

Volume 2

Managing Peace Processes

Thematic questions

A handbook for AU practitioners

Foreword



The African Union (AU) was borne out of the collective will of its Member States to deepen and consolidate peace, security and development throughout the continent. The promotion of peace and security by the African Union is underpinned by a comprehensive approach that promotes tackling the root causes of conflict. This approach is based on good governance and the rule of law, respect for human rights and poverty alleviation.

On this basis, the OAU Mechanism for Conflict Prevention, Management and Resolution was established in Cairo in 1993 to pave the way for more effective approaches to conflict resolution on the continent. In addition, the establishment of the Peace and Security Council in Durban in 2002 gave the AU a dedicated framework for undertaking its work on conflict prevention and resolution: the African Peace and Security Architecture (APSA). The Architecture has the Peace and Security Council (PSC) as its key pillar, supported by the African Standby Force (ASF), the Continental Early Warning System (CEWS), the Panel of the Wise and a Peace Fund.

Over the past few years, the AU has decided to put in place tools and procedures for its staff and Envoys to learn better from the past experiences of the AU, and others, in peacemaking and conflict prevention. In line with such commitment, we have worked with member states, partner organisations and other regional and multilateral bodies to promote information sharing to the benefit of our staff and Envoys. Case studies have been compiled, rosters are being developed, joint planning and learning sessions are continuously being held, and Standard Operating Procedures for mediation support as well as a knowledge management framework are now in place.

The present handbook contributes to this ongoing effort. Peace processes are challenging and long term and the AU, like others, has had to struggle continuously to keep some of these processes on track, open new paths of dialogue among conflict parties, devise confidence-building measures, mediate once conflicts have broken out, and assist in the implementation of peace agreements.

I warmly encourage all my AU colleagues involved in peacemaking to read this handbook which, I am confident, will contribute positively to our work. In the process leading to its publication, prominent authors and experts have compared notes and engaged in passionate debates to provide us with practical analysis and comparative expertise related to the management of peace processes. The handbook tackles difficult questions that each of our colleagues involved in peace talks must grapple with at one point or another. Divided into thematic and process chapters, illustrated by practical and recent examples, this handbook seeks to provide African peacemakers with reference material, as they search for ever-more creative and efficient African solutions to African problems.

A handwritten signature in black ink, appearing to read 'Lamamra', with a stylized flourish at the end.

Ambassador Lamamra
AU Commissioner for Peace and Security

Contents

Chapter 1: Media strategy in peace processes	11	Chapter 4: Negotiating ceasefires	75
1.1 Introduction	11	4.1 Introduction	75
1.2 A complex media environment	12	4.2 Purpose and content	76
1.3 Challenges	15	4.3 Challenges	82
1.4 Four tactical communication options	20	4.4 Options for mediators	91
1.5 Summary: strategic communication provides stability and coherence	26	4.5 Conclusion	98
 Chapter 2: Negotiating power-sharing agreements	 29	 Chapter 5: Elections and mediation in peace processes	 101
2.1 Introduction	29	5.1 Introduction	101
2.2 Setting up negotiations for power-sharing	32	5.2 Framing the debate	104
2.3 Power-sharing options for institutional design	38	5.3 Mediation challenges and opportunities	107
2.4 Conclusion	52	5.4 Practical tips and options for mediators	117
 Chapter 3: Justice in peace negotiations	 55	5.5 Conclusion	125
3.1 Introduction	55	 About the authors	 126
3.2 Framing questions of justice	56	 Further reading	 130
3.3 Justice in peace agreements: experience to date	58	 Endnotes	 136
3.4 Process and participation	63		
3.5 Understanding amnesties	64		
3.6 The International Criminal Court: implications for mediators	67		
3.7 Justice in peace negotiations: emerging lessons and best practice	70		
3.8 Conclusion	73		

Introduction

This mediation handbook was put together, in the wave of an increasing recognition by the African Union of the need for peacemakers throughout the continent to have easy access to comparative experience. Hence, this handbook compiles material focusing on key issues that mediators encounter in their work.

Selected chapters of this handbook have been the object of passionate debates. How to move away from a normative approach? How to be comprehensive yet make information accessible in a concise format? How best to combine policy and practice to come up with practical, actionable advice?

The AU mediation handbook has sought to answer these questions and more in three volumes. Volume I focuses on how to make peace processes more inclusive. This present publication is the second of three volumes, and looks at selected thematic issues that surface in most processes. A subsequent Volume III will examine process questions. In each volume, selected chapters look at a distinct aspect of peace-process management. Written from the point of view of a mediation team, the chapters discuss practical challenges peacemakers face, as well as some options at their disposal. They further build on short case studies and reference material specific to each given topic.

Chapter One, written by Ingrid Lehmann, focuses on practical challenges and options linked to building media strategies in support of peace processes. It has benefitted from inputs by Mark Arena, James Arbuckle, Jason Arbuckle, Julia Egleder, Susan Manuel, Marianne Kearney, Michael Vatikiotis, Susannah Price.

Chapter Two looks at questions of power-sharing in peace processes. It was produced by Stefan Wolff, a specialist in state-building who teaches International Security at the University of Birmingham. It was reviewed by Andrey Ladley, Katia Papagianni, and Sean Kane.

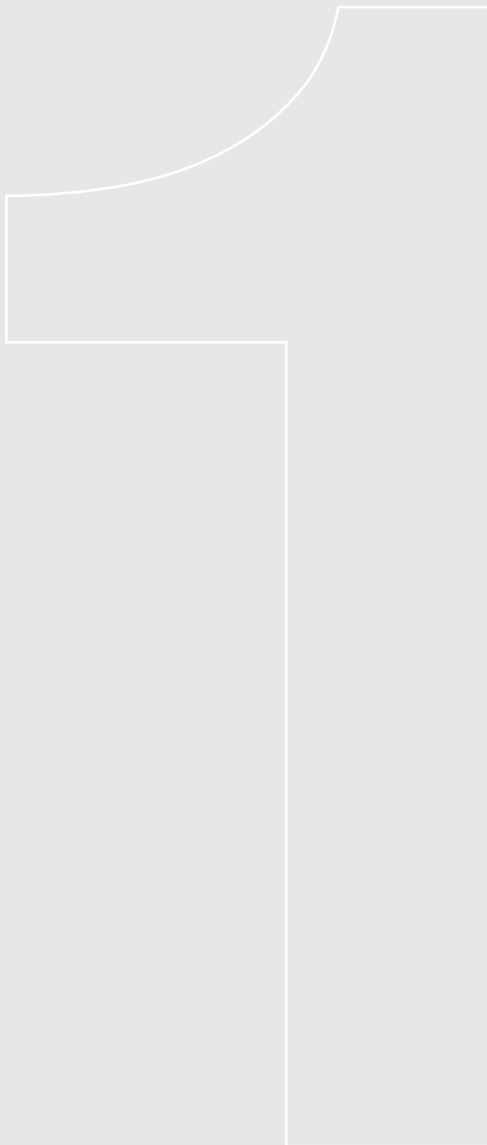
Chapter Three, by Priscilla Hayner, builds on a previous paper written for the International Center for Transitional Justice (ICTJ) and the Centre for Humanitarian Dialogue, as well as the author's work and research on Truth and Reconciliation Commissions.

