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Centre for
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Mediation for peace

1999-2009



interview

The Prisoner
of Peace

An interview with
Kofi A. Annan

The Centre for Humanitarian Dialogue (HD Centre) is an independent Swiss Foundation dedicated to helping improve the global response to armed conflict. It attempts to achieve this by mediating between warring parties and providing support to the broader mediation community.

114, rue de lausanne
ch-1202
geneva
switzerland
info@hdcentre.org
t: + 41 22 908 11 30
f: +41 22 908 11 40
www.hdcentre.org

The Kofi Annan Foundation supports Kofi Annan's efforts to provide inspirational catalytic leadership on critical global issues, particularly preserving and building peace and facilitating the more equitable sharing of the benefits of globalisation, by promoting poverty alleviation, good governance, human rights and the rule of law.

9-11 rue de Varembe
ch-1202
geneva
Switzerland
info@kofiannanfoundation.org
t: +41 22 919 7520
f: +41 22 919 7529
<http://kofiannanfoundation.org/>

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The presidential elections of December 2007 in Kenya were the first broadly contested elections in the country's history. The sudden eruption of violence that followed the announcement of the results brought to light longstanding tensions concerning both inequalities in wealth and political ethnic cleavages. Former and sitting African heads of state¹ reacted swiftly and flew in to offer good offices. Their effort unfolded in the deployment of the African Union Panel of Eminent Personalities, led by Kofi Annan as chief mediator, with Graca Machel² and Benjamin Mkapa.

Upon his return from Kenya, Kofi Annan discusses the five weeks of intense mediation he led there, in an interview with Martin Griffiths, Director of the Centre for Humanitarian Dialogue. Mr Annan's main concern was to avoid a further escalation of violence, leading him to maintain a rapid pace in the talks while continuously changing his strategy to adapt to developments. Although this approach ran the risk of his portrayal as 'a fox', even 'a dictator', by the parties, Kofi Annan's unique experience and stature enabled him to mobilise a high level of international support. Combined with a strategy of transparency to Kenyan civil society, and occasional pressure on the parties, his efforts led to the development of a successful 'African solution to an African problem'.

- 1 These included former Presidents Chissano of Mozambique, Masire of Botswana, Kaunda of Zambia and Mkapa of Tanzania (all members of the Africa Leaders Forum) and President Kufuor of Ghana.
- 2 Former First Lady of Mozambique.

The Prisoner of Peace

An interview with Kofi A. Annan by Martin Griffiths³

Geneva, 9 May 2008

³ The interview is reproduced with only minor editing in order to capture Kofi Annan's voice and the immediacy of his recollection of the mediation process.

⁴ Elected as the presidential candidate of the ODM in September 2007, Raila Odinga became Prime Minister in the Coalition government in Kenya.

HD: The first thing I would like to ask you is, when did you start realising that you would get involved in this process? Was it only in late January or was it already in December 2007 when the violence started?

KA: It was in January. I happened to be in Accra, and the President of Ghana, Kufuor, was then Chairman of the African Union; he called me and said, 'You know what has happened. We'll need your advice and help.' So I spoke to him on and off, and then he decided to go to Kenya (...). He spent two or three days there, he saw the President [Kibaki], he saw Odinga⁴ – he had attempted to bring them together. It didn't work. So he called me and said, 'It is not going well; I will have to return, but we will have to find some way of assisting them, and I'm pleading with you to assist me, and I may also ask Ben Mkapa and Graca to join you as a panel of eminent personalities.' So I spoke to both Graca and Ben Mkapa who had himself been in Nairobi when President Kufuor got there, as part of the group of former heads of states who are members of the African Forum.

HD: That weekend, you came back to Geneva on a Saturday?

KA: On the Saturday, and then I tried to make some calls to the European Union, to you, to London and Paris.

HD: How did you choose the people to call? What did you have in your mind at this point, because you had a mandate which was quite unusual?

KA: Yes, I had a mandate which was quite unusual, and very short – almost one line – which is sometimes good. I also felt, as it was an AU mandate, we were going to need strong support from the international community, and I felt I had to organise it before I got in: get them to understand how I was going to approach the problem, what sort of support I needed from them, and how we should coordinate. Because I know that sometimes, when these things happen, lots of people rush in and sometimes different mediators come in and it leads to confusion. So I wanted to get it right from the beginning – that we should speak with one voice, and that I'm going in to do my best and there should be [just] one mediating process. They all agreed and said, 'We fully support what you are going to do.'

HD: Did you have a clear sense when you were talking to these people of what your approach would be, apart from it being a single track?

KA: Yes, I had some general ideas of what I would want to see, but it crystallised as I went along. One of the ideas I had was to address the early signals that you can't ignore – that there was an ethnic element, which you really need to be concerned about because that can really push things in the wrong way, and you can get it hopelessly wrong. So there was a need for prompt action to try and stem that. That was the reason that one of my first acts on the second day of my arrival was to get the two leaders together in public for them to shake hands, and send a message to the people – to those groups that you think are going to kill each other: 'Here are the leaders shaking hands, so hold your horses.' So that was one thing I felt was very important. The other thing that I had wanted

'I had come to an early conclusion that a rerun would be a bad decision, and bad decisions get people killed.'

to do was see how we deal with the question of the elections. I had come to an early conclusion that a rerun would be a bad decision, and bad decisions get more people killed. 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. So I felt that we needed to find a way of dealing with the disagreement over the election by looking forward, and not trying to rerun, repeat or something that would not give you the result you want, but may also get people killed. And 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 other. So some type of partnership/coalition was going to be necessary.

