

## **Book review**

# ***Back from the brink: The 2008 mediation process and reforms in Kenya***

**Graça Machel and Benjamin Mkapa 2014**

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Although much has been written about triggers of post-electoral violence, and what needs to be done to prevent their resurgence in Kenya and Africa, insights into the architecture on which Kenya's post-2007 electoral institutions were built have not benefitted from the same amount of scholarly and policy attention. With early warning signs suggesting that growing elitism and the gap between the rich and the poor are set to widen, interest in democratic processes is also set to increase. However, this interest risks sparking some uncontrollable civil strife or popular uprisings such as has been witnessed around the world in the North Africa and Middle East region, Greece, Spain, and now Ukraine. How states or international organisations would respond to such strife is marked by the incertitude that contemporary policy makers have to grapple with. *Back from the brink* presents a real life example of how contestation in Kenya's democratisation

process uncovered years of unresolved socio-economic undercurrents and almost degenerated into a civil war. Although *Back from the brink* speaks about a retroactive solution to an anticipated crisis, it provides policy lessons for early preventive action, effective mediation and durable institution building. Being an insider's perspective, *Back from the brink* presents minute details of mediation and stands as a reference point on: the constitution of a mediation team; the principles to underpin the mediation; characteristics of a key interlocutor; and, most crucially, the time for intervening. While previous studies contemplated that the role of the Panel of Eminent African Personalities ended after the February 2008 National Accord between Raila Odinga of the Orange Democratic Movement (ODM) and Mwai Kibaki of the Party of National Unity (PNU), *Back from the brink* strengthens the assertion that mediation is a process which goes beyond peace agreements. With the perspectives that mediation is a fine art or craft, that mediating skills can be contributed by eminent persons or former statesmen, and that world leaders are acquiring the understanding that mediation is an emerging social science discipline, *Back from the brink* will be relevant to a vast constituency of readers, including peace and security students, conflict analysis and development practitioners, conflict management policymakers, and diplomats with interest in the quintessence of mediation.

Structured into thirteen reader-friendly and interconnected chapters, *Back from the brink* reflects the fact that both the panel and the negotiating teams of both Raila and Kibaki did not see the peace agreement as an end, but as a means to stability conditional to the full implementation of all the provisos of the agreement. The compilers of the chapters reflect what seems like consensus from not just the Panel's eye, but also from the negotiating team and their principals. Other mediators are therefore enticed to read between the lines to find how totally opposed factions can reach common positions about totally opposing views on a number of things. For instance, one of the critical challenges to unpacking the triggers of a crisis is often the juxtaposition of conflict theories and concrete reality – which sometimes dilutes or amplifies the cause of the conflict and misinforms the mediator or even the policy community about the resolvable immediate causes. With *Back from the brink*, the Panel's ability to get the negotiating team and their principals to agree to the immediate and

remote causes of the conflict is a successful milestone in mediation history as it immediately helps to focus the Panel's work on what can be achieved in the short, medium and long term. It is often said that the most important people to a mediation are the negotiators, and that getting a common position from them is critical to the success of the mediation. These issues are highlighted in *Back from the brink*. Chapter one suggests that from the onset, the negotiators' acceptance of the Panel was indicative that both Raila and Kibaki's factions were open to a negotiated settlement facilitated by the team. Thus suggesting that for successful mediation, perhaps the first condition is getting the parties to agree to the mediator; and then getting them to agree to the causes of their feuds whether they be historical or immediate. Consensually, both Raila and Kibaki agreed that the process was flawed because the minds of the Electoral Commission of Kenya (ECK) and those of local and international observers did not meet, which was suggestive that something had to be done. Thus, the mediation ceased to be about who won the elections but focused upon how the electoral process can be fixed to ensure that futuristically, what the ECK announces tallies with ground realities as witnessed by all observers (p. 92).

Following from the above, one of the key benefits of the 2008 Kenyan mediation process was the coordinated international support for the process. Unlike in certain mediation experiences such as Syria where competing international interests obliterated Kofi Annan and Lakhdar Brahimi's mediation efforts, support of the Kenyan process in 2008 was international – with funds being administered by the UN (p. 33); regular consultations with the diplomatic community taking place (p. 31); and reporting being done facilitating the implementation' (p. 47). It should be noted that it refers to when the peace agreement was signed and the phase that follows. As previously mentioned, mediation is a process, and even if it were to be concluded, it would only be, when according to the words of the Kenyan anthem, '... all with one accord, In common bond united, Build this nation together, And the glory of Kenya ...' (p. 39). So, following the peace agreement, the role of the Panel changed to give Raila and Kibaki a chance to roll out the agreement in a show of local ownership. From then, the Panel's role was one of facilitation. The process towards wording and concluding the agreement derived not just from the negotiating

team, but from wide inter(national) consultations, and, amongst others, from Kenya's vibrant civil society organisations whose critical contributions gave the mediation and agreement a multi-track configuration (p. 45).