In Chapter Four, Luc Chounet-Cambas explores the circumstances under which ceasefires are negotiated in peace processes and how they can best support sustainable agreements. It builds on inputs from Cate Buchanan, David Gorman, Matthew Hodes, Julian Hottinger, Marc Knight, James Lemoyne, Ram Manikkalingam, Jeffrey Mapendere, Katia Papagianni, Alvaro de Soto, Leanne Tyler and Teresa Whitfield. The author also drew a number of observations from participating in the Mediating ceasefire and cessation of hostilities agreements workshop organised by the United Nations Department of Political Affairs in Geneva on 7–8 October 2010. An earlier version of this chapter appeared in the Centre for Humanitarian Dialogue's Mediation Practice Series.

Chapter Five was written by Chris Fomunoyoh and Meredith Preston-McGhie. It looks at options and challenges that specifically apply to the mediation of election-related crisis and has benefitted from feedback by Astrid Evrensel, Nathan Stock and Gerard Stoudman.

This handbook could not have been made possible without the support of the HD Centre over the past two years: Stine Lehmann-Larsen who mobilised resources to make this and other projects possible; Luc Chounet-Cambas who edited the handbook; Katia Papagianni who came up with the original concept; their colleagues from the regional office in Nairobi; our African Union colleagues who supported them in this endeavour, Yvette Ngandu and Lulit Kebede; language editors Nina Behrman and Joy Taylor, Francois-Xavier Bernard and his team for the French translation, and Nicolas Ducret for the design and layout.

Mr El Ghassim Wane
Head, Conflict Management Division



Chapter 1:

Media strategy in peace processes

Ingrid Lehmann

1.1 Introduction

Many diplomats and others involved in the mediation of international conflicts tend to be reluctant to publicise details of their work and may prefer to stay entirely out of the media's limelight. While this approach has its merits during some negotiations, particularly in the early stages, in today's 24/7 information environment nothing stays confidential for long. It only is a matter of time before information leaks, sometimes at the initiative of the parties themselves. Increasingly, mediators find that an active media strategy becomes an essential element of their work. Such a public-information strategy will aim to build public support for the peace process, shape the public image of the international negotiator and avoid negative fallout from uncontrolled and misleading public exposure.

In 21st-century conflicts, there are not only professional reporters covering a conflict or emerging crisis, but countless interested observers. Some may be citizens 'bearing witness', who can create a 'story' through a short message, photo or video posted on the internet. Such news items can be picked up by the traditional media and may rapidly take on a life of their own.¹ For mediators it thus becomes vital to monitor relevant information channels and attempt to manage the news flow about their work in a proactive way. Seeking the 'information high ground', as in defining and enunciating the basic issues in the negotiations and avoiding unnecessary and contentious details, ought to become one of the goals of all active mediators.

1 Early on, it is useful for the team involved in the negotiations to reflect on how communications can be used to advance the peace process:

- ▶ How do we want our mediation efforts to be reported and perceived?
- ▶ Who do we consider our most important audiences, partners and adversaries in this process?
- ▶ What are the messages we want to communicate publicly and which parts of the negotiations would we like to keep confidential?

2 Brainstorming these questions with members of the mediator's team will elicit interesting ideas which can then be used to develop an effective communication strategy to support the peace process.

3 1.2 A complex media environment

• Why public information matters

Structured information strategies allow mediators to meet six distinct objectives in a peace process:

1. Establishing credibility for the negotiator's team as a reliable source of information for journalists and other observers reporting on the conflict.
2. Promoting greater understanding of – and information about – the goals of the peace process and why a peaceful resolution is in the public interest. (Beyond the educational aspect, it is important here for mediators to broaden public support for peace.)
3. Framing, reframing and re-defining the issues at hand: unbiased reporting and analysis can help de-conflict some of the issues and focus instead on common interests and new ideas and options.
4. Giving members of the public a space in which to express their hopes for peace, thereby increasing public pressure on the conflict parties to negotiate and keep to their word.

1 5. Managing hostile information campaigns directed at discrediting the peacemakers and that will negatively affect their image.

6. Managing misperceptions, emotional outbursts (by parties' representatives, opinion leaders or prominent journalists) and counteracting destabilising reporting by 'information doers'² that could affect or derail the whole negotiating process.

• The political power of media

In modern societies, media communications perform at least three functions:

1. They serve as **agenda-setters**, in that media coverage or lack of it influences **what** people and policy-makers think about.
2. They are formative, in that media reports **frame** how people see a country or organisation or conflict situation, thereby influencing **how** a conflict is perceived nationally and internationally.
3. They help to create **lasting images** of the causes and consequences of violent conflict, and of the performance of international actors in those conflicts.

For example, local media reports were used to incite the massive killings in Rwanda in 1994, but the lack of reporting by international media had a significant impact on the international community's lack of effective response to that conflict. Subsequently, hundreds of thousands were killed, and the image of the United Nations suffered substantial damage.³

Harnessing the power of media reports about regional or international conflicts should therefore be a high priority for international peacemakers. Media are not inherently evil or good – although they are owned and controlled by people who might be either. Media messages and reports can help to promote an informed understanding of the peace process and gain support for a peaceful resolution of conflicts.⁴ Several peace missions and peacemaking efforts have used information programmes successfully, such as the United Nations operations in Namibia and Cambodia and the various negotiations around Kosovo (Box 1).⁵

Box 1

Kosovo 2004 – Working with the local media to counter hate messages

In the first years of an international presence in Kosovo, the Organization for Security and Cooperation in Europe (OSCE) and the UN attempted to regulate the country's media. A Temporary Media Commissioner (TMC), appointed by the UN's Special Representative, was to implement a temporary regulatory regime over Kosovo's broadcast outlets, then 23 television and 70 radio stations, to prevent slander and hate speech. However, in the spring of 2004 local media reports incited crowds in the town of Mitrovica to violence which led to the destruction of religious sites, 19 people dead, 900 injured and 4000 people left homeless. The process of reconciliation between the ethnic groups experienced a significant setback.