HD: You had – before you hit the ground – quite a lot of advice from different people (...). How many of these thoughts of yours came from your talking to other people, how much from your instincts and your knowledge of Kenya, and how much of your approach did you share with other people at this point?

KA: At that point I wasn't sharing very much. I listened, and I tested one or two ideas on people. I remember talking to Mark,⁵ and he said, 'your friends in the international community, including someone like Jeffrey Sachs, think that there has to be some sort of a rerun, and they thought that Kibaki shouldn't be allowed to get away with it.' So I listened, and he noticed I was not convinced.

⁵ Mark Malloch-Brown, Minister of State for Africa and Asia, Foreign and Commonwealth Office, UK, was previously Administrator of the UNDP and UN Deputy Secretary-General.

HD: I was going to ask you about your dealing with different views....

KA: Yes, I was not convinced. I said, 'It's easier said than done.' That was the way I dealt with it. I didn't want to get drawn in...

HD: Did you feel particularly, from great powers, like the US or others, that you were under any pressure to come up with a different view other than your own?

KA: It's interesting; they all said, 'we know you and we trust you and we are fully behind you', which was what I had really wanted, and what I needed. And they said, 'Tell us when you need something, tell us

when we can help.' So they all wanted to come to Nairobi, and argued, 'we have to be logical and consequential with ourselves. We sent election observers, we said the elections were fraudulent and then we do nothing. We must impose sanctions or do something.' And I said, 'that may be necessary, but not now. I will let you know, if you have to.' And some said 'I'm ready to come to Kenya', and I said, 'Not now.' And they said, 'OK, you are the boss, give me the signal and I will come.' And also the reason I didn't want too many people visiting was to send a strong signal. Sometimes ministers come and speak to the parties and either one or the other side would take comfort from what they have said. But above all, it also takes lots of time away from the negotiations. You know, you have to brief them, they want to see people at the airport, and it takes lots of time, when you should be really doing your work.

HD: Yes, I wanted to ask you about time. For example, I remember you were given the mandate on the Thursday, you came back to Geneva that weekend, and you were due to leave on a Tuesday.

KA: That's an interesting question. I turned that around quickly, because I was concerned that, given the niche of the conflict, if one doesn't intervene quickly, it could get out of hand, and the protagonists were so intransigent. From our conversations with them, there

'So I got in on the night of the 22nd, and then on the 23rd I brought the two leaders together. So for them that was something that was the first positive sign since the killing began.'

appeared to be a certain lack of urgency about tackling the issues. Hence I wanted to get there early. I set out to go on a Tuesday, and when I left I was feeling reasonably well. I woke up the next morning and had a 15-minute meeting in my office, at the end of which I was shaking like a leaf. So I called the doctor (...) and we went to the hospital (...). For the first two days they couldn't tell what it was. Then they discovered I had a microbe infection and said I needed to be on antibiotics for 10 to 15 days – minimum ten. And I said I couldn't afford ten days. So I negotiated with them, that I would do the intravenous antibiotics for five days and then I would leave and go to Kenya where I would take it orally. Throughout the period in Kenya, I had massive doses of antibiotics (...). I left the hospital on a Monday and left for Kenya on Tuesday.

HD: During that week in the hospital – I can't remember exactly, but violence was continuing – certainly the tension was continuing to rise, and expectations of you were beginning to rise. A story that went around was that the country became reliant on you. Did you feel at any time any kind of alarm as to what was happening, and the burden that was being placed on you?

KA: I was concerned and alarmed about the fact that if we didn't manage to contain it, it could get really really serious. I knew they were expecting me to come, but I did not realise at the time the nature of the expectations.

HD: The personal reliance?

KA: Yes, the reliance on me. I didn't realise until a few days after I had got in that they were really looking to me to work their magic. I think the escalation of the violence, and perhaps also given what had happened to all the senior people going in offering their good offices.... So I got in on the night of the 22nd, and then on the 23rd I brought the two leaders together. So for them that was something that was the first positive sign since the killing began.

HD: And you decided this before you got in, as you said earlier – that this was a key confidence-building measure. And I think that a lot of people said that this would be a breakthrough moment. So how did you manage to make that happen?

KA: I saw Odinga first and then saw the President. In fact I had asked to see the President earlier. At 3.30 we had spoken on the phone. And then when Museveni came into town, he postponed the meeting. So I saw Odinga, and I said, 'Look, the two of you have to work together, the two of you have to save this situation. It's very very dangerous. I want to work with you to contain the situation, and I encourage you to work together to heal and reconcile the nation. I'm going to see the President and I would want you to meet, and I don't want any hesitation if he agrees.' And then there is a question of, 'We won't go to the State House because in doing so, it's a recognition of the President.' I said, 'Let's get the appointment and then we'll worry about the protocol side of it.' So I saw Mkipa, and I saw the President and he agreed to do it. And I said, 'Let's do it straight away. How about this afternoon, while the iron is hot?' He said, 'Fine.' So I called Odinga that we were going to meet the President at Harambee House⁶ at 4.00 or 4.30, and he should be there. What I didn't know was that the entire cabinet was going to follow the President there.