*Back from the brink* provides a vivid account of the inner workings of the coalition government and demonstrates that it was not always rosy. That Raila and Kibaki knew that the coalition government was only a temporary remedy to fix undercurrents in the Kenyan political system was critical in eliminating delays in crafting preventive remedies to future electoral processes. Benefitting from the eagle-eye of the facilitation team that continued to keep watch over the implementation, Raila and Kibaki knew better than to be seen as stalling the process – with the risk of falling out with the international community that wholly supported the process.

*Back from the brink* dedicates chapters five to twelve to reform making – starting with reforming the electoral system which was the last pulse that sparked the violence. Negotiators often resorted to having independent committees which would review the pre-existent system and posit recommendations for the future. Although severely criticised for not focusing enough on the violence that ensued in the aftermath of the elections, the committees created worked with the mindset not to stall the process by blaming any of the parties. This philosophy which underpinned the work of the committees was key in advancing dialogue and giving direction to policy makers. In many cases, the dialogues were stalled by accusatory remarks issued against the other by either of the parties. For instance, while PNU claimed the elections were free and fair and devoid of irregularities, as announced by the head ECK which declared Kibaki the winner, ODM rebutted that its agents were excluded from the vote-tallying in what seemed like a systematic ploy to tamper with the electoral outcomes (p. 90). ODM challenged the PNU to a vote recount or forensic audit, and PNU responded that the election laws allowed recounts to happen 24 hours after elections. And after these back and forth arguments, an Independent Review Committee was agreed to, and set-up. The same principles applied to the Commission of Enquiry in Post-Election Violence (CIPEV); the Truth, Justice and Reconciliation Commission (TJRC), the Police Reform Implementation Committee (PRIC); and the Independent Electoral and Boundaries Commission

(IEBC). Expectedly, there were stalemates and instances where the negotiations could not move forward. It is usually in such instances that the tact of the mediator is seen and tested. In one of such, Kofi Annan interrupted the usual prayers and offered to play a song which had been composed by Hans Corell and dedicated to him when he left the United Nations on March 2004. The Song which he titled 'Secretary-General Kofi Annan's Prayer for Peace' was tuned, and as it whistled symphonic lyrics into the hearts of the negotiators, Kofi Annan tuned down the music and recited sections of the Kenyan National anthem (p. 39). This tactful act reminded the negotiators that the cause which had brought them together was bigger than they themselves – it was about the Kenyan people.

Before concluding with lessons learned from *Back from the brink*, it should be stated that the book largely focuses on the actors, their thought processes, and key decisions; but not at all on the mediation team. While it is noble for the team to package a review of the Kenyan process, it would equally be opportune to understand the inner workings of the Panel, how they were constituted, and how they resolved their own differences on how they saw things. From a process point of view, *Back from the brink* speaks a lot about how mediations should be carried out but little about how the mediator and his team should conduct themselves, especially when they come together from different works of life and have different appreciations of the reality they are dealing with or different responses to divisive issues – such as how to address impunity.

With a lot of conflict-intervention challenges usually centred on the question for timing, *Back from the brink* also fails to pin-point what made the Panel's intervention timely. Such an assessment is important in understanding what William Zartman refers to as 'hurting stalemate' and the 'ripe moment'. *Back from the brink* leaves us with more questions than answers as to whether Raila and Kibaki had to cope with any hurting factors at the time when the Panel intervened. It seems as if, as Graça Machel put it, 'the country was at stake ... it was divided and bleeding', and it was important to bring the nation together in 'a place where all citizens had a sense of belonging' (p. 37). That this 'place' is Kenya is undoubted, but does this suggest that successful mediation must happen in the countries where the disputants are? If so, what can one infer from the fact

that the Burundi Peace process was not mediated in Burundi, but yielded to some form of stability which the country still enjoys today?

In conclusion, *Back from the brink's* chapter 13 is a must read. It lays out some solid variables on which the success of the Kenyan mediation was anchored. From the tact of the mediator and his team that enjoyed international support, through the process of early diagnosis and timely intervention, *Back from the brink* speaks to the importance of successful conflict analysis which led Ghana's former president John Kuffuor (Chair of the African Union) to appoint the Panel and entrust to them the task of ending the brutal blood-bath that Kenya was experiencing. These approaches, coupled with 'power-sharing' presented by the mediator as one of many possible solutions, indicate the patience of the mediator in leading while giving the negotiators the chance to make common choices. Finally, it should be emphasised that although mentioned passively, the African context was critical. Suffice it to say that the often-mooted 'African solutions to African problems' seems to have been vindicated by this mediation as it was led by Africans, for Africans and in Africa. *Back from the brink* therefore provides a useful resource for understanding the nuances of mediation. Such an analysis, as provided by *Back from the brink*, is useful because it foregrounds informed and context-specific conflict resolution.