The spokeswoman of the UN Mission in Kosovo at that time admitted at a press conference that she was surprised by the level of violence, admitting that they had not adequately monitored the local media. Consequently, the powers of the TMC were strengthened in December 2004, and in particular the main Kosovo broadcasters agreed to ban the broadcasting of hate messages. In 2005 a local multi-ethnic press council of 11 major publishers was formed and invested with considerable powers, most importantly the commitment to a journalistic Code of Conduct, which led to a professionalisation and self-monitoring of the Kosovo media.⁶

• Beyond traditional channels of communication

There are now a growing number of actors in an increasingly diverse media environment. Private citizens using smart phones and video recorders are able to relay visual images to diverse media outlets, and traditional journalism is at times replaced by 'citizen media'. Observers in the conflict theatre can post potential news items to various social and professional websites in all parts of the world.⁷ Many non-governmental organisations with a stake in the negotiations have their own staff and supporters relaying information to their head offices. Furthermore, the protagonists in the conflict may have their own media outlets,⁸ constantly feeding information, or disinformation, to their supporters and to their own ethnic or diaspora media. Rapid information dissemination has now become an important tool for most conflict parties.

While mainstream media are not necessarily in the front line of these 'information wars', they can pick up relevant news snippets from these diverse sources without thorough verification, thereby exacerbating pressures on negotiators at the international level. News is now created in an instant and the lead-time to react to emerging news about one's organisation or peace mission is at best several hours, sometimes only minutes. Nik Gowing of the BBC has termed this challenge a 'new tyranny', which often creates news reports that are 'first, fast but flawed'. For governmental policy-makers, this may rapidly create a media crisis which, according to Gowing, many perceive as formidable if not frightening.⁹ As a result, governments and inter-governmental organisations have lost their monopoly on information management to a diverse group of non-state actors with access to a variety of information channels.

In the face of such an abundance of 'information doers',¹⁰ mediators need to plan and develop information campaigns to influence how people see an international mission and to ensure successful implementation of their mandate. Successful negotiators, such as Martti Ahtisaari, former President of Finland and recipient of the Nobel Peace Prize, have long adopted this approach. In his decades of negotiations on Namibia, Kosovo and Northern Ireland, Ahtisaari decided that information capacity must be part of the peacemaking strategy. In the case of Namibia, he saw a goal-oriented information strategy as the backbone of a mission in an environment where negative campaigns by opponents of the peace process, or critical news stories about the mediator and their team, could affect or even derail the negotiations. Such a clear leadership decision is also a signal to potential spoilers of the peace process, whether internal opponents or external foes, that the peace mission is prepared to present itself, and defends its positions when need be.

1.3 Challenges

• Analysing the information environment¹¹

At the start of a mediation process, and in order to act effectively, mediation teams need a good knowledge of the local media landscape and information capacities. How do people get their information? What media do they mostly trust? This analysis allows the mediation team to understand which media are most used and most effective, which ones to monitor, and which ones to work with so that information reaches the largest number of people. This early analysis should include issues such as literacy and education of the population, access to and control of radio and television, cell-phone and internet usage in the country and the distribution and quality of the print media. Which outlets strive for

1 impartiality and could be considered allies in the peacemaking process? The analysis should also include the level of civic engagement, the role played by churches, mosques, teachers, students and other opinion leaders, as well as the level of open and public debate in the country. Are propagandistic or hate media active? How do rumours spread and who are the main carriers of rumours?

2 The presence of international journalists covering a certain conflict may vary widely, depending on the kind of conflict and the timing of the peacemakers' activities. Many conflicts receive very little international media attention, for reasons of political and economic salience of the area concerned, logistical reasons (geographical inaccessibility or other hurdles put in place by a party to the conflict), general security concerns, infrastructure problems or when 'conflict fatigue' sets in, i.e. when a conflict has been in the news but is no longer considered newsworthy.¹² In such situations, there can be a tendency towards complacency among international mediation staff who may often realise too late, as in Kosovo in 2004, that more careful attention to local media reporting could have alerted them to upcoming troubles.

3 Peace negotiations are sometimes covered by reporters who are called 'parachutists': they drop in for a few days, but if talks drag on, they or their employers may lose interest and move on to more newsworthy subjects. Some conflicts, such as the Western Sahara or Cyprus, then become 'forgotten wars', ignored by the international media for years or decades. The reverse can also occur, as in the case of Afghanistan/Pakistan in September 2001 when the sole spokeswoman of the UN Office for Humanitarian Affairs, assisted by one local staff member, who normally handled a few media requests a week, suddenly found herself inundated with media requests from thousands of journalists after the attacks of 9/11.

4 • **Monitoring the media**

5 To understand its environment and be reactive, the mediation team needs to monitor the media and other public spaces (blogs, social networking sites, newsgroups and groups communicating with SMS-cellphones). Such an undertaking can be labour-intensive but is a vital chore which should be assigned to members of the peacemaking team or other local supporters with language capacities. When media reporting about the negotiator's activities is found to be inaccurate, corrective measures can be taken immediately, before rumours and misinformation take hold. Journalists should be aware that the peacemakers are monitoring their work, inaccuracies can be pointed out through phone

calls, letters to the editor and, if necessary, press conferences. If severe cases of hate messaging occur, the top negotiator can immediately lodge complaints and intervene to check destructive communications.¹³ In this case, the peacemaker's team needs to act quickly and decisively, to prevent the distorted images from taking hold, and to anticipate further issues.

• **Identifying target audiences**

When surveying the information environment in the countries or region concerned, it is important to consider the main communication partners and target audiences. When time is short and the mediator's team is small, the most important audiences for an effective communication campaign need to be identified as soon as possible. Ideally, different messages will be crafted, and possibly completely different communications approaches designed, depending on the mediator's intended target audience. A non-comprehensive list of significant players who should be regularly communicated with includes those with in-country and those with international influence.