HD: That's right. He appointed this cabinet controversially a week or two before.

KA: So when we went there, we went into a room the three of us, we spoke and we decided to come down and meet the press for the photo op., and when we came down the entire cabinet was there. Ruto⁷ was there with Odinga, the President, myself and the entire cabinet, which upset the ODM⁸ – they said the pictures made it look like they were joining the cabinet. I said, 'People will understand, we can explain it.' And of course they were also upset that the President then said, 'I'm a duly elected President.' They were actually very upset, but we calmed them down (...). But then I said, 'Look, we need to start the negotiations in earnest, and I want each of you to give me three names.'

HD: Had you thought of that before? At what point did you know that this was what you were going to do? On your way down, or when you were at the hospital?

KA: On my way down I thought, since there was such tension between the two of them, I thought it would be wrong of me to bring the two together to negotiate – to shake hands fine, but to get them into straightforward negotiations given the tensions may in fact

6 Harambee House designates the office of the President in Nairobi. Importantly, since it had not been much used by the President, it was an acceptable neutral venue.

7 William Ruto, member of the Orange Democratic Movement, was part of the opposition's negotiation team. He is now Minister of Agriculture in the Grand Coalition Cabinet.

8 The Orange Democratic Movement Party of Kenya, most commonly known as ODM, is headed by Raila Odinga. The name 'orange' originates from the ballot cards in the constitutional referendum, in which a 'Yes' vote was represented by the banana, and a 'No' vote by the orange.

complicate matters and blow up everything, and if I had a group of three each and we sat talking and they fed [the Principals] what was going on, it would help diffuse the situation, giving them a sense that they are involved but not immediately confronting each other.

HD: And you left it to them?

KA: I left it to them to select the names. I didn't know enough people, so I said 'give me three'. So each side was waiting to see what the other side would do, whom they would propose and what kind of level. And they kept asking me, 'Do you have the others' list?', and I'd say, 'No,

wait...' When we met eventually, the opposition ODM noticed that there were three lawyers on the other side, and that's how the number went up to four. It was three on either side, and having agreed on three I think they would have had difficulties going back and making changes. So they said, 'Can we increase it to four?' I said, 'Why four? I like small groups, the smaller the better.' And they explained they would also need a lawyer.

'I could see there was some tension within the group, so when we were setting up the agenda, it became clear that if I could give them something they could agree on in the early stages and build confidence, it would help the process.'

HD: And this was [James] Orengo?

KA: Yes, and this was very good. So they brought in Orengo, and the other side brought in the Foreign Minister – he was the later addition – and we got going.

HD: When you were with the two Principals getting them to do the famous handshake and the session together, did you get a sense that these were the two people who – as it later turned out – you were able to get to work individually? What was the chemistry?

KA: Well, the language was very stiff – but this remained unchanged because they knew each other so well; they had too much history, which we knew. So in fact, after we had gone through the preliminary discussions, I told them why I thought they should shake hands... We were kept in the room for over an hour because of the podium.⁹

HD: Just the three of you?

KA: Yes, and lots of people thought we were having serious discussions, but they were not ready.

HD: So what did you talk about for an hour, apart from the arrangements of the microphone?

KA: ...Which we didn't have anything to do with. I talked to them about conflicts and what's going on in Africa and trying to get them to engage in the situation in the country, and the need for them to act, but they were not ready, so I didn't push. So I talked to them about other things. Because it's like trying to arrange a marriage before they are ready.

HD: What did you feel, at this point before the formal negotiations

⁹ The press encounter with the two Principals and Kofi Annan was delayed because arrangements had been made for the presidential podium to be brought to Harambee House so that Kibaki could speak from it.

started? I'm thinking for a moment about the organisation of your arrangements... on arrival – and before – you had a lot of support from the UN in Nairobi...

KA: And other places, yes.

HD: You had your two panel members, who were there when you arrived. Am I right in thinking that your relationship with your panel – it was evident to those of us who were there that they [the panel] very much accepted that you were the mediator. They were there to support you as and when you needed it. Was it something you talked though with them, was it an issue?

KA: Actually, I didn't talk to them about it – it came up naturally. Graca said, 'I'm not a negotiator, I'm learning a lot.' And Mkapa said, 'I'm not very good at chairing, and besides I'm a neighbour' (...). They both preferred and accepted my leadership. But one thing we had to do, because when we got there three of the four leaders in the Africa Leaders' Forum were in town, so I wanted to know what their plans were. And I also wanted to let them know that we were not attempting any power grab at all. So we discussed this and I asked them how they saw it. They thought they could stay on – they were establishing an office – and deal with the social aspects by encouraging social cohesion, getting them to talk together, getting the Kenyans to come together to talk to each other. And I said, 'No, I think that will lead to confusion, when you have the panel of eminent persons negotiating and three or four former heads of states leading a process that is trying to get the Kenyans to talk to each other.' I said that we should leave it to the Kenyans, and that we should encourage them to do so.

'And before these meetings (...) I saw all the NGOs, civil society, Churches, businesses, and I promised them a transparent process, because I wanted them to stay involved.'

