The mediation in the 2007-2008 post-election violence in Kenya was a successful application of the responsibility to protect. The success can be attributed to three elements: timing, selection of mediators and mediation strategies. These conditions were well predicted by conflict resolution theories. Though the applicability of lessons learned is limited by context-specific factors, the Kenyan example has useful policy implications.

**Key Words:** Conflict resolution, Mediation, Responsibility to protect (R2P), Kenya, Election.

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Responsibility to Protect and Mediation: Lessons from the 2007-2008 Post-Election Crisis in Kenya

Introduction

The mediation in the 2007-2008 post-election violence in Kenya is recognized as a successful application of the responsibility to protect (R2P) through mediation.1 This paper investigates how and why it was possible to successfully end the crisis in the country. The scope of analysis in this paper is limited to the R2P in the context of track I mediation;2 whereas its main timeframe is from the election of 27 December 2007, until the signing of the Agreement on the Principles of Partnership of the Coalition on 28 February 2008.

This paper also illustrates how theories on conflict resolution are valid to predict conditions for effective mediation, but also how particularities in context can determine the “success.” The following section describes the post-election crisis and examines its causes. The third section analyzes the intervention by the Panel of Eminent African Personalities (“the Panel” hereafter) with respect to timing, actors and strategies by applying theories on conflict resolution. Why did the mediation start at this particular time? Why was this Panel chosen as mediators? What strategies did they use? These are the three key questions in the analysis. Then, the fourth section summarizes lessons learned from Kenya. The fifth section focuses on additional factors contributing to the result, while the sixth section encompasses recent development and challenges for the future.

The 2007-2008 Post-Election Crisis in Kenya and Its Causes

Violence and Trigger Causes

After the announcement of the presidential election results on 30 December 2007, Kenya experienced its worst political crisis since independence.3 There were more than 1200 deaths and several hundred thousand Kenyans displaced.4 The trigger causes of the violence were the flawed election and its contested results. Before the election, news media had reported that opinion polls showed a very tight race between Raila Odinga, the leader of an opposition party, Orange Democratic Movement (ODM), and the incumbent President Mwai Kibaki.5 Though

2. "Mediation" here is defined as “a process in which disputants attempt to resolve their differences with the assistance of an acceptable third party”. See Kennet Kreseel, "Mediation Revised."
4. OHCHR, "Report from OHCHR Fact Finding Mission to Kenya."
both sides apparently engaged in election malpractice,\(^6\) the Electoral Committee of Kenya (ECK) announced the victory of Kibaki.\(^7\)

The first wave of violence appears to have been spontaneous and reportedly stemmed from the anger of ODM supporters at what they perceived as the theft of the presidential election.\(^8\) This type of violence took place in Kisumu, Mombasa, Eldoret and Nairobi’s slum areas.\(^9\) The second type of violence occurred mainly in the rural setting of the Rift Valley as well as Eldoret and Kericho towns by allegedly targeting those perceived as ODM opponents, including the Kikuyu, Kissi and Luhya communities.\(^10\) The last type of violence was of retaliatory character. “Counter-attacks and reprisals developed, led by mobs of Kikuyu youths, notably in Nairobi’s Mathare slum, and two localities of the Rift Valley – Naivasha and Nakuru.”\(^11\) Gangs drawing on the large numbers of unemployed and marginalized youth were also responsible for the more organized violence.\(^12\)

It is to be noted that there were several institutional factors leading to the post-election violence in 2007-2008. First, 19 out of 22 members in the ECK had been appointed shortly before the elections and by the President alone without inter-party consultation. Some of the new commissioners lacked electoral experience, which caused doubts among many Kenyans about the legitimacy of the ECK. In addition, the Constitution and electoral law created further complications. For instance, the Constitution was silent about the way the 12 nominated seats in the Parliament were to be filled.\(^13\) Finally, only one complete copy of the electoral law had existed in the Parliamentary Library before the election, which made it difficult to provide those interested with a complete and comprehensive legal text.\(^14\)

**Root Causes**

The 2007-2008 election violence can never be explained without exploring its root causes: ethnic grievances. The population of Kenya is about 41 million consisting of 42 tribes: Kikuyu 22 per cent, Luhya 14 per cent, Luo 13 per cent, Kalenjin 12 per cent, Kamba 11 per cent, Kisii 6 per cent, Meru 6 per cent, other African 15 per cent and non-African\(^15\) including Asian, Europe-