1. **Players who influence in-country public opinion**, pass on information, represent views of parties not included in the negotiation process, and can also act as feedback mechanisms from the broader audience. These players will help the mediation team gain local buy-in and can be:
 - ▶ Local media (print, radio, television, internet), which need to be monitored; channels for regular liaison should be established
 - ▶ Established reputable opinion leaders in the civic community, such as religious leaders, educators, parliamentarians, justices and others for whom regular meetings, briefings and public events could be organised
 - ▶ Local organisations, activists and bloggers, including their websites, which should be monitored and understood to inform decisions on appropriate interactions.
2. **Players who can exert influence over key foreign policy-makers** (whether government officials, regional organisations or other mediators) in support of the mediator's approach:
 - ▶ International media with representatives on the ground (correspondents or stringers) who need to be updated regularly

- 1
- ▶ Spokespeople and leaders of inter-governmental organisations and non-governmental agencies, aid and refugee assistance providers, who can be kept informed and updated regularly through special briefings and personal interaction
- ▶ Expatriate communities and their media need to be monitored; those who could play a supportive role should be contacted and kept informed as they could be helpful in spreading the peace message.

2 These two categories often overlap as, for instance, established in-country opinion leaders may themselves have direct access to foreign policy-makers.

• **Transparency versus confidence building**

3 Some negotiators instinctively prefer to 'keep things close to their chest' and avoid unnecessary public communications. While it is true that premature statements about initiatives and sensitive aspects of the mediator's work can lead to confusion and could undermine negotiations, it is equally risky to be seen as secretive or unnecessarily concealing information or confusing the issues. As a matter of principle, transparency should underpin the mediator's dealings with the public and media in conflict areas. A recommended course of action would be for mediators to be as open and transparent about the process as possible, while they do not necessarily need to enter into – possibly contentious – details of the negotiation.

4 Often, the rumour mill is highly active in areas of conflict, and speculative local observers, bloggers or reporters will create a story whether the mediator likes it or not. As discussed above, it should be decided early on which parts of the negotiations to keep confidential and which can be publicly shared. In each case, the peacemakers must ask themselves: what if confidentiality is not adhered to? For this eventuality, a Plan B will ideally be prepared and go into effect when necessary. When faced with leaks from interlocutors during the Kenyan peace talks in February 2008, Kofi Annan moved the negotiations to a remote undisclosed location, effectively creating a two-day media blackout. This helped to give the negotiations breathing space necessary for the parties to reach the power-sharing agreement.

Box 2

Darfur process proves difficult for communications on mediation efforts

The Joint Mediation Support Team was launched with much publicity and a few public- information specialists in late 2006. Despite their efforts, the 2007 peace talks in Sirte failed to attract rebel attendance. The New York Times' front-page photo, featuring a lone camouflaged militant at a huge buffet table, said it all.

The long and complicated Darfur peace process has been a challenge for professional communicators. The interim Joint Chief Mediator, Ibrahim Gambari, is also the Joint Special Representative of the African Union–United Nations Mission in Darfur (UNAMID). He uses the mission's communications team to promote key moments in the peace process and urge broader commitment to the talks. But UNAMID is careful not to imply ownership of the Doha Document for Peace in Darfur (DDPD), which is the latest incarnation of the peace agreement. Not being in a position to 'sensitise' the population on the document of 100+ pages, UNAMID counts on the signatories – the Government of Sudan and a small opposition movement, the Liberation and Justice Movement – to do so.

4 How fully the population is engaged is hard for outsiders to deduce. The DDPD is being disseminated in UNAMID-supported workshops across Darfur, but there is no media forum for debate. It is not posted on Sudan media websites, and UNAMID radio programming is scrubbed by Khartoum censors before broadcast. The 'enabling environment', i.e. freedom of speech and assembly, which some key capitals insist upon before endorsing a Darfur-based internal dialogue, does not seem to exist.

5 With attention focused on the independence of and then crisis with South Sudan, international media have largely lost interest in Darfur, except for a few diehard bloggers. The non-signatory parties have not responded to date to public calls from the international mediator to join the process, and are openly hostile in public statements. Getting basic coverage of mediation efforts is not a problem in Sudan. But finding a credible and authoritative voice, which is accessible to and influential with all communities and which can convince parties to lay down their weapons, continues to elude communicators¹⁶.

Public Information can also be used to great effect in the crucial period after the agreement has been signed, in support of its understanding and implementation. Between 2003 and 2005, the Centre for Humanitarian Dialogue helped the parties to the Aceh conflict implement a Cessation of Hostilities Agreement (COHA). A semi-autonomous body called the Public Information Unit (PIU) was used to clarify areas of misunderstanding and build public support for the agreement.¹⁴ Such work on public information can help parties stay on track in the post-conflict phase and monitor implementation of agreements. Sympathetic local media and NGOs can also help in the peacebuilding phase by reporting when benchmarks are missed or backsliding occurs.

- **Vox populi – feedback mechanisms**

When negotiations are long, the peacemaker may wish to survey local public opinion to assess perceptions about the international mediation effort. While members of the peacemaking team can do this informally, at small scale, there have been professional opinion polls undertaken by international organisations about their work in areas of conflict. The UN Department of Peacekeeping Operations has carried out such ‘vox populi’ since 2004, partly as a result of severe criticism of the behaviour of UN peacekeepers in missions in Africa.¹⁵

Although not peace-process related, the case of the 2010 cholera outbreak in post-earthquake Haiti, which UN peacekeepers were accused of having caused, illustrates how failure to consider local opinion can rapidly backlash and affect an organisation’s credibility. In the presence of persisting rumours, it may be better for peacemakers to address these, rather than ignoring them. This may entail a public commitment to a prompt investigation, the investigation itself, public apologies in case of mistakes/responsibility and a commitment to avoid such mistakes or incidents in the future.

1.4 Four tactical communication options

Communications possibilities open to negotiators in international settings can be grouped into four basic approaches. Responding to modern communication challenges and opportunities is likely to require the mediator to use all four options, or a combination of them, at different times during a process.

- **Option 1: Stay out of the headlines and keep a low profile**

This approach is preferred by some ‘traditional’ peacemakers but is increasingly unlikely to succeed in times of intense media scrutiny. Its passivity allows other parties (including the conflict parties themselves) to seize the initiative and set the agenda in terms of media coverage, its tone and content. It leaves the peacemaker ‘speechless’ in the case of attacks and the peace process vulnerable and possibly destabilised. Once a public relations crisis sets in, the peacemaker will find it hard to regain the high ground – much of his or her time may be spent in crisis management. This happened during the 2007 Darfur talks in Sirte, Libya (Box 2). In the absence of key rebel groups, the joint UN–AU mediation team could do little in terms of PR efforts.

- **Option 2: Reactive but responsive**

The peacemaker can respond to media reports or blogs about their work and give occasional updates in press conferences and background interviews. Many United Nations officials follow this course, as for example in the Cyprus negotiations over the years. This option relies on a low-key or reactive approach, which can work when reporters and local parties are not hostile to the peace process. Once a media crisis occurs, this approach may throw the negotiator’s team into turmoil and lay the mission open to criticism.