So I thought there should be one process and we should keep them informed. I said, 'We will share our papers with you and maybe at some stage you will be able to help, but I don't think we can both be in town. It would be very awkward for example for Mkapa, who is on both sides. When he speaks, is he speaking for you or for me? It leads to confusion.' And they understood, so they left town.

[The UN] (...) were helpful. They had a couple of people from DPA down on the ground when I got there. So they were very helpful. Pascoe¹⁰ called with instructions from the Secretary-General. He said, 'We'll do what we can to help.' So they were helpful. They gave me some material support staff, but they did not interfere with the way I ran the intervention. They didn't give me instructions or tell me how to do it, and they were very happy about the way things were going. So, pretty much all of them left me alone (...).

HD: (...) Now I want to come to the negotiation itself. How did that evolve over time? Did you have a sort of a 100 per cent conception from the beginning of where you wanted to get to?

KA: I had a general idea of where I wanted to go. But as I dealt with them I refined it and it began to crystallise. I cannot claim I had it

10 UN Under-Secretary-General for Political Affairs.

sorted, but I had a general idea of where I wanted to be. So once I got to know the place and also got to understand the environment better, I would adapt to it accordingly and move forward. For example, when they first came together I could see there was some tension within the group, so when we were setting up the agenda, it became clear to me that if I could give them something they could agree on in the early stages and build confidence, it would help the process. I was very grateful that they agreed on the agenda very quickly, because it could have taken a long time, but they agreed that this was urgent. I said, 'You are going to make history, you are going to save your nation.' And so we moved on.

HD: Then they moved straight to the issue to stop the violence – Agenda Item 1...

KA: ...Which was easy for everyone to agree on, as they were all under pressure (...). And before these meetings, between the 22nd when I arrived and the 29th when we launched [the talks], I saw all the NGOs, civil society, Churches, businesses, and I promised them a transparent process, because I wanted them to stay involved. I wanted them to know what was happening to maintain the pressure on the politicians, and I promised them that any agreement that was signed, I would make public immediately.

HD: And indeed you had your first public agreement on 1 February, which was two days after you started the negotiations – a dramatic progress.

KA: It really was, because they could all feel the tensions, and it was dramatic – they moved very quickly. And then we moved very quickly also on the humanitarian issue.

HD: So the feeling across the table on those two items was very good?

KA: It was pretty good.

HD: We received a message back here in Geneva¹¹ – I'm not sure how much of this was your wish right at the beginning, whether you wanted to do kind of a workshop for them. In other words, an opportunity for them to work together to build confidence. Very quickly... that was not required?

KA: Yes, I raised that issue, but then I realised we were making such progress, and they know each other and they were encouraging. So I thought since it was going so well we could delay the retreat and do it at another point. So we went through the [issue of] violence, the humanitarian [issue] and then when we got to the political [issue], which was a bit tricky, so I took them to Kilaguni.¹²

HD: I remember... when you got to the political [issue] you took them through a deductive process to rule out rerunning, retallying, recounting and so forth. You weren't manipulating them, but you were guiding them. How much do you think they realised what was going on? These were clever people...

11 The message informed the HD Centre of the possible need to convene a confidence-building workshop for the participants.

12 Kilaguni is a lodge in Tsavo National Park in Kenya.

13 Craig Jenness is Director, Electoral Assistance Division, DPA.

'I felt that the only way to go was a political option, but (...) I thought if I put it down to them they will shoot it down. So I had to take them through all the issues (...) and let them come to the conclusion that they had no option but to share power.'

KA: They were very clever – very smart people. I think some may have realised because in a way I was very open. I put all the items on the table. I did not say, 'Let's discard this.' I put all the items on the table and let them run, and with Craig's¹³ help took them through what each option means. For example, if you are going to do a rerun, it's almost like organising full elections. And they knew the situation on the ground; 'Given the environment, do you think we can have a rerun? (...) Counting 11 million votes and sending people to all the constituencies – it's another election, and it's going to get people killed. Is that what you want? Retallying gives you bits and pieces of paper, but it doesn't give you anything else. The so-called forensic audit doesn't really make sense. If this is the case, we don't want to sweep the election issue under the carpet. We have to find some way of dealing with it.' And (...) I thought the independent review would be the way.

(...) And I also thought it would give people the sense that the issue of their concern – over which some had been killed – had not been brushed under the table. Because usually when these things happen, we focus on the needs of political leaders. So I pushed Kibaki to set up a compensation fund for victims, which we discussed here too, and he has done that. So, as we went forward, I wanted them to agree and to put aside all the issues that had been really tearing them apart, but they had to get down that path.

HD: There must have been a huge time pressure on you, an enormous number of people saying, 'Kenya depends on you – don't leave the country', and so on (...). Yet you did not take any shortcuts in terms of the solution. You let them go through the issues steadily. Did you get tempted to say, 'Look, obviously this is wrong, let's go for a political option'?

KA: I felt that the only way to go was a political option, but given the arguments they were bringing from their Principals, I thought if I put it down to them they will shoot it down. So I had to take them through all the issues, a bit like the electoral issue, and let them come to the conclusion that they had no option but to share power.

14 Item 3 was 'How to resolve the political crisis'. The negotiation teams reached, within days, an agreement on Items 1, 'Immediate action to stop violence and restore fundamental rights and liberties' and 2, 'Measures to address the humanitarian crisis, promote reconciliation, healing and restoration'. Item 3 was the most politically sensitive and took three-and-a-half weeks of the total five weeks of the mediation process.