\(^6\) Ibid.115.
\(^8\) OHCHR, "Report from OHCHR Fact Finding Mission to Kenya." 8.
\(^9\) Njogu, ed. *Healing the Wound.*115.
\(^11\) Ibid. 10.
\(^12\) Ibid. 10.
\(^13\) Some examples are the Mingiki, mainly consisting of the Kikuyu; the so-called “Taliban” and “Baghdad Boys” largely of the Luo; and the Saboat Land Defence Force generally of the Kisii. See Elisabeth Lindenmayer and Josie Lianna Kaye. “A Choice for Peace?” 3.
\(^14\) The electoral system in Kenya can be described as a special case of a parallel system. According to the Constitution, the country is divided in 210 constituencies, each of which elects a representative under plurality rules (usually called First-Pass The-Post or FPTP systems). However, according to Section 33, there are also 12 members nominated by the parties represented “according to the proportion of every parliamentary party in the National Assembly.” See Independent Review Commission, “Report of the Independent Review Commission.” Annex 7. A.
\(^15\) However, non-Africans are usually not included in the 42 “tribes”, which refer to “African” ethnic groups.
The root of the ethnic grievances can be traced back to the colonial period, as the “colonial government initiated the concept of tribes by replacing the traditional leadership system with the colonial chieftaincy system based on ethnic lines.”

Among all provinces in Kenya, the Rift Valley is one of the provinces most affected by ethnic conflict involving the Kalenjin and other ethnic groups such as the Kikuyu, who allegedly benefited most from the land settlement program there during the colonial and post-colonial period. Coastal Province also shares a similar problem as 90 per cent of its land was allocated to “a large number of influential upcountry people for settlement.” Limited job opportunities and regional nationalism also aggravated the existing land tenure in question in the province. On the other hand, Northern Kenya was left underdeveloped and marginalized by the central government. The proliferation of illicit arms, inadequate policing and state protection contributed to the escalation of conflicts. Youths who were idle and unemployed were easily recruited into militias and terror gangs, exacerbating conflicts. Instability in neighboring countries such as Somalia certainly aggravated the fragility of the northern region.

In addition to these historical grievances among ethnic groups, the history of elections also intensified the conflicts in Kenya. After independence, the political system in the country shifted from a multi-party system (1963-1969) to one-party system (1969-1992) and changed again to multi-party democracy from 1992. In the 1992 elections, the incumbent President Daniel Arap Moi won with his party, Kenya Africa National Union (KANU), obtaining a majority in the 210-seat Parliament. In the next 1997 presidential election, Moi was reelected with a plurality of 40 per cent, whereas his rival Mwai Kibaki won 31 per cent. The KANU won 107 seats in the 222-seats Parliament in contrast to the opposition who secured the remaining 103 seats.

The 2002 elections ended the 25-year rule of Moi. The opposition parties formed a coalition, National Rainbow Coalition (NRC), and won 132 seats in the Parliament, compared with the KANU gaining 67 seats. In the presidential election, Kibaki defeated Uhuru Kenyatta with a 62 per cent majority. However, despite his promises for radical reform, little was actually changed in Kibaki’s first term. Indeed, the President’s privileged status for his own ethnic group, the Kikuyu, created the perception of a “stolen election” among Kenyans.


18. Kenya has eight provinces: Nyanza, Western, Rift Valley, Central, Eastern, Coast, North-Eastern and Nairobi. Each province was arguably dominated by one or a few ethnic groups: Nyanza Province by the Luo; Western Province by the Luhya; Rift Valley Province by the Kalenjin, Maasai, Turkana, Samburu and Pokot; Central Province by the Kikuyu; Eastern Province by a mixture of ethnic groups such as the Rendille, Gabra, Boran, Embu and Meru; Coast Province by the Taita, Taveta and other small groups; North-Eastern Province by the Ogaden, Gurreh, Degoida, Hawiyah and Somali. Nairobi Province has a well mixture of various ethnic groups. See Oucho, Undercurrents of Ethnic Conflict in Kenya.