- **Option 3: Work with the parties to frame the media agenda**

When the peacemaker cannot set the agenda directly through a visible public information mandate, he or she can help the negotiating parties in understanding the benefits of a joint approach to communication. The mediator can explain to parties that it is not in their interests to pre-empt, provoke, misinform or manipulate public perceptions. The mutually beneficial potential of open communication channels can be discussed early in the negotiations and a joint communication strategy elaborated. Should violations occur, sanctions can be applied depending on the powers invested in the mediator and the parties.

The case of Kosovo was very unusual in that the ‘mediator’, the United Nations, was in control and so could apply sanctions. Sanctions were also applied in Cambodia where the UN controlled the sphere of information, according to the 1991 Paris Peace accords. But usually a mediator does not have the tool of sanctions or other forms of physical control over the parties. More often, a mediation might resort to a sanctions committee, such as the one set up by the UN Security Council in Cote d’Ivoire to limit hate media.

• Option 4: Set the agenda

The negotiator and his or her team can drive the communication flow about the peace process through high visibility and control of the media agenda, as Kofi Annan did during the Kenyan Dialogue 2008 (Box 3). This option needs a skilful and experienced information team with the confidence and full involvement of the negotiation leader. Communication is given a high priority; daily messaging is carefully crafted and adjusted when the need arises. The leader is a good communicator who has decided that public perceptions matter in peace negotiations.

This option mainly applies to contexts where foreign media coverage is under way. By contrast, in a conflict zone in which there are no longer any foreign media (because they have lost interest and/or because they are not allowed access), and the media covering the conflict either belong to the state or have taken on the voice of the opposition, 'setting the agenda' becomes an unlikely scenario in-country. The communications team may nonetheless try and set the agenda with key influential foreign media outside the country. Typically, they would want to reach out to the public opinion of foreign countries whose leaders have leverage over the conflict parties and can exert amicable pressure on them.¹⁷

The choice of communications option will be largely context-specific. However, the PR matrix in Box 4 (developed by media professionals)¹⁹ is a simple yet effective tool that can help mediators rapidly identify and apply the optimal PR strategy in a given peace-process situation. The 12 questions broadly represent the key drivers that ought to shape any peacemaker's public-information strategy. Once the mediation team has answered the questions and agreed on a diagnosis, the matrix below will point them in the direction of one of the four tactical options outlined above.

While this matrix should not be taken as a 'one-size-fits-all' type of solution, and cannot dictate mediators' choices, it can help mediators to initiate two important sets of discussions (diagnosis and strategy) that will be key in devising appropriate media solutions.

Box 3

Kofi Annan and the Kenya National Dialogue 2008

Following the elections in Kenya in December 2007, large-scale violence led to 1200 casualties and over 600,000 displaced persons. In January 2008, the opposing sides agreed to mediation by a Panel of Eminent African Personalities under the Chairmanship of former UN Secretary-General Kofi Annan. The Kenya National Dialogue was a high-profile mediation process that received much publicity worldwide. This was due to the positive outcome of the negotiations, the respect Kofi Annan himself generated, and a well-organised public information and media programme. The mediation maintained its own website, still operating in early 2012 (<http://www.dialoguekenya.org>), and generated support from the international NGO community, such as International Communications Volunteers (ICV) and the activist website www.avaaz.org. The Kenya Dialogue Review meetings, which continue to take place at regular intervals, exert continuous public pressure on the Kenyan interlocutors. The Kenya dialogue is a good example of a mediation that succeeded in stopping violence and undertaking political reforms, something which can be attributed in part to an efficient use of media helping to garner international attention and support.¹⁸

Box 4

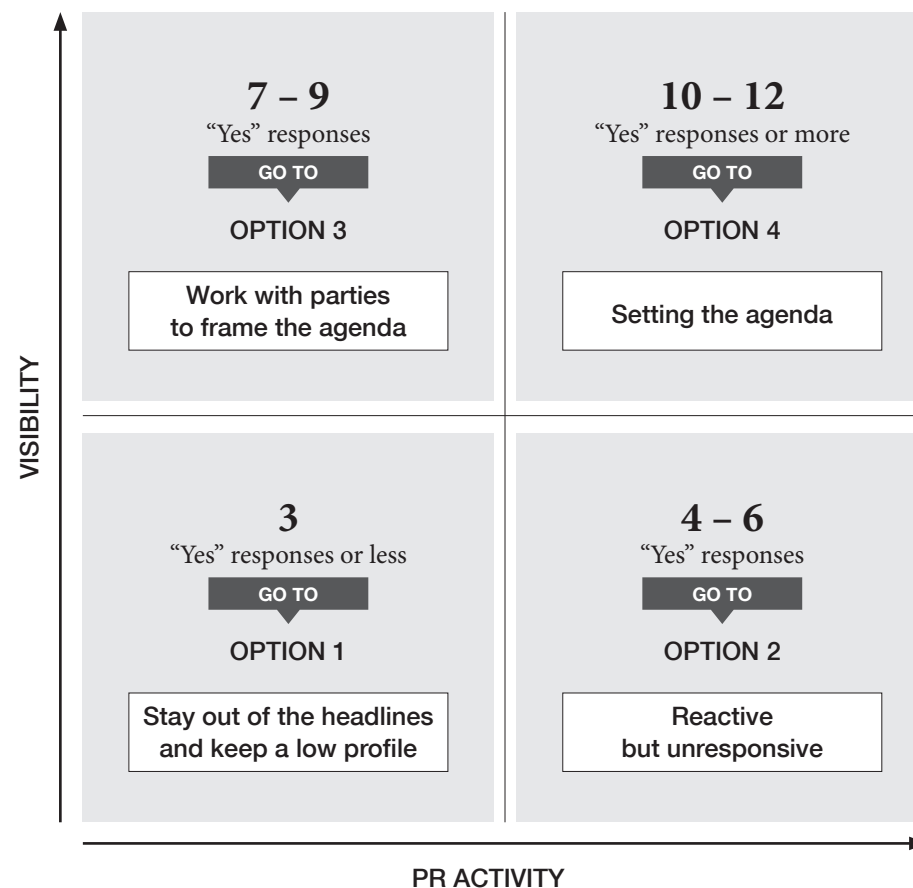
The Peacemakers' PR Matrix

12 Questions to Identify the Most Suitable Public Relations Strategy in Conflict Areas

Question	Yes (& Notes)	No (& Notes)
1 Does the local media follow this issue ?		
2 Is the media environment hostile to any of the parties or outsiders, such as the mediator(s) ?		
3 Does the international media follow this issue ?		
4 Is any party likely to engage or seek to manipulate the media ?		
5 Are international stakeholders (funding agencies, diaspora communities) engaged with this topic ?		
6 Is media coverage likely to bring pressure to bear on the negotiating process ?		
7 Does social media shape and influence discussions amongst any of the stakeholder populations ?		
8 Is transparency an essential component of this process ?		
9 Do the public and the media expect regular and updates on the negotiations ?		
10 Is it to be expected that confidentiality of the process will be breached by one or more of the parties ?		
11 Is there a generally accepted consensus about the probable outcome of the process on all sides ?		
12 Will the final outcome of the process depend on the broad support of the concerned public ?		