HD: Item 3:¹⁴ I remember one of the difficulties you had as the chair and moderator of the talks was that they kept on returning to history, telling you how much they won, the details of the election, that facts needed to be restated. Did you find yourself after two-and-a-half weeks down there – you had been sick beforehand – did you get cross? Did you find your patience wearing thin?

KA: There were moments when I got cross and irritated (...). There were moments I would say, 'Gosh, why are they doing this? This is serious, people are dying and they are going through these silly games (...).' So, yes.

HD: You were running the talks all day long, each day, seven days a week. In the evenings you would be talking to people, at lunch you were making calls. How many of those calls outside were: a) a drain on you; b) important to you in terms of the way you fashioned your tactics?

KA: The calls I made were important to me. Sometimes the calls that came in were not. So, whenever I called, I wanted to fit it into the things I was doing. For example, when I called the German ambassador, I said, ‘Can I speak to Frank-Walter [Steinmeier] – the Foreign Minister? Or tell him that I need someone who can come and explain how you form a grand coalition and what it takes.’ And I have worked a lot with the Germans in the Middle East, so they would deliver. Or I would call Condi [Condoleezza Rice] to say, ‘Look, things are not going well and I have just suspended the talks and a statement would be in order.’ So those kinds of calls were part of my conducting. But when you get a call from someone asking to come, saying, ‘We need to do something.’... In this sense one of the most dangerous situations you can get yourself in is of ‘wanting to do something’. You see, most people feel that when you are in a difficult situation you have to ‘do something’. It doesn’t occur to them that sometimes the best thing to do is just to sit.

‘...most people feel that when you are in a difficult situation you have to “do something”. It doesn’t occur to them that sometimes the best thing to do is just to sit.’

HD: But it’s difficult to do that – isn’t it?

KA: It is. But there are times you need to ‘let’ things happen, because whatever you do won’t make any difference, but you must know when you need to ‘make’ things happen – when to move. And so that fine sense of timing is very important.

HD: I come now to the safari period (...) where everyone dressed informally – what was the difference?

KA: It was interesting. That’s when they started calling me ‘the dictator’. And ‘the fox’ came later, when I got them to agree to things they didn’t want to agree on. But the other one [‘the dictator’] came because we were discussing the whole question of governance. We had agreed on all the other items under 3 and we got stuck on the governance issue [power-sharing]. So at the end of a morning meeting I said, ‘Look – the lawyers are going to sit together, there are four of you here, and you are going to consider this and come to us with options. Set a table for four for them. They will sit together and eat alone and they will come back to us.’ So they all headed to one table, and they discussed it, and then they sent Mutula¹⁵ and Ruto to work further on this, and they came with some options they thought were workable. And I said, ‘Let’s continue this on Friday’, and Martha¹⁶ said, ‘No, we have to go now, on Thursday afternoon, to consult with our leaders.’

HD: And you went down on the Tuesday?

KA: Yes, and they left on Thursday (...) to go and consult their leader.

¹⁵ Mutula Kilonzo was a member of the government’s negotiation team.

¹⁶ Martha Karua, Minister of Justice, National Cohesion and Constitutional Affairs, headed the government’s team during this process.

It was a long weekend and they came on Monday with hardly any ideas or guidance. So I was beginning to get irritated with them.

HD: This was the bottom of the process, wasn't it?

KA: Exactly. I had sent them there [on the retreat] so they could relax, breathe free air without people calling them from the ministries and all that. Each time they said 'we need to consult', I expected them to come back with some wise positions, but they came empty-handed.

HD: And were they just playing for time, or what was going on?

KA: I think they were playing for time, and it was also the crunch, you see, because we were asking them to discuss power-sharing, and ODM said 50-50 on the ministerial posts, and I pushed the idea that it should reflect the parliamentary strength of the group – hence moving away from the 50-50 balance. And these were ministers who had a future behind them, pretending they were protecting the President: 'You can't take power away from the President. The President is the one who decides which ministers to appoint. Odinga can submit names and he [the president] can look at it and decide'. But I was saying, 'if you want to remove a minister of the opposition, there has to be consultation and concurrence, and you can't fire the Prime Minister.'

Most of them were saying in the back of their mind, 'Prime Minister... why should he supervise me?' One of them – a prominent Kenyan not in the team – told me, 'They don't see how Odinga should supervise them and honestly they are a bit afraid of him (...)'. So they really didn't want to give him anything at all. So by pretending that everything should be within the constitution, you can't touch the constitution. The President will conserve all his power and prerogatives and can keep them without being forced to bring him [Odinga] in.

Corell's amendment: 'Notwithstanding Section 3, the National Accord and Reconciliation Act and its provisions shall apply with Constitutional power and in the case of any discrepancy in the interpretation, then the Act will supersede the Constitution. This (3a) will cease to apply when the Act ceases to apply.'

HD: So it was back to the legal argument? Because you had been trying to get it on to politics.

KA: Exactly.

HD: But you also set up this legal working group under Hans Corell,¹⁷ and I remember some of your team said, 'but surely this is substantive – this is a mediation issue. You shouldn't leave it to the lawyers', and you said, 'I want to leave it to the lawyers.' So you were combining both the advantages of a technical process with wanting to make it a political thing. Did you think that there was just going to be better chemistry in the legal working group?