22. Twelve out of 222 seats are appointed by the President.


24. Ibid. 112.

In 2007, Odinga and his party, the ODM, emerged as a major challenger to Kibaki, capitalizing on the frustration of many Kenyans and appealing particularly to young people. Kibaki and his party, the Party of National Unity (PNU), attempted to campaign on Kibaki’s achievements. As was described above, the result was that the tight race and flawed elections triggered the violence. An additional factor to the crisis was that “[v]arious parties had strongholds in particular provinces where certain ethnic sentiments reigned.”

If Kenyan political parties are of ethnic color, the ethnic clashes during the elections were not accidental. In short, each region has historical grievances, related to land tenure, access to pasture, poverty and unemployment especially among the youth. These factors made Kenyans susceptible to the political manipulation of ethnic differences in combination with the culture of impunity and the winner-take-all political system. From these facts, it can be concluded that the outset of the 2007 election had already created a high risk for violence.

**Analysis of Intervention: Timing, Actors and Strategy**

This section examines what conflict resolution theories predict about the timing, actors and strategies of intervention, and compare these predictions with the implications from the Kenyan case.

**Timing: Why that moment?**

The ripeness theory argues that the condition lies in the “demand” side. In other words, the conflicting parties have to be ready for mediation. In fact, the best timing for conflict resolution is given by a mutually hurting stalemate on the one hand and the optimism of both conflicting parties about finding a negotiated settlement on the other. In the same line, Kleiboer emphasizes the “willingness” of the parties, while Pruitt points out the symmetry/asymmetry of their power relations. On the other hand, there is an explanation based on “supply” side: the theory of “readiness”. It requires that attributes and resources should be available to the peacemaker. Therefore, theories provide insights for both demand and supply side.

The Kenyan case proves the validity of these theories. The question is why the mediation started on 22 January 2008, with the arrival of the Panel, not earlier or later. The first explanation is based on the demand side. Prior to 22 January, despite a number of mediation offers from important figures, the conflict remained “unripe”. For instance, when Desmond Tutu arrived on 2 January, “the scale of the crisis was, at this point, still unclear, and Kibaki was intent on control by force and determination, flooding the streets with security forces, and issu-

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27. The political and economic dominance of the Kikuyu would cause resentment among other ethnic groups, which make them a likely target of the election violence (ibid.).
33. Both demand- and supply-side arguments are summarized by Kriesberg into three conditions for de-escalation: adversary relations, domestic circumstance (or pressure) and international context. See Louis Kriesberg, *Introduction: Timing Conditions, Strategies, and Errors.* 5-11.
ing a ban on media broadcast.” At the same time, the Kenyan government was afraid of “internationalizing” the conflict. Indeed, it rejected the mediation by John Kufuor because there was no need for international mediation for the “Kenyan situation”.

However, as the conflict continued, the increasing number of deaths and the displaced resulted in more international attention. Gradually, the conflict became ripe. Reluctant to share power, Kibaki appointed 17 ministers on 8 January, including Kalonzo Musyoka as his Vice President with the intention to exclude Odinga from the government. This action further fueled violence, which severely damaged the country’s main tourist industry and exports. The economic loss of the crisis mounted to roughly $500 million a week, exceeding all the economic aid that Kenya receives annually. This vicious cycle – Kibaki clinging to power, violence mainly led by Odinga supporters, decline in the economy – made the conflicting parties realize that they were in a “mutually hurting stalemate”. The excessive cost of both economic and human loss increased the willingness of Kibaki and Odinga to accept mediation.

At the same time, international pressure was mounting. In the face of escalating violence, many mediators came to the scene. The then U.S. Assistant Secretary of State for African Affairs, Jendayi Frazier, arrived shortly after Desmond Tutu on 4 January. On 8 January, four former heads of state – Tanzania’s Benjamin Mkapa, Mozambique’s Joachim Chissano, Botswana’s Katumile Masire, and Zambia’s Kenneth Kaunda – visited Eldoret to meet with victims of the post-election violence. Simultaneously, African Union Chairman and Ghanaian President, John Kufuor, also arrived in Kenya at the invitation of President Kibaki. In his capacity as Chairman of the Heads of State Summit of the East African Community, Uganda’s President Yoweri Museveni arrived on a two-day official visit on 22 January.