Ranking & Suggested Programme

Total the number of “yes” responses from the 12 Questions to identify which quadrant applies to you. Each quadrant has two drivers of strategy : PR activity and public visibility.



For more details on each option please refer to the chapter 4.

1.5 Summary: strategic communication provides stability and coherence

Media and communication strategies are the result of careful analysis of the information environment in the area of operations. In developing the peacemaker's core messages, several options and alternatives should be explored. Box 5 lists some practical steps in dealing with the media. Once agreed, the key messages should be adhered to by all members of the peacemaking team. This gives the negotiator coherence in communicating with the outside world, and may contribute to his or her leverage with the parties to the conflict.

Adequate information strategies will be key in enabling the peacemaker to better understand the operating environment, and to communicate better the aims of the mission and the potential benefits of peace. Such strategies will further help the mediation team to mitigate spoilers' use of inflammatory language.

When the tools described in this chapter are creatively applied, they may not guarantee success but will definitely contribute to it, as the 2008 Kenya precedent demonstrates. When these tools are ignored or contravened, they will too often lead to failure. Evaluating the impact of communications strategies for peacekeeping and peacemaking would further help practitioners understand what works and what does not – something that currently remains largely unmeasured.

Box 5

Checklist – Some practical first steps in dealing with the media

- Plan early for your communication strategy: too little too late is a frequent cause of failure in this field.
- Choose the spokesperson and information team carefully: at least one person should be an experienced professional in this field. Leaving this sensitive subject to untrained staff can backfire.
- Be hands-on in identifying communication priorities and key messages.
- Make sure that all team members are able to articulate three key messages that underpin your communication strategy.
- Engage personally with key journalists and other opinion leaders – make them feel you are open and available.
- Hold informal briefings and press conferences as the situation requires; don't be rigid about when and how to engage with the media and public.
- Before critical media encounters, press conferences and public appearances, role-play difficult questions that may be asked of you.
- Pay attention to the tone of your communication, e.g. whether to be assertive and firm or open and consultative.
- Learn basic rules for engaging with the media: on-the-record, off-the-record, for background only, etc.
- Always get back to journalists with information promised: establish a reputation for reliability.
- If you lack experience in interviews and public speaking you may wish to receive basic media training.



Chapter 2:

Negotiating power-sharing agreements

Stefan Wolff

2.1 Introduction

Power-sharing is a governance arrangement that facilitates joint decision-making by representatives of different groups in one or more branches of government. Power-sharing institutions are a crucial part of many conflict settlement and prevention processes. The crafting of these institutions needs to be based on an understanding of the advantages and risks of any particular conflict situation. On the positive side, power-sharing institutions can provide conflict parties with institutions of governance that accept and protect their core identities and effectively address concerns about security, participation and representation, the preservation of cultural identity and the improvement of living standards. However, there are also risks that need to be considered and managed. As the goal is to allocate power on the basis of group membership, the most obvious risk is of 'trapping' any society into one specific manifestation of identity-based representation in perpetuity.

In some situations, the actual power-sharing arrangement might be (or become) a source of conflict, or a reason for the prolonging of the conflict. For example, Bosnia and Herzegovina, more than 15 years after the conclusion of the Dayton Accords with their highly rigid power-sharing institutions, is still far from a fully functioning state and still requires an international military presence, albeit at significantly reduced numbers. Hence, even if the positive aspects of power-sharing are prominent at one point of a conflict, thought must also be given to how they evolve across time. Things change - including leaders, population ratios, risks, values and assessments of what is 'fair'. It is, therefore, important to look beyond the immediate peace 'effect' that power-sharing

1 institutions can facilitate and consider whether, and how, they may need to be adjusted later in order to contribute to (re-)building sustainable states. It is also important to consider how opportunities for such subsequent adaptation can be built into the original arrangements. This is particularly relevant to any longer-term and constitutionalised arrangements for power-sharing.

2 This publication presents issues associated with, and options for, designing power-sharing institutions and highlights considerations which are relevant to mediators. As with any such publication, no single option will be sufficient to 'settle' any particular conflict or prevent any crisis from escalating. Power-sharing institutions are only one dimension in a comprehensive approach that frequently also includes arrangements for a spectrum of self-governance/autonomy; safeguards for the protection of human and minority rights; guarantees for an entrenchment of the rule of law; disarmament, demobilisation and reintegration programmes; and broader programmes for economic development. Such complementary aspects of a comprehensive approach are not detailed here, but in the longer term they may be critical determinants of 'success' in the sense of building enduring frameworks for the regulation of peaceful political competition.

3 Power-sharing is not a panacea. It is a useful device, in combination with other mechanisms, to offer conflict parties an alternative to continued fighting because it assures them of institutional safeguards that will protect their interests. It is frequently applied in identity conflicts – whether they are fought along ethnic, religious, linguistic, or even ideological lines. It can be either a transitional arrangement in the run-up to a permanent new constitution (as was the case in South Africa's transition from apartheid) or written into post-conflict constitutions to enable former adversaries to commit credibly to non-violent politics in pursuit of their interests. Power-sharing often emerges as a seemingly 'natural' compromise that offers conflict parties a way out of an intractable situation after prolonged violent conflict (as in Sudan's 2005 Comprehensive Peace Agreement) or after contested elections (as in 2008 in both Zimbabwe and Kenya). In the post-election scenario in particular, the 'easy availability' of power-sharing has the potential to undermine the democratic process: as long as they can credibly threaten violence, election losers – challengers and incumbents alike – can still gain a share of political power. In such situations, power-sharing may still be a viable option to prevent all-out civil war but it is unlikely to address deeper-seated problems often associated with winner-take-all political systems in divided societies. In these cases, power-sharing is best used as a transitional arrangement creating the space to address these more fundamental underlying problems in a consensual way.