KA: Martha was in it, and (...) when I got there, they said, 'they put hardliners in the group'. I said 'better, they will have to sell it, and they can sell it much easier'. I shared this with the President himself – I had someone to tell him that [Lyndon] Johnson said 'I want that guy in the tent pissing out, instead of outside pissing in'.

¹⁷ Hans Corell, Swedish lawyer and diplomat, was Under-Secretary-General for Legal Affairs in the UN Secretariat (March 1994 to March 2004).

(...) They were making progress in the legal group and they came up with three options. And they also all realised that by talking about it the argument of not touching the constitution was nonsense (...). So once the three options were discussed, you go for the optimal one. And the optimal one was the Corell proposal which is the one they are going to use now, so something positive came out of it. Corell is wonderful, he is very meticulous and focused, and they were amazed how much he had picked up by the time I called him and he got to Nairobi. And he came with something that was very neat – the amendment of four lines.¹⁸

18 Section 3 in the Kenyan constitution states that anything passed by Parliament that contravenes the constitution will be deemed to be illegal and the constitution will supersede it. Corell's amendment (on the previous page) can effectively reverse this for the purposes of the peace agreement for the duration of the agreement only.

HD: It was a very interesting choice, he has of course huge experience in the world, but you wouldn't immediately think of him. You, however, thought about bringing him in from the beginning.

KA: Because he had worked with me, I knew him well, and I knew how his mind works and how he is very good on the details and is able to come up with a new angle.

HD: And it was a brilliant choice and it really drove it, and I think that the legal working group was central to your plan. But what it eventually did of course was to show you the areas of disagreement.

'...the others do their homework. They put forward their ideas and proposals. Your side produces nothing. They keep repeating the same argument.'

KA: Exactly, also by the time we got there I knew that ODM was happy realising there was a way out to amend the constitution without wreaking havoc and changing so many provisions (...).

HD: Around this point, back at the Serena, you are getting down to removing brackets or adding brackets.¹⁹ At this point, ODM in the room looked as if they were fine. They were the good people, they made compromises. I know a lot of people were regularly accusing you of bias, how did you feel about that? Was there a lot of pressure on you?

19 At this point, draft text within brackets indicated opposing positions of each side, whenever they had different views. The discussion to remove brackets and/or clarify pending issues was expected to enable the negotiating team to finalize documents for signature.

KA: No, in fact I explained to the President in their presence – I went to see him and they brought the whole cabinet there. I said, 'Mr President, some of your people think the panel is biased. We are not biased, but the others do their homework. They put forward their ideas and proposals. Your side produces nothing. They keep repeating the same argument. And I suspect they feel that they don't have to produce anything because you are the President and they claim you won fair and square. So if this is the position (...), it is a problem.'

HD: It is a problem, and eventually it effectively made the moderate position give more away. Did you find that the relative formality of the negotiation room in Serena was important? You were always referred to – apart from as a dictator – as an Excellency...

KA: I would have preferred a much more informal atmosphere – and ideally without ties and suits, etc. The Kenyans are very formal. In Kilaguni, everyone was without ties, in short sleeves and all, which was fine. That atmosphere, I think, suits better contacts and relationships, and that is what I really would have preferred.

HD: In that regard, before the big breakthrough – there you were, you were really working the room. You were acting as somebody who was about as active and interventionist as chairman of the meetings as anybody. There was no sense of sitting back – you were working it. Was this unusual for you in your experience from when you were an SG?

KA: This was more active for two reasons. I knew what was happening in the country and I wanted them to move. They did not seem to understand the sense of urgency, so I was pushing them. And I would have been able to tell them, ‘I’m pushing you because people are dying.’ So when they kept saying, ‘you are pushing us, we are breathless’, it was because I had to. Under other circumstances, I would sit back a bit more and pull them back to steer things right. But here time was running out, and I really thought they were wasting time, and that’s why I pushed them the way I did. If I had sat back and waited for them, we would probably still be there.

HD: I want to come back to how long you would have been in Kenya. Then we come to the moment when you suspended the talks. Now, that happened on a Tuesday. You had this difficulty from the government side...

‘The speed of the caravan is determined by the slowest coach and if you want to move it faster, you have to either repair the slow coach or unhinge it.’

KA: (...) They had had the weekend, they had been consulting, and instead of removing brackets, they were adding brackets. I said, ‘Look, this is getting nowhere, so I’ve decided I’m suspending talks.’ And apparently, when I announced that, there was gloom around the country even though I said I had suspended it to be able to move faster and to act in a different way. I had done my duty and believed the leaders should do theirs.

HD: Did you worry about the idea that the country was going to think that this move was fatal, but in fact it was an opportunity?

KA: I was worried about that, and that’s why when I went to speak to the press, I made a point of saying, ‘The talks have not broken down, I’m doing this to be able to move faster, I’m going to deal directly with the leaders in order to get a deal.’ I reassured them so that they could understand that it’s an approach, which I’m taking, which hopefully will accelerate the process, and it did.

HD: At this point you did (...) some background briefing to the press, which essentially fingered the government for putting up obstacles. You therefore put them in a position which made it extremely difficult for them to walk away from the talks.

KA: That’s correct. Particularly when we had all said, ‘whoever is responsible for failure must pay a price’. And I got Condi, the EU and even the Swiss to fly in to back it up. One thing I also knew was that neither side wanted to be blamed for failure.

HD: And given that, was it a conscious act therefore to brief against the government because they were the ones you feared would walk away?

KA: Yes, earlier I had even said, ‘The speed of the caravan is determined by the slowest coach and if you want to move it faster, you have to either repair the slow coach or unhinge it.’ And I said this to the press.

HD: Then we come to your five-hour marathon.²⁰ When you went into that meeting that day, did you feel confident?

KA: Yes, and before we began, I had called the President of Tanzania and asked him to come to Kenya and ‘explain to the President that you live with a Prime Minister and that you are thriving. Your Presidency hasn’t exploded. And in fact your Prime Minister even has more power than the power we are thinking of for Odinga.’ He said, ‘I’ll try and come.’ And I said, ‘Please be flexible, you might have to stay a day or so’, and he said, ‘OK’. When he came he had discussions with the President and explained to him the powers his Prime Minister has, and then took up what I was proposing including the word ‘supervise’.²¹ That night he got [the President] to agree to include ‘supervise’ in the agreement, which was very good news.

HD: That was on the Wednesday. And you met with the President that evening with Kikwete²² and Mkapa?

KA: Yes, and on Thursday we met.

HD: I remember that morning. You said, ‘Change the text of the agreement again. Put “supervise” back in again.’

KA: Yes, exactly, which you did. And then the other thing you did which was very good was the rationale for the coalition government – the one-pager – which I thought we should do. So when we went in, I made my speech that (...) the only way to save this nation is cooperation and coalition. The two of you have the responsibility to work together, to heal, unite and reconcile this nation, and I know you had the chance to talk to your fellow President and neighbour – head of your Union – and you can live with a Prime Minister. I know your people say you can’t, but I think we must also agree and understand the rationale behind the coalition, so I would want you all to read this paper.

HD: And you handed that out?

KA: Yes, and Kibaki read it very carefully – he must have read it twice. And then I said, ‘I also want you to go through the text of the Act. There are a lot of brackets, which your people couldn’t remove; it doesn’t make sense to me and I think we can remove them here – between the five of us.’ So we got to work! We went through paragraph by paragraph – some we dropped, some we didn’t. And then we got to the constitution issue, and I said, ‘You haven’t dealt

20 On 28 February, Kofi Annan asked for a meeting with the Principals only in order to finalize the agreement on Agenda Item 3. Despite the protocol of previous meetings, Mr Annan made it clear that only five participants would attend: President Kibaki and Raila Odinga, former Tanzanian President Mkapa (member of the Panel), Tanzanian President Kikwete (Chair of the AU) and himself. The Tanzanian model of government combined strong roles for the Prime Minister and the President, and was deemed an important example to draw upon for Kenya.

21 The importance of the term ‘supervise’ in the agreement was the scope of powers this conferred to the Office of the Prime Minister. Without agreeing to an Executive Prime Minister, use of this term would dramatically increase his power over cabinet and the business of the government.

22 President of Tanzania, Jakaya Kikwete.

'Here you have five of us (...), a former head of state, two Presidents, an opposition leader and a former Secretary-General – and we can't resolve this?'

23 Amos Wako, the Attorney General.

with the Prime Minister issue', and he said 'No, the constitution says it's difficult', and I said 'We brought a lawyer in, and Mr President I think it can be done.' And he asked for Amos Wako²³ so we brought him in. And, as we did, Odinga said, 'Maybe my lawyer can come too?' So James Orengo came in. Then I knew, because I had had meetings with the Attorney

General, the Minister of Interior, Vice President, the speaker... (...) I had said [to the Attorney General], 'Look, you agree with this proposal by Hans (...) that this is the neat option.' He had started by arguing the government option; I had said, 'It's no good; you know that this is better.' We had gone back and forth. Anyway, he had come to see me and I had asked him, 'Can you propose this?' and he'd said, 'I can't but if I'm placed in a situation where I'm asked if this will work, I will say, "yes"'. So that was the situation we had at the President's office.

(...) Any case, we went through all the options. And, as a typical lawyer, he went through it all: 'this is fine, this is within the constitution, paragraph one, paragraph two... the President can remove ministers... The only area which I don't think fits with the constitution is the removal of the Prime Minister, which is no longer in the hands of the President, but in the hands of parliament. Only the parliament can remove the Prime Minister through a vote of no confidence and that will require an amendment.' And then Orengo came in and said, 'I agree with all the areas where my colleague says it's in accordance with the constitution, but I would even argue that when you consider the issues we are dealing with and the problems we are trying to solve, to go to the constitutional roots is really not helpful. And that in the spirit of the constitution and in the theory of the constitution, quite a lot of areas as he says would be fine, but I agree with him that we need constitutional amendment.' And then I said, 'Well, we have three proposals,²⁴ one of them is Corell's and we all agree that that is the best solution', and the President said, 'OK'.

24 Option one was the Corell amendment, option two was some other form of amendment and option three was no amendment to the constitution at all.

HD: So the President went with it because he basically made the political decision and it was also a way of avoiding further destabilisation by getting the law right.

KA: And the acrimony of his own team – he kept them out, because normally in this sort of thing he would bring them in. And in fact the day before the meeting, I had insisted that it should be only the five of us and then the Foreign Minister came to talk to me and I said, 'I'll be at the President's office tomorrow, we have a meeting', and he said, 'I will be there.' So I called the Chief of Civil Service and I said, 'get hold of him. I arranged it personally with the President and we said five. Who else is coming?' And then he sent the message back: 'You are right – only five.' The others were all in the chamber. He gave them all the impression that they would be in the room, but he kept them all away.

HD: Before you went off to the five-hour pentagon five-star session, you said ‘the thing I will not allow is that they take the document and consult with their people’. That you wouldn’t have accepted.

KA: No, I wouldn’t have accepted that.

HD: If they had insisted on that, in a sense you would have had to accept it to some point. What would you have done?

KA: Had they insisted on that, I would have said ‘Mr President, I spent almost six weeks with these guys, I know the way their minds work, and believe me if they could have solved it I wouldn’t be here with you. Here you have five of us. You have a former head of state, two Presidents, an opposition leader and a former Secretary-General – and we can’t resolve this?’ I probably would have told him, ‘I think you need a new mediator.’

‘When I (...) saw the ethnic nature of the killings and the conflict, the responsibility to protect, and the Rwandan and the Yugoslavian stories came to my mind.’

(...) I was really determined to bring it to a head and resolve it, because we were so close (...). The things they were fighting about [at the negotiation table] were so silly in a way. But if it had become make or break, knowing Kibaki and the other Presidents and the people in the room with Odinga, they would have said, ‘Give us a day. Let’s come back tomorrow.’ And they would have come around, because they knew the implications. What they would avoid was for me to walk away. So I knew that I also had some room for manoeuvre.

HD: OK. Now a couple of wrap-up questions. You have a very particular curriculum vitae – an interesting career. Being African, former Secretary-General, having done a lot of this kind of work as Secretary-General, having had a Nobel Prize for doing exactly this. How rare is this experience? Is it really absolute serendipity?

KA: I came with unique skills and attributes and also the ability to pick up the phone and speak to anyone around the world. Even [George] Bush spoke to me from Tanzania next door – his wife Laura also spoke to me. That helped and they also knew that I had the entire international community behind me. It wasn’t me saying that, they were the ones saying, ‘We are 100 per cent behind Kofi – we support him fully.’ It gave me a leverage that other mediators wouldn’t have had.

HD: Did it give you more than the Secretary-General of the United Nations? Even when you were the SG?

KA: First and foremost, if it was the UN dealing with it, you have to go to the Security Council to get a mandate or sometimes the SG can take initiative and then begin to pull staff together. But where it requires tons of resources, you have to go to the Security Council and then to the General Assembly, and they would discuss the issue, and the Kenyans would say, ‘Don’t get involved with our internal affairs’, and all that. And then you would appoint an envoy, who

doesn't always know the system, and he is injected into the situation, and you would begin to look for staff for him and sometimes you cannot order the best people to go. So it takes about 2–3 months to put together staff; by then the issue is running. I don't know if you saw what George Bush was saying in Kampala? He said, 'It's early warnings that the international community cannot ignore.' I'm not saying that what is happening in Kenya is like what happened in Rwanda. But he made the link of early warning and the international community. But even when we see the early warnings, we are slow in moving. Here, because of the [AU] and Kufuor being there, we were moving fast. I took a letter and I ran with it, because otherwise it could have taken a couple of months [getting there].

HD: You were free of machinery. It's also a tribute to the African Union to move so quickly, and they confirmed your mandate at their Summit when you were there.

KA: Exactly.

HD: OK. Last question on responsibility to protect – this is something that you pushed a lot when you were SG, in fact you got into terrible trouble (...). Was this to protect Kenyans who were desperate for your help? Or was this something that was more personal?

KA: No, when I left Geneva – protecting Kenya and keeping Kenya together was foremost on my mind – the people who were dying. It was when I got on the ground and saw the ethnic nature of the killings and the conflict that the responsibility to protect, and the Rwandan and the Yugoslavian stories came to my mind. It came to me very strongly that we need to work very fast to contain it before it got out of hand. And then I realised that I would have to do whatever I can and probably stay on a bit longer than I had expected in order to get it to a reversible point – and by that I mean the agreement and the rest of it.

'...The prisoner of peace.'

HD: (...) Then the whole dynamics changed when you got to Nairobi. And had you left Kenya at any point – you were the 'prisoner of peace' – if you had gone to the airport, people would have been marching in the streets.

KA: Absolutely, even those who were negotiating said, 'If you leave, we can't walk the streets.' They were afraid they would be blamed for frustrating my efforts.

HD: Can I just end by saying two things. I think, in my view, what you brought to it apart from your authority, and your background and your network, I think personally from watching you – as everybody says, you are the master of intuitive appreciation and insight and you were using that all the time. Not just in the negotiations but also with the people you met. The second thing, which is an unusual combination, is your extraordinary methodical planning, which as we discussed you often kept to yourself. The combination of those

two things, I think, was extraordinarily productive, magical, so
– congratulations!

KA: Thanks, and I was very happy you were there to help because it was very charged....As Mkapa said, 'This is too much for me. Your pace is frantic.'