These multiple and parallel mediation efforts finally turned to be “one voice”, or harmonized international action with the beginning of the Panel-led mediation (see below for more details). This increased engagement of the international community obviously put more pressure on both sides in the conflict thereby again making a “mutually hurting stalemate”. In other words, Kibaki and Odinga came to the realization that a negotiated settlement would be better than the status quo. At that point the conflict finally became “ripe”, and the parties got ready for mediation.

The second explanation is given by the supply side. It is to be noted that, though the international community is often criticized for its inaction or slow actions (e.g. Rwanda, Sierra Leone and Liberia), the intervention into Kenya was relatively early. One reason is that the momentum of the responsibility to protect (R2P) made the international community more willing to take immediate action. In particular, the ethnic-based violence in the country implied that the Kenyan case would become a test case for R2P. Another reason for the quick action was

34. Lindenmayer and Kaye, “A Choice for Peace?” 5.
37. The Senate Foreign Relations Committee’s Subcommitte on African Affairs, Hearing on the Immediate and Underlying Causes and Consequences of Flawed Democracy in Kenya. 5.
40. The 2005 Summit Outcome Document states that R2P is applicable to four cases: genocide, war crimes, ethnic cleansing, and crimes against humanity.
that this initiative was taken by a regional organization, the African Union (AU). Exercising the right to intervene in member states (the Constitutive Act, Art. 4(h)), the AU was willing to take more flexible and quick actions in comparison with the United Nations (UN). Had it been the UN, it would have taken a couple of months to put staff on the ground. In addition, mediation is a “cheap” intervention relative to other means such as the deployment of peacekeepers. These facts enabled the early intervention.

In sum, the convergence of both demand- and supply-side readiness determined the timing of mediation in Kenya.

**Actors: Why these mediators?**

Theories make only a few predictions about the qualification of mediators. First, though their neutrality and impartiality may matter, the acceptance by conflicting parties is the more important determinant for the mediator. At the same time, they must have leverage of one kind or another – i.e. both positive incentives/promises and negative pressures/threats. In other words, they should be able to alter “future-based cost-benefit calculations” of the parties and re-formulate the conflict to “allow for a positive-sum formula for agreement”, by bringing “ideas, knowledge, resources and interests of their own”.

These theories are valid to explain the “unselected” mediators in the Kenyan case. For instance, the failed mediation efforts by Frazier and Museveni were due to the lack of acceptance by the ODM. Likewise, Kufuor was rejected by the Kenyan government. On the other hand, the absence of leverage accounts for the other unsuccessful mediation efforts. During the “mediator shopping” in the early January 2008, though not clearly “rejected”, all visitors to Kenya, including Mkapa, Chissano, Masire and Kaunda, failed to get both Kibaki and Odinga at the negotiation table, apparently because none of them could change the stakes of the parties.

On the contrary, the Panel acquired their acceptability and leverage through a variety of political, social and cultural elements. For instance, being the former UN Secretary General, Kofi Annan had strong connections with the UN, the AU, the EU and the United States. That is why he could obtain full support from those actors and realize “one mediation only”. He was one of the most suitable mediators in Kenya because of his wide experience in conflict mediation in various locations such as Nigeria, Iraq and Timor-Leste, and possibly because of his reputation as the promoter of R2P. Furthermore, his background in Ghana – one of the most democratic countries in Africa – also added credibility to his qualification as a mediator. For these reasons, Kofi Annan had considerable gravitas and leverage to manipulate the stakes of the parties.

42. Kresse, “Mediation Revised.”
44. Zartman, “Conclusion: Discounting the Cost.” 305.
48. The Panel (Annan, Machel and Mkapa) was mandated by the AU.
By the same token, the other two Panel members had their own leverage as mediators. Graca Machel, a renowned international advocate for women and children’s rights, obviously added gender balance into the Panel. She is also the third wife of Nelson Mandela, one of the most respected persons in the African continent. On the other hand, Benjamin Mkapa could facilitate direct communication with the public in Kenya during the mediation process through his language ability in Swahili. His Tanzanian nationality arguably gave him a positive qualification as well.

In short, the Panel was a choice based on the excellent political, social and cultural quality of individuals, which resulted in their outstanding skills to convince the conflicting parties and mobilize the international community. These facts guaranteed the Panel’s acceptability and leverage required for the mediation.

**Strategies: What strategies were used?**

According to Kreseel, mediation has two styles: problem-solving and relational. The former’s priority is to unblock the parties’ stalled efforts to reach agreement, while the latter aims to improve the long-term relationship between the parties. In both styles, however, mediators have two major strategies: (1) change in cost-benefit calculation of the parties and (2) reformulation of the problems. The third important factor in strategy is coherence and coordination among mediators. The Kenyan example demonstrates that these three strategies successfully prevented the escalation of the conflict.

First, change in cost-benefit calculation was brought by the “one mediation” strategy. One voice in the international community hindered the parties from playing politics at the international level. It also sent a strong message of the “clear last chance” to the parties — i.e. “if you miss this mediation, you will not have another”. Given the threats to cut aid by the European Union, the United States, the World Bank and the African Development Bank, together with

52. Tanzania is known as a stable country. Its first President, Julius Nyerere, was a heroic figure during the decolonization, and he was named as "World Hero of Social Justice" by the UN General Assembly President in 2009. See Eye on the UN, "UN Honors Fidel Castro As "World Hero of Solidarity." Available at: http://www.eyeontheun.org/view.asp?i=11&l=338 (Accessed 16 January 2012).
53. It is also notable that the Panel represented the notion of "African solution for African problem" by consisting of regionally-balanced "Africans" – i.e. West (Annan), East (Mkapa) and South (Machel).
54. Kreseel, "Mediation Revised."
56. Zartman gives more detailed steps starting from early awareness and reduction of uncertainties, to reframing of the problem, building home constituencies and home support, developing an attractive package of costs and opportunities, and creating appropriate regime to provide continuing prevention of the problem. See Zartman, "Conclusion: Discounting the Cost." On the other hand, Bercovitch claims more specifically that objectives in mediations are to (1) change the physical environment of conflict management, (2) change the perception of what is at stake and (3) change the parties’ motivation to reach a peaceful outcome. See Bercovitch, "Introduction: Putting Mediation in Context." 16.
the possibility of travel bans and economic sanctions, the cost of failure in the negotiation looked too high for both Kibaki and Odinga. On the other hand, the offer of “business as usual” from the United States would be a sweet carrot for the parties. These altered the cost-benefit calculation of both parties and encouraged them towards a serious commitment to the negotiation.

Second, the Panel could also reformulate the problems. During the negotiation, the Panel divided the issues into four – (1) ending the immediate violence, (2) dealing with the humanitarian crisis, (3) dealing with the political crisis and (4) addressing long-term socio-economic grievances. It helped the parties agree to work on the first and second problems immediately. The Panel also transformed political issues into technical ones. Put another way, when the parties had difficulties in reaching agreement on some issues (e.g. the choices of return, recount and fresh election), the Panel invited experts to “brief the parties on technicalities”. It de-politicized the issues and facilitated agreements. All these efforts transformed their destructive processes into constructive ones (cooperative problem-solving), which would lead to a constructive relationship. To a lesser extent, this positive relationship was nourished by the shared experience of both leaders – e.g. working with the same number of people in the same negotiation room, dealing with hardliners on both sides and going out to the retreat on 12 February.

Third, the Panel carefully made coordinated efforts with track II actors to increase pressure on the political leaders. One of their strategies was to have an inclusive and transparent process, involving civil society – including religious leaders, women’s groups, and business communities. An effective use of media to keep the public informed of developments in the mediation process led to more pressures from the people on the two leaders to reach agreement. Moreover, such a “ripple effect” of the mediation helped to sustain the peace process in a wider range of the society.

**Context-Specific Factors Contributing to the Success**

This section explores context-specific factors which contributed to the successful mediation in Kenya. The experience of Kenya highlights three factors. The first factor is the control over constituencies. Both Kibaki and Odinga were able to tame their hardliners; otherwise, the situation would have turned into splits within the parties as happened in Somalia and Sudan. In this aspect, the international pressure played an important role. For example, some hardliners on Kibaki’s side “depend on international credit-worthiness to keep their enterprises prosper-

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63. Ibid. 13.
64. Deutsch, “Cooperation and Competition.”
67. Abdi, “Insider Mediators.”
ous". Thus, the threat of travel ban and asset freeze encouraged the would-be peace spoilers to make concessions during the negotiations and keep good faith in the implementation of the agreement. On the other hand, hawkish constituencies at the grass-root level were arguably contained by the expectation for economic reforms and promises to address past grievances. In fact, major violence had been halted by the time the Agreement on the Principle of Partnership of the Coalition Government was signed. It implies that hardliners in the two political parties, constituencies and gangs respected the agreement between Kibaki and Odinga.

The second factor is Kenya’s economic structure. Unlike many other African countries, Kenya is not highly dependent on natural resources. Indeed, the major part of the country’s GDP comes from the service industry (59.5 per cent), notably tourism. It made the cost of the crisis higher for the country, since the perpetuation of the conflict meant more damage to the tourism industry. If the country were abundant in natural resources like DRC, Angola and Nigeria, it would be more likely for the parties concerned to fuel the conflict by resource revenues. Then, the threat of aid reduction would have been less effective, thereby making it more difficult to manipulate the cost-benefit calculation of both parties. In this sense, the freedom from “resource curse” is an asset for mediation.

Third, the commitment of the international community was high for geopolitical reasons. On the one hand, Kenya is a center of stability in the volatile East African region. It had an annual economic growth rate of over 6 per cent, and it had even played a pivotal role in the peace process of Sudan and Somalia. The post-election crisis in Kenya risked a power vacuum in the region; hence the international community was willing to move quickly. On the other hand, Kenya factored into none of the critical strategic interests of the major international powers, such as the United States, France, Russia and China. Thus, it was possible for the international community to take a concerted step. If a similar crisis had occurred in former French colonies or the Middle East, disagreement among the major powers would have paralyzed the mediation process. In short, the international community had stakes in enhancing the peace process in Kenya, but not too much interest. This “moderate but enough” interest made it possible to create the harmonized mediation process and strong support for it.

Lessons Learned

The mediation in Kenya gives several lessons learned in the three aspects: timing, mediators and strategies. These lessons learned are in fact all correctly predicted by the conflict resolution theories. The right timing for the Panel-led intervention was brought out by the convergence between “ripeness” on the demand side and “readiness” on the supply side. Hence, the...
first lesson is to “ripen” the conflict by increasing costs and international pressure on the parties concerned. It is possible to manipulate costs on both sides and “artificially” create a mutually hurting stalemate. In fact, international pressure played a key role in ripening the conflict in Kenya. The second lesson is the need for preparedness and flexibility on the supply side. Pooling resources and training potential mediators will be possible solutions for better preparedness, whereas regional organizations rather than the UN will be able to take more flexible approaches.

The selection of mediators gives the third lesson. The Panel was selected based on their leverage and acceptability by the conflicting parties. The acceptability and leverage largely lay in the excellent individual qualities. The personal capacities such as the former UN Secretary General are primary reasons for the mediator selection, but also other elements such as language skills and gender consideration were arguably important determinants. These qualifications certainly vary case by case; however potential mediators can be identified early enough by using these criteria of acceptability and leverage. It will help to select suitable mediators smoothly in the case of emergency. On the other hand, it is equally important to prevent unqualified mediators from intervening into the conflict. “Mediation shopping” by multiple actors caused confusions and undermined the “one voice” strategy at the early stage of the Kenyan crisis.

The strategies used in Kenya teach additional lessons. First, harmonized mediation is critical for success. Without “one voice”, the parties could have played politics with different mediators and would have been less interested in settling negotiation. Second, problems should be reformulated. “Salami tactics” – dividing problems into several parts and solving them step by step – is an effective tool in mediation. The de-politicization of problems also makes it easier for both parties to negotiate. Third, civil society should be involved. It will require an effective use of media and coordination with Track II mediation.

That being said, the applicability of these lessons is limited by the context-specific factors mentioned above: (1) the control over constituencies, (2) the freedom from resource curse and (3) moderate but enough interest of the international community. Conflicting parties may not always be able to contain hardliners, thus rather they split into multiple factions. This would highly complicate the mediation process. Furthermore, some countries rich in natural resources are trapped by “resource curse”. In such a case, the mediation would be much more difficult because the rich conflict economy gives little incentive for the parties to negotiate. Lastly, some cases attract too little interest or too much interest from the international community. Too little interest would result in silence, while too much interest would cause tensions among major actors, which paralyzes mediation.

Though their applicability may be constrained by these specific factors, the lessons learned from Kenya offer a number of policy implications for future mediations such as ripeness, readiness, criteria for mediators, coherence in mediation process, reformulation of problems and civil society involvement. These implications should not be dismissed for success in the future mediation.
Recent Development and Challenges for the Future

Despite the “successful” mediation in Kenya, the prospect for sustainable peace depends on the implementation of the four agreements of March 2008. The country has achieved significant progress in having a new Constitution promulgated in August 2010. The latest report by South Consulting – a research firm which has been monitoring the implementation of the reforms since 2008 – focuses on three areas: (1) implementation of the Constitution; (2) electoral reforms; and (3) the legacy of post-election violence, especially the intervention by the International Criminal Court (ICC) and the issue of internally displaced persons (IDPs).

First, the “process of implementation of the constitution is on track” as the “necessary legal and institutional framework is in place”. In particular, the judiciary has made significant progress by appointing judicial officers through a transparent process with the high integrity standards demanded. Second, electoral reform is also in progress since several laws have been enacted. For instance, the “process to establish an Independent Electoral and Boundaries Commission (IEBC) has begun in earnest”. Though the preparedness for the next general election still remains to be seen, these developments cast a positive picture for durable peace.

Nevertheless, there still exist several problems behind the progress. Some ministries and departments do not have enough capacity to draft bills of good quality. Divisions among politicians are also delaying the implementation of the Constitution. The absence of coherent leadership and conflict mediation mechanisms among agencies is further slowing down the implementation process. In addition, the lack of public awareness about the provisions of the Constitution raises concern. There is an urgent need for civic education.

On the other hand, the legacy of post-election violence is still visible. The first legacy is the justice issue. Six suspects of the 2007-2008 election violence have been to the ICC for confirmation of charges hearing. Approximately 65 per cent of Kenyans support the ICC intervention and trust its capacity to protect witnesses. However, there is a caveat in the ICC intervention. “Although the ICC is designed to prosecute those who bear the greatest responsibility, persisting impunity for low and middle-level perpetrators continues to pose a threat to future stability”.

Furthermore, many Kenyans doubt the capacity of their government to investigate and prosecute the suspects. Such distrust also indicates that the country needs to develop capacity and sustainable mechanisms to address the culture of impunity.

The second legacy is the issue of IDPs. “According to the latest available update from the Ministry of Special Programs, 5,396 acres of land have so far been acquired to settle 1,898 IDP families”. However, a number of displaced persons still continue to live in camps. In addition,

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74. These are General principles and parameters for the Independent Review Commission on the 2007 Elections (IREC); General principles and parameters for the Commission of Inquiry into Post-Election Violence (CIPEV); General principles and parameters for the Truth, Justice and Reconciliation Commission (TJRC); and Roadmap for a comprehensive constitutional review process. See Kofi Annan Foundation, “The Kenya National Dialogue and Reconciliation.”
75. South Consulting, “Progress in Implementation of the Constitution and Other Reforms.”
76. Ibid. 8.
77. Ibid. 9.
78. Ibid. 60.
some host communities are against the allocation of land to ‘outsiders’ while their own local people remain landless. This tension between “host community” and “outsiders” related to land issues will possibly re-create the ethnic grievances parallel to what happened after the independence of Kenya.

Conclusions

The 2008 mediation process in Kenya was a successful application of the R2P. The Kenyan example affirms the validity of the conflict resolution theories in determining the effective timing, actors and strategies. Despite some limited applicability, the lessons learned from the country also offer a number of political implications.

The recent progress in the implementation of the new Constitution and electoral reform gives expectations for a peaceful election in 2012. However, challenges such as the issues of justice and IDPs still pose questions to durable peace. The Government of Kenya should develop its capacity to address the legacy of the post election violence and effectively implement the new Constitution. At the same time, the international community should carefully watch the progress, while continuing its support to the peacebuilding process in the country. The prospect for sustainable peace remains to be seen. The future of temporary peace is in the hands of both Kenyans and the international community.
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