Figure 1 Four steps toward conflict prevention and resolution through institutional design

1. Map the situation
 - Identify relevant actors at local, state, regional and global level.
 - Determine their interests and demands.
 - Calculate the balance of power between them.
 - Assess whether they are ready for a comprehensive settlement.
2. Identify issues to be resolved
 - Clarify with conflict parties what their concerns are and why particular demands are being made.
 - Decide whether these issues need to be resolved incrementally or whether a cumulative approach towards a comprehensive settlement is more likely to succeed.
 - Determine the sequence of issues to be negotiated, a timetable and the venue/s for negotiations.
 - Assess, in consultation with the parties, capacity-building needs and develop a programme of joint and individual events.
 - Agree funding mechanisms with relevant donors.
3. Assist parties in developing basic institutional design to address relevant issues
 - Match issues with options for power-sharing.
 - Discuss any needs for guarantees and options for the settlement with the parties.
 - Revisit capacity-building issues as necessary.
4. Refine the basic institutional design
 - Consider potential complications arising from the power-sharing options chosen.
 - Develop solutions to address these complications.
 - Ensure that options complement each other so they don't work at cross-purposes.
 - Finalise guarantees for the settlement and its implementation.

This publication is aimed primarily at assisting senior diplomats, mediators and facilitators involved in conflict prevention and settlement as well as negotiators from the parties in conflict. It elaborates on four steps in the process of designing power-sharing institutions (see Figure 1) and assesses the options and issues that may arise from the process.

2.2 Setting up negotiations for power-sharing

Even if outsiders consider that there are manifest advantages for all sides in a power-sharing arrangement, the concept is not necessarily acceptable to all conflict parties, nor is it an inevitable outcome of negotiations. For example, where both sides realise that they cannot win by military means, it does not always follow that they will put their faith in negotiations for power-sharing. Often, the balance of power is such that 'not winning', primarily means 'not losing' (i.e. the ability to prevent the other side from 'winning'). Mediators then need to focus on helping the parties to understand that a negotiated political settlement is preferable to a military and political stalemate, especially in light of the economic, humanitarian and other crises that so often follow such a stalemate. One option for mediators is to highlight (and, in some circumstances, structure and emphasise) incentives and the pressures on the parties so as to make all alternatives to negotiation less attractive. Sometimes confidence-building measures and guarantees to the parties in the run-up to, and during, the negotiation process are also extremely important steps in steering parties into negotiations. It is not possible here to detail the many tools that might help in getting the parties to the table. Each strategy has to fit the circumstances and should always be balanced against the risk of the mediator and others going too far and threatening the confidence that the parties might have in their role. There are many factors which are relevant to the establishment of power-sharing negotiations and, while many of these matters are relevant for all negotiations, the goal is to highlight factors especially relevant to power-sharing. As a result, the assumption in this publication is that it has been possible to get the parties to agree in good faith to negotiate relevant arrangements. Generally, getting the parties to the table and holding them there are the foundational steps in the entire process – hence they warrant a good deal of energy, expertise and diplomacy.

- **Steps towards power-sharing**

Another closely-related problem concerns the substance of an agreement that might be acceptable to the parties (both their leaders and their constituents). Weaker parties may not be comfortable with the idea of giving up their guns in exchange for politics, even if they are guaranteed a role in political decision-

making through power-sharing institutions. Stronger parties, in contrast, may not be persuaded by the idea of making concessions and allowing weaker parties a real say in the political process, even if this would mean bringing a costly conflict to an end. In such situations, mediators could start with shuttle diplomacy to establish core issues of concern for negotiators related to both the process and substance of negotiations. This could be followed by confidence-building measures to build a minimum level of trust between negotiators. Peer-learning, which enables negotiators to enhance their understanding of power-sharing options in a joint setting that provides opportunities for them to learn with and from each other as well as develop trust in their mediators, is particularly useful in this context.

- **Mandate problems**

Although mandates are primarily matters for the parties, mediators need to keep in mind the risks of 'mandate problems'. These risks include negotiations which only involve some of the key groups/leaders (a problem for the Darfur processes in 2011, and in the 1990s in Bougainville and Papua New Guinea) or which involve a repudiation of draft agreements. The latter includes cases where negotiators become 'caught up' in the process but are then unable to carry their groups or leaders with them (a problem with the Lord's Resistance Army negotiations in Uganda/Sudan). Sometimes time spent clarifying mandates for all sides can be part of confidence-building processes, although the issues need to be delicately handled as some sides may choose to see 'clarification' as challenging their authority. In the negotiation processes in the Southern Philippines in 2008, for example, negotiators on the government side had come entirely from the Executive, which did not appear to factor in that there might be major problems with the other two branches of government (the Judiciary and the Congress). This resulted in a spectacular public collapse of the process just as a settlement was about to be signed, and a partial resumption of military conflict. At the end of 2011, the mediating and negotiating process had still not been completely restored.

- **Approaches to a power-sharing negotiation**

Mediators (together with the sides' negotiators) also need to agree on the approach to negotiating a power-sharing settlement.

A step-by-step approach

It allows the parties to conclude a range of separate agreements in an incremental process, where each agreement would be concluded and implemented independently. The advantage of such an approach is that it helps parties gain confidence in their ability to tackle the issues between them and to see the

1 actual results of their co-operation relatively quickly. This can build momentum towards addressing hard issues later on and begin a track record of success which also enables the parties to make a more persuasive argument in favour of a negotiated settlement vis-à-vis their own constituents and possible detractors within their communities.

An alternative is to construct a 'comprehensive agreement'

2 This approach presumes that 'nothing is agreed until everything is agreed'. Here negotiations are only concluded once all issues that the parties have agreed to address have been resolved. This does not exclude the possibility of a series of sequential preliminary arrangements, some of which might be implemented. The important point is that the door remains open for re-opening all issues as matters progress, for example as part of an ongoing bargaining process in return for compromises. The comprehensive approach can help mediators overcome an impasse in negotiating a particular issue by 'parking it' for discussion further down the line of a peace process. In contrast to the step-by-step approach, the comprehensive approach also prevents parties from concluding 'easy deals' from which they directly benefit in the absence of an overall settlement – in other words, it helps avoid a situation in which negotiators only engage on issues that make the status quo more comfortable and thus remove the urgency of a full settlement. It is essential for mediators to determine whether the parties are ready for a comprehensive settlement. If, at the beginning of a peace process, they are deemed not to be, the step-by-step approach could initially be used as a way of building confidence and encouraging peer learning before remaining issues are 'bundled' into a comprehensive approach.

3 • **Guarantees and assurances**

4 For either of these approaches, it is important to consider the needs of the parties for assurances or guarantees – both for the actual settlement and its implementation. There is a very wide range of factors that could fall into this broad category of 'assurances' or 'guarantees'. In some cases, an early internationalisation through monitors will be sufficient to assure parties that their fighters will not simply be massacred by a side which is militarily stronger (for example, the Commonwealth unarmed observers that lived in guerrilla assembly points in Zimbabwe in 1979). Alternatively, assurances or guarantees might include an ongoing internationalised presence to guarantee a fair electoral process, or an amnesty or guarantees of office in governments.

Box 1

Negotiating the Machakos Protocol for Sudan (2002)

1 After years of only limited progress on resolving the North-South conflict in Sudan, these were the first serious negotiations, involving teams of eight negotiators on each side. The mediators – led by Kenyan General Lazaro Sumbeiywo – approached each of the issues identified in the 1994 Intergovernmental Authority on Development Declaration of Principles individually and let the parties debate them. Over a period of four weeks, the mediators drafted, paragraph by paragraph, what they considered to be an acceptable consensus and thus built what would eventually become the Machakos Protocol. After frequently heated discussions, the mediators eventually presented this single draft, highlighting the tangible progress that had been made including on wealth and power-sharing, on security arrangements and on reforms of the judicial system. They focused the attention of the parties on the two main issues on which no agreement had yet been achieved: self-determination and the role of shari'a law in a future Sudan. Sumbeiywo presented this text to the parties' negotiators late in the evening and demanded they give him an answer that same night. Leaving the parties with such a tight deadline was a risk, but it paid off. After consulting with their respective leaderships, the negotiators indicated that they had reached agreement in the early hours of the following day. This established the fundamental parameters of the subsequent Naivasha negotiations in which the 2002 Machakos Protocol was fleshed out with detail and turned into the 2005 Comprehensive Peace Agreement.

2 In some instances, discussing guarantees may have to precede substantive settlement discussions to assure parties that any negotiated outcome will 'stick'. Such early discussions of guarantee options can also serve to build confidence between the parties and consolidate the position of the mediators, especially if they are seen to be able to garner significant external backing for a negotiated settlement. If preliminary talks about guarantees are not seen as important by the parties, they could be introduced into the negotiations as the settlement begins to take shape. In a step-by-step approach to negotiations, guarantees need to be discussed for each individual agreement; under the comprehensive approach, it is also possible to combine guarantee mechanisms that cover a settlement as a whole with those that are specific to individual arrangements, processes or institutions negotiated by the parties.

Negotiating the Lusaka Protocol for Angola (1994)

The Lusaka Protocol was the negotiated outcome of a mediated effort led by the United Nations (UN) to resolve the intra-state dimension of the Angolan conflict. It was the third such attempt in half a decade: following the successful US mediation of the tripartite Angola-Cuba-South Africa agreement in 1988, the Gbadolite negotiations (mediated by Zaire's President Mobutu) failed to bring about an agreement between the Government of Angola and UNITA in 1989, and the 1991 Bicesse Accords collapsed into renewed civil war in 1992. When it became clear that it had lost the 1992 UN-led elections, one of the parties (UNITA) simply pulled out of the agreed peace process. More than a decade of civil war followed, about a third of the population was displaced and more than half a million people killed. Given a mounting death toll and humanitarian crisis, the UN Security Council passed a resolution that singled out UNITA as solely responsible for the resurgence of violence and appointed a Special Representative of the Secretary-General, Alioune Blondin Beye, to mediate a new accord along the lines of Bicesse.

Undertaking shuttle diplomacy between the parties, the team of mediators quickly realised that the new agreement would need to incorporate a substantial guarantee element to persuade UNITA to commit to meaningful negotiations and subsequent implementation of the agreement. The death of UNITA leader Jonas Savimbi in 2002 was arguably the critical factor in persuading UNITA to give up armed struggle, but its remaining leaders and fighters were concerned that, without international supervision, they were likely to be killed. As a result, the 1994 Lusaka Protocol made extensive provisions for a UN mission to monitor and verify the implementation of the agreement. In addition, a Joint Commission, with representatives from the two parties, the UN, and the governments of the US, the Russian Federation and Portugal, was established to resolve disputes during the implementation process. This provided both sides with sufficient assurances to reaffirm their commitment to the Bicesse Accords and their implementation and helped Angola's transition to stable peace after 1994.

In all cases, there are balancing factors and risks to consider. If assurances include an amnesty, what are the risks? If they include guarantees of political roles, what happens if the electorate rejects a key party to power-sharing? In Sierra Leone in the 1990s and from 2000 onwards, the Revolutionary United Front (RUF) sought guarantees of amnesty as well as an ongoing role in the political process. The former was problematic for key leaders, but worked well for rank and file RUF fighters. However, it quickly became clear that the people of Sierra Leone were unlikely to vote the RUF into any ongoing political role (just as the people of Cambodia had earlier made it clear they would not vote for the Khmer Rouge, a key participant in the power-sharing arrangements leading to elections in 1993). It is critical that mediators and resulting power-sharing agreements do not give 'false hope' that political deals can permanently bypass ballot box realities, or, indeed, the requirements of international law.

- **Power-sharing arrangements: transitional or permanent institutions?**

A related 'preliminary' matter that might arise early in establishing the framework for negotiations is the question of the duration of the arrangements. The irony is that parties who are reluctant to commit to negotiations may seek assurances about the nature of 'end' results before they commit (or at least at a very early stage). For example, mediators and negotiators should consider whether the parties see power-sharing as a mechanism to enable a transition from war to peace (in other words, as a temporary arrangement) or as a longer term governance structure. The transitional option is often more appealing to stronger parties wary of making too many concessions. Conversely, weaker parties may be wary of transitional arrangements fearing permanent exclusion from decision-making after a period of mandatory power-sharing. This was one of the reasons why the Khmer Rouge pulled out of the transitional arrangements in Cambodia in 1993.

There are many possible options in working through this dilemma at an early stage, including:

- ▶ Agreeing to build into the transition period a process of negotiating a longer term institutional design that requires consensus among the parties; or, in preparation for the possibility that there is no consensus, this could include agreeing a (possibly international) mediation, arbitration or other deadlock-breaking process;

- ▶ Building into a final agreement regular review points that enable the parties to revisit the arrangements they initially agreed to, possibly also facilitated by external mediation;
- ▶ Discussing the option of gradually incorporating the dispute-resolution and power-sharing processes into regular ‘constitutional’ decision-making processes (for example, through combinations of electoral systems, judicial processes and decision-making in legislatures). