textit{Human Rights Watch} specifically noted that the violence perpetrated by opposition allied militias targeted members of the Kikuyu ethnic groups – President Kibaki’s constituency.\textsuperscript{28} Soon after, Kikuyu militias committed revenge attacks against members of the Kalenjin and Luo ethnic groups – supporters of Raila Odinga.\textsuperscript{29} Over the next two months, ethnically motivated massacres, sexual violence, and police brutality resulted in at least 1,000 deaths and displaced more than 500,000 Kenyans.\textsuperscript{30}
The International Community Intervenes

After the election, numerous prominent African figures visited Kenya to call for an end to the violence, and try to resolve the political crisis. Despite pressure from Archbishop Desmond Tutu, U.S. Secretary of State for African Affairs Jendayi Frazer, AU Chair John Kufour, Tanzania’s President Benjamin Mkapa, Mozambique’s Joachim Chissano, Botswana’s Katumile Masire and Zambia’s Kenneth Kaunda, the parties refused to negotiate and remained entrenched in their positions. Raila Odinga’s ODM alleged that the elections had been rigged, and that an interim government should be created until another round of elections could be organized. President Mwai Kibaki’s PNU countered that a new round of elections was impossible, and that ODM should pursue charges of election fraud through the courts.

After numerous efforts failed to get the parties to the table, John Kufour asked Kofi Annan to chair an AU mandated mediation, which would be assisted by Graca Machel and Ben Mkapa. Annan accepted and Kufour announced the decision on January 10, 2008. On January 16th, the day Annan was expected to fly to Nairobi, he was hospitalized due to a microbe infection. While the hospitalization set him back a week, Annan used the occasion to mobilize support from the international community. Part of Annan’s strategy would be to ensure the international community was speaking with “one voice,” and thus prevent the parties from “forum shopping.” While hospitalized, Annan called heads of state from Africa, Europe and the U.S. to enlist their support for “one mediation process” backed by the international community. Lindenmayer and Kaye highlight that the weeklong delay also helped create a “ripe” atmosphere for mediation, by creating the perception of a mutually hurting stalemate.
Annan arrived in Nairobi to begin the mediation on January 24th. While both parties remained entrenched in their positions, the parties agreed to meet at Annan’s request. Nairobi’s Serena hotel was chosen as an appropriate neutral venue, rather than Kenya’s State House, which Odinga feared, would legitimize President Kibaki. However, Annan was unaware that Kibaki had appointed his cabinet the week before. As a result, the meeting proved awkward for Odinga and Annan when President Kibaki arrived with his entire cabinet. “The pictures made it look like they [Odinga and other ODM members] were joining the cabinet,” Annan recalls.

While the parties shook hands, and agreed to enter into mediation, they also used the occasion to advance their interests. President Kibaki attempted to consolidate his legitimacy, by noting he was the duly elected President, and that the crisis could be resolved internally. Odinga responded by warning of “mass action,” referring to the protests and violence organized by ODM politicians after the elections. The only way confidence could be restored in Kenya’s government, Odinga noted, was to form an interim government and schedule another round of elections. Kibaki retorted that the PNU couldn’t share power with those responsible for mass violence, and that ODM should pursue their complaints through Kenya’s courts.

Little progress occurred during the first week of negotiations. Both the parties restated their positions to each other and the mediation panel. However, getting the parties to the table was a monumental achievement given their initial refusal to dialogue. Further, the conversation revealed information that would help Annan craft a strategy. Odinga sought to galvanize international pressure to exact as many concessions as
possible prior to formal negotiations. Kibaki argued that negotiations would only be able to proceed once Odinga acknowledged that the presidency was off the table.

During the first week, the principals agreed to enter into mediation on four agenda items, otherwise known as the “Road Map.” The items under discussion included: (1) to undertake immediate action to stop violence and restore fundamental human rights and liberties; (2) to take immediate measures to address the humanitarian crisis, promote reconciliation, healing and restoration; (3) to overcome the political crisis; and (4) to work on long-term issues and solutions, such as poverty, inequality, and unemployment (especially among the youth), as well as the need to confront impunity, tackle land reform, and consolidate national cohesion, and transparency.

Rather than negotiate the issues themselves, the principals appointed a negotiating team, which as Lindenmayer and Kaye note, left “a vast amount of power lay outside the negotiating room, a dynamic that would prove to be both a challenge and an opportunity within the peace process.” To build momentum, Annan announced his timeline to the media. “Violence could be stopped in seven days, the shorter term issues dealt with in four weeks, and the longer-term issues within one year,” Annan reported. Throughout the process, Annan would strategically employ the media to sustain momentum. Even when the parties had agreed to nothing, Annan would “talk up the talks” to the media, reinforcing pressure on the parties to come to a settlement.

On the first day, the negotiating teams moved immediately to discuss agenda item one – ending the violence and restoring human rights. Annan notes that, “this was easy for everyone to agree on, as they were all under pressure,” from NGO’s, civil society,
Negotiating an end to the violence first would serve a dual purpose. It would enable the talks to proceed in a peaceful environment and give the parties something to agree on quickly, which was important for confidence building purposes.

By February 4th, the parties had come to agreement on concrete measures to implement agenda item one and two – ending the violence and addressing the humanitarian situation. Lindenmayer and Kaye believe mounting international and domestic pressure was crucial to quick agreements on these first two items. While speaking at the AU Summit in Addis Ababa at the end of January 2008, U.N. Secretary General Ban Ki Moon had called on the parties to “resolve their differences through dialogue and respect for the democratic process.” In consultations with the parties and the mediation team in Nairobi, Ban also emphasized the need for the parties to think beyond their personal ambitions, and consider the larger interest of restoring peace and stability throughout the country. Additionally, the U.S. helped build pressure on the parties through vague but threatening statements, emphasizing the possibility of an “external solution” should the parties fail to come to agreement. While Kenya’s leaders noted that U.S. statements were “unnecessarily threatening,” Lindenmayer and Kaye argue that escalating pressure was critical to moving the process forward.

A quick agreement on the first two items also improved relations among the principals. In joint statements, the principals appealed for an end to violence, and emphasized practical measures to implement the first two agenda items, such as the need to mobilize community leaders for reconciliation efforts and to create corridors to enable humanitarian aid to reach victims. Yet, while the parties had a shared incentive in
ending the violence, they remained divided over how to resolve the political crisis. And addressing long-term issues – land reform, corruption, transparency in government and national reconciliation – would require a genuine shift in the mindsets of Kenya’s leaders.

The mediation quickly lost momentum when the talks moved to agenda item three – resolving the political crisis. The ODM negotiating team reemphasized its demand for the creation of an interim government for six months, until another round of elections could be run. The PNU refused to consider another election, and restated their position that the courts were the appropriate venue for elections fraud complaints. As the negotiations stalled, Annan stepped up pressure on the negotiating teams, by noting that he would not be able to stay long, and that a deputy mediator would be appointed to prepare for his departure. As Annan knew that the parties wanted him to stay, threatening to leave was an innovative way to push the parties towards compromises.

In early February, the Intergovernmental Authority on Development (IGAD) talks were scheduled to be held in Nairobi. Out of concern that the talks would strengthen President Kibaki’s image, ODM protested allowing the conference to go forward as planned and accused the PNU of trying to derail the peace process. ODM politicians further called on their constituents to mobilize a peaceful protest against the IGAD talks. Annan intervened quickly, and urged ODM to call off the protests. At the same time, the U.S. and Canada threatened to impose travel bans on those responsible for organizing the violence. ODM called off the protests and the IGAD talks went on as planned. Once again, the international community intervened at a strategic moment to influence the parties, and consolidate support for the mediation.
As talks stalled on agenda item three – resolving the political impasse – the mediation panel decided to bring in an elections expert from the U.N. Department of Political Affairs (DPA) to discuss the potential consequences of re-counting the ballots or setting up a new election. This helped increase support for a power-sharing arrangement for several reasons. First, while the expert discussed the pros and cons of going back to the ballot box, the expert emphasized how politically divisive and dangerous a search for the “true” winner of the election would be. Second, “expert” advice turned the issue of delving back into the elections from a political question to a technical one. This tactic was employed by the mediation panel numerous times throughout the process to generate support for a power-sharing arrangement.

After several weeks passed with no concrete achievements, Kenya’s press began reporting that the talks were on the verge of failure. To deflect the negative press, Annan and his team accepted an invitation to brief Kenya’s parliament on the mediation’s progress. Annan used the heavy media presence upon arrival to advocate patience and bolster confidence in the talks, noting that, “change is not an event, but a process.” After the press was escorted out, Kenyan parliamentarians were able to dialogue with the mediators. Many Kenyan MP’s emphasized the need to respond to the humanitarian crisis and reconcile the nation, while others slagd bitter accusations at each other, and called on Annan to pronounce which candidate had won the election. Annan skillfully used the occasion to accelerate the process, by “floating a formula” that had not yet been agreed to – a grand coalition. While he tempered his remarks, noting a coalition government represented “his perspective,” Annan’s remarks had raised public expectations and set the stage for the eventual power-sharing arrangement.
After the parliamentary briefing, Annan and his mediation panel decided to move the talks out of Nairobi to a more neutral environment.73 To prevent any further leaks, Annan told the press that the mediation was moving to an undisclosed location for two days. Relocating the talks from Nairobi to Kilaguni lodge, a hotel situated on the savannah in southeastern Kenya, changed the dynamics of the mediation considerably. First, the relaxed atmosphere loosened up the parties, which lead to a more substantive discussion of the issues. Second, the removal of the media and other distractions in Nairobi helped the parties focus on the issue at hand – resolving the political impasse.74

While at the savannah, Annan again sought expert advice to advance his goal of resolving the impasse through a coalition government. On February 13th, Gernot Erler, the Minister of State of Germany, was invited to brief the negotiating teams on his experience with a coalition government. Erler noted the need for trust and cooperation for a coalition government to work but emphasized the practicality of a coalition government in resolving a political crisis.75 Initially, the PNU negotiating team reacted negatively, stressing the fundamental differences between the political systems of the two countries, and noting that the lack of trust would render the government ineffective. The ODM negotiating team responded by calling into question the other side’s motives.76

While relocating the talks to Kenya’s savannah initially had led to a more substantive discussion, the talks quickly reached a stalemate. After forty-eight hours of discussions failed to lead to substantive results, Annan stepped up the pressure on the parties. Given rising internal tensions, including reports that militias were mobilizing in preparation for a collapse of the talks, Annan knew the mediation panel couldn’t go back to Nairobi without some type of an agreement.77
On the last day of the retreat, Annan sat the teams down, and told them to come up with options to resolve stalemate. As Annan stepped up the pressure on the negotiating teams, the teams resorted to calling him a “dictator.” However, pressure compelled the parties to make some compromises. First, the negotiating teams agreed that an Independent Review Committee established earlier was the best and only mechanism for investigating the 2007 elections. The negotiating teams also agreed to a number of “agenda four” items, including constitutional reforms, electoral reforms, judicial reforms and the creation of a truth and reconciliation commission.

Despite that President Kibaki and the PNU negotiating team had not yet agreed to a coalition government, Annan told the press back in Nairobi that discussions on a “new government” were underway. While “talking up the talks” had the potential to backfire, Lindenmayer and Kaye argue that Annan’s statement forced President Kibaki to realize that a compromise was needed from his end. Annan also reversed his statement on withdrawing from the mediation, telling the press that he was prepared to stay as long as needed for the parties to reach an agreement. The press conference served both to quell national anxiety as well as reinforce the notion that failure to reach an agreement would be the fault of the parties.

International pressure in support of a power-sharing arrangement was also escalating. On his Africa tour, President Bush called for the parties to form a coalition government. In her visit to Nairobi, Secretary Rice told the parties that the “time for political settlement was yesterday,” and warned that Kenya would not enjoy its’ previously close relationship with the U.S. should the parties fail to secure a deal.
While pressure worked in finally getting the parties to accept a power-sharing arrangement, the talks stalled over the practicalities of a coalition government. PNU negotiators resisted suggestions by the ODM team to create a prime minister position alongside the President. PNU negotiators insisted that such a new position would fragment power, and render the government ineffective. Thus, while PNU negotiators spoke about a power-sharing deal, they resisted any proposal that would fundamentally alter the configuration of the existing government, or undercut President Kibaki’s power. PNU negotiators also emphasized the technical difficulties of a power-sharing arrangement, stressing that creating a new prime minister position, with executive powers, would require a constitutional amendment.

Once again, Annan resorted to expert advice to resolve the impasse. Hans Corell, a former UN legal adviser was invited into the negotiating room to coordinate a legal working group with the party’s lawyers. Initially, the mediation support staff pushed back on Annan noting, “this is a mediation issue. You shouldn’t leave it to the lawyers.” However, Annan’s goal was again to transform the political question before the parties into a technical issue.

After three days of negotiations, the working group returned with a draft of the National Accord and Reconciliation Act of 2008. While the parties had agreed to form a coalition government, which would include a Prime Minister and two Deputy Prime Ministers, the group remained divided over several issues. For instance, the working group failed to reach consensus on the powers of the Prime Minister, the nominating process, what should happen if the coalition government dissolved as well as whether the Parliament or the Executive Branch should enact the reforms.
While substantial disagreements existed, Annan used the opportunity to build confidence, by emphasizing the achievements made to date. Then he urged the negotiating teams to consult the principals and return for another round of negotiations with Corell. However, the parties remained entrenched in their positions during the second round of negotiations with the former U.N. legal adviser, and thus produced no new agreements.

To avoid a collapse of the peace process, Annan suspended the negotiations and asked to negotiate directly with the principals. Annan recalls, while “there was gloom around the country…I had suspended it [the negotiations] to be able to move faster and act in a different way.” In his press statement, Annan emphasized that suspension of the talks was not “act of desperation or giving up,” but rather an opportunity to directly engage the principals directly.

Amidst rising pressure from the international community, Annan, President Mkapa and the new chair of the AU, Tanzania’s President Kikwete, met with the principals alone to finalize agreement on agenda item three – resolving the political crisis. The most contentious issue – the powers of a prime minister position – proved the most difficult to resolve. While ODM negotiators had demanded the creation of a prime minister position with executive power, PNU negotiators had resisted ODM’s proposal, emphasizing the need to prevent creating two centers of power. To resolve the impasse, Raila Odinga suggested the prime minister position be given a “supervisory” role, which ensured his new position would have substantial oversight power. President Kibaki approved the proposal, given this proposal stopped short of executive authority.
While the principals had resolved the most contentious issue, the technicalities still needed to be worked out. Despite that Annan had intended to keep the dialogue between the mediators and the principals in the final session, the lawyers were brought back into the room to advise the principals on the constitutionality of creating a prime minister position. After the lawyers from both parties agreed that a constitutional amendment was required, the five hour negotiating session was brought to a close.\textsuperscript{99}

On February 28\textsuperscript{th}, President Kibaki and Raila Odinga signed the \textit{Agreement on the Principles of Partnership of the Coalition Government}, and held a press conference to announce the peace settlement. The final agreement included the creation of a prime minister with supervisory powers, which would be filled by the party or coalition with a plurality of seats in parliament.\textsuperscript{100} Additionally, “two deputy prime minister positions would be created, one to be appointed by ODM and other by PNU.”\textsuperscript{101} As a security guarantee to ODM, the parties agreed that the prime minister position could only be removed through a vote of no confidence by Kenya’s parliament.\textsuperscript{102} Lastly, the agreement stipulated that the coalition government would remain in power until the next round of elections in five years. On March 6\textsuperscript{th}, Kenya’s parliament swiftly passed the legislation required to legalize the grand coalition.\textsuperscript{103}

\textbf{Was the Mediation a Success?}

While the Annan-led mediation was instrumental in ending the political impasse and preventing Kenya from descending into full-scale civil war, few of the reforms the principals agreed to have been implemented, and the root causes of the violence remain. Given the lack of progress on the reform agenda, and Kenya’s history of violent
elections, why should anyone think Kenya’s 2012 elections will not be marred by violence? Was this mediation successful?

As Bercovitch argues, mediation success should be measured by “results achieved, change brought about, or behavioral transformation.” Bercovitch’s definition of mediation success requires a better understanding of whether and how the mediation panel and agreement affected change in Kenya.

Almost immediately after the mediation panel left the country, the coalition government stalled on implementing the accord. Dividing up responsibilities over the ministries was the first obstacle. While the parties agreed to the balance of power, both sides sought control of the key ministries – Finance, Internal Security, and Public Service. After the PNU refused to give up these ministries, ODM supporters went back to the streets, and Annan was called back to resolve the impasse.

By the fall of 2008, all three-review committees established by Kenya’s National Accord had been set up, and some had finished their work. In September 2008, the Independent Review Committee, which was charged with investigating election fraud, published their report. The commission decided that a re-count of the ballots of the 2007 election would not be possible, but recommended a number of changes to improve the independence of the Electoral Commission on Kenya. In October 2008, the Commission on Inquiry on Post-Election Violence, otherwise known as the “Waki” Commission, published their report, which identified a list of alleged perpetrators of the post-election violence. Soon after, the Parliament passed legislation creating the Truth
Justice and Reconciliation Committee, which despite lacking prosecutorial powers, has the capacity to investigate human rights abuses dating back to Kenya’s independence.108

While the Independent Review Committee and “Waki” commission have published substantive reports, the reaction from Kenya’s leaders to the recommendations put forth by these reports has been lukewarm.109 Furthermore, the dispersion of power in government, as a result of the power sharing arrangement, has at times paralyzed the government. Last spring, politicians in the Rift Valley reportedly began rearming the deadly militias that initially instigated the violence in response to reports that the coalition government was on the verge of collapse.110 A complete breakdown of the government could send the country spiraling back into large-scale violence.

Impunity and corruption also remain a significant problem. Last May, the U.N. Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions reported that police brutality and violence continues with impunity.111 In July, Transparency International named Kenya’s police “the most corrupt institution in East Africa.”112 Further, while the parties agreed to establish a national commission to investigate and prosecute perpetrators of the post-election violence, the parliament has increasingly blocked legislation to create a tribunal. After the parliament missed the deadline to authorize the creation of a local tribunal, Annan handed the International Criminal Court (ICC) a list of those alleged responsible for the violence.113 Several of Kenya’s most prominent MP’s are reported to be on the list Annan handed to ICC Prosecutor Luis Moreno Ocampo last summer. Given that many of Kenya’s most prominent leaders have an interest in blocking the creation of a local tribunal, the ICC Prosecutor decided to open investigations into Kenya’s post-election violence in November 2009.114
Yet, while corruption and impunity continue, the coalition government has survived the ominous warnings of collapse. Some progress has also been made. In June 2009, Kenya opened its first parliamentary media center, which allows Kenyans to watch and listen to parliamentary proceedings. Many believe the increased transparency will play a critical role in mobilizing grass-roots support for the reform agenda outlined in the National Accord. In November 2009, Kenya’s Committee of Experts (COE) released a draft of the new constitution, which clarifies the roles and responsibilities of the President and Prime Minister. Furthermore, Kofi Annan, his mediation team and the international community has engaged at key times to press the government to move faster in implementing the reform agenda.

Thus, while Kenya’s coalition government has faced numerous obstacles since the mediation, there have been some results. If we ascribe to Bercovitch’s argument that “effectiveness” in terms of “results achieved, change brought about, or behavioral transformation,” is the most important element in defining mediation success, then Kenya’s mediation should be considered a success.

While the underlying causes of the crisis have not yet been resolved, and implementation of the agreement has faced numerous obstacles, the mediation resulted in three important achievements. First and foremost, ethnically motivated mass violence was brought to a halt. Many believe Kenya could have slid into full scale civil war had the parties failed to reach an agreement. Roger Cohen of the New York Times argues nothing less than genocide was prevented as a result of the mediation. As such, halting the immediate bloodshed and preventing what could have been much worse was an important achievement.
Second, the mediation dramatically improved the relationship among the principals, and has marginalized the more extremist elements within the ODM and PNU. It is important to remember that the parties initially refused to negotiate until Annan and his mediation team arrived. When the government has deadlocked, the principals have rose above it all, marginalized the hard line elements and compromised for the good of the country. The final five-hour negotiating session with Annan to hammer out the final details of the agreement as well the negotiations to split up the ministries are two examples of bi-partisan cooperation. As Horowitz notes, the “agreement forces the parties to act as checks against each other within the government.”

Third, a number of different justice, accountability and reform minded mechanisms were created as a result of the agreement. The Truth, Justice and Reconciliation Committee set up last fall has the potential to investigate and expose past atrocities. Given Kenya’s history of state sponsored violence, the commission could dramatically increase transparency over government affairs. While no action has been taken to investigate and prosecute alleged perpetrators of the violence identified by the Waki Commission, the commission’s list has been the basis for the ICC to begin investigations. Prosecutions of those responsible for organizing the violence, which includes influential members of parliament and the cabinet, could serve as an important deterrent to future violence. Lastly, Annan and the international community continue to remain engaged in pressing the government to move forward on the reform agenda.
Why did the Mediation Succeed?

The appointment of a single empowered African led mediation panel was critical to the success of the mediation for several reasons. First, an African mediation panel ensured the parties would not be able to charge the mediators with unwarranted intervention and derail the peace process. Kofi Annan and his mediation panel also brought a significant amount of prestige and moral authority to the situation, which greatly increased the mediation panel’s chance for success. The empowerment of a single mediation panel was also essential to preventing “forum shopping,” or the search by each of the parties for a mediator that will deliver the best results for each party individually. Annan made a deliberate effort to ensure “one mediation process,” and that the international community spoke with one voice in support of this process.

International engagement in support of the mediation process was also critical to enhancing Annan’s leverage. Lindenmayer and Kaye note that Annan’s hospitalization in Geneva before the mediation proved to be a “blessing in disguise,” as it allowed Annan to mobilize the international community in support of the process. Annan called on U.S., European and African heads of states to engage the principals at key times to press for an agreement. For instance, U.S. threats to impose an “external solution” on Kenya, as well as travel bans, proved critical to getting the parties to move towards a power-sharing deal. Yet, U.S. statements were also not spontaneous. Coordination between Annan’s aides and the 7th floor of the State Department was extremely close, according to Roger Cohen.
Important African leaders were also brought in at key points to consolidate pressure and build the confidence in the parties. For instance, Lindenmayer and Kaye note that President Kikwete, President of Tanzania and Chair of the AU, was brought into the final five hour negotiating session with the principals for several reasons. First, Kikwete could highlight Tanzania’s successful experience with a coalition government, where power had been shared without creating dual centers of power. As chair of the AU, Kikwete could highlight the continent’s undivided support for the mediation.

Lastly, Annan and his team ran a highly pragmatic process. Rather than focusing on which side won the election, Annan pushed the parties towards a power-sharing arrangement from the very beginning. Lindenmayer and Kaye note that Annan emphasized “pragmatism over politics.” Some have criticized the Annan-led mediation for emphasizing a power-sharing arrangement rather than a process to determine who won the election. Much of this criticism comes from ODM supporters who believe Raila Odinga won the election. Yet, Joel Barkan, an observer to Kenya’s 2007 elections, notes that both sides “inflated vote totals.” While Barkan admits that “Kibaki supporters had perpetrated the far greater fraud,” he also notes, “it is impossible to argue with certainty that Odinga won the election.”

From early on, Annan knew a rerun or recount of the elections would be risky, given Kenya’s history of violent elections and the role of ethnicity in the violence. Annan recalls:

Enough had been killed already; and in that environment any kind of election was going to be acrimonious and was going to get people killed …When looking at the election results, it was clear to me that there was no way that either party could run the government effectively without
the power. So some type of partnership/coalition was going to be necessary.\textsuperscript{131}

While the parties were vehemently opposed to a power-sharing arrangement upon entering into negotiations, Annan and his mediation team skillfully employed technical experts to build support for a coalition government. First, he brought in UNDPA elections experts to brief the parties on the politics involved in recounting the ballots or re-running the elections.\textsuperscript{132} While the experts were impartial, the arguments against going back to the ballot box were clearly stronger. Second, Annan brought in Gernot Erler, the German Minister of State, to emphasize the merits of a coalition government.

Dividing up the issues into categories was also highly pragmatic, as it enabled the parties to achieve two quick agreements on issues they both agreed upon – ending the violence and addressing the humanitarian crisis. Given the bitter relationship between the parties from the start, this proved to be an important confidence building moment before turning to agenda three – resolving the political crisis.

\textbf{Conclusions}

Two important lessons can be learned from Kenya. First, a single internationally backed full time mediator (or mediation panel in this case) is better than numerous part time envoys. Too often, the international community undermines its efforts by appointing half a dozen part time special envoys to resolve a crisis. Quality and unity of effort is better than quantity. The international community should speak with one voice, by consolidating their support behind one high level mediator (or mediation panel), which brings moral authority and leverage to the negotiating table.
Second, Kenya’s experience demonstrates the importance of timing. The classic position suggests that a late diplomatic intervention, after the parties have reached a “mutually hurting stalemate,” is best. Lindenmayer and Kaye argue that Annan’s intervention was successful because the parties had reached such a stalemate. In this case, however, the concept of a “mutually hurting stalemate” fails to completely explain why the violence was successfully brought to a halt.

In terms of timing, rapid mobilization of the international community better explains why the parties were able to reign in the violence. The quick and unified reaction to Kenya’s crisis stands out when compared to how the international community has responded to crises in Darfur and the Democratic Republic of the Congo. As Annan notes “we’ve learned that when you have ethnic violence, if you don’t mediate quickly, you get a hopeless situation.” While it’s not clear if the mediation would have failed in Kenya had the international community not stepped in so quickly, numerous studies have found that intervening early enhances the mediator’s chance of success.

Kenya’s experience also demonstrates why “mediation success” is elusive. For instance, while the agreement was critical in ending the violence, and resolving the impasse, it is not clear that Kenya won’t suffer from another round of violence in its 2012 elections. While efforts have been made to crack down on impunity, bring perpetrators of the violence to justice and increase transparency, the root cause of the violence – poor leadership and Kenya’s voracious political culture – will take time to change. If violence breaks out in 2012, will it be so easy to maintain that Annan’s mediation was successful?
In reality, mediation success is a grey area between a cease-fire and a complete resolution of a conflict. An agreement that easily breaks down won’t do, but a total resolution of a conflict takes time. As Bercovitch argues, mediation is successful when it sets in motion a process of change. While significant problems in Kenya still exist, the Annan-led mediation should constitute success as it helped end the immediate violence, led to a change in the behavior of the principals, and led to the creation of several mechanisms to address the root causes of Kenya’s crisis.

9 Ibid.
10 Bercovitch, 297.
11 Ibid.
12 Touval and Zartman, 14.
14 Bercovitch, 299.
15 Bercovitch, 289; Kleiboer 361.
16 Bercovitch, 291.
17 Ibid, 293.
18 Ibid.
20 Horowitz, 2
23 Ibid.
24 Ibid.
25 Ibid.
28 Ibid.
30 Ibid, 1.
32 Horowitz, 8.
33 Ibid.
37 Lindenmayer and Kaye, 8.
38 Ibid.
39 Griffiths, 6
40 Ibid.
41 Ibid.
42 Lindenmayer and Kaye, 9.
43 Ibid.
44 Ibid.
45 Ibid.
46 Ibid.
48 Lindenmayer and Kaye, 10.
49 Ibid.
50 Ibid.
G.R. Berridge, *Diplomacy: Theory and Practice*. 3rd edition. London: Palgrave MacMillan, 2005, 68. Berridge notes that “talking up the talks,” or giving the public the impression that negotiations are nearer to completion than is reality, is often used to sustain momentum during negotiations.

Griffiths, 9.

Lindenmayer and Kaye, 10.

Ibid, 11.

Ibid.


Lindenmayer and Kaye, 11.

Ibid.

Ibid.

Ibid.


Lindenmayer and Kaye, 13.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Berridge, 47. This author describes how “floating a formula” has been used to “expedite negotiations by preparing the public for an eventual settlement.”

Horowitz, 8.

Lindenmayer and Kaye, 15.

Ibid, 16.

Ibid.

Lindenmayer and Kaye, 17.

Griffiths, 11.

Lindenmayer and Kaye, 17

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

87 Lindenmayer and Kaye, 18.
88 Ibid.
89 Ibid.
90 Griffiths, 12.
91 Lindenmayer and Kaye, 18.
92 Horowitz, 9.
93 Griffiths, 14.
94 Ibid.
97 Griffiths, 15.
98 Ibid.
99 Lindenmayer and Kaye, 22.
100 Horowitz, 9.
101 Ibid.
102 Ibid.
103 Lindenmayer and Kaye, 22.
104 Horowitz, 11
105 Ibid.
108 Horowitz, 11
109 Horowitz, 11


Horowitz, 15

Kleiboer, 373. This author argues that prestige enhances a mediator’s chance of success.


Kleiboer, 12.

Lindemayer and Kaye, 13.


Lindemayer and Kaye, 27.

Ibid.

Ibid.

Ibid.

Barkan, 148.

Ibid.

Ibid, 149

Griffiths, 4.

Lindemayer and Kaye, 13.

Zartman, 228.

Lindemayer and Kaye, 7.


Bercovitch, Anagnoson, and Willie; Bercovitch (1991), 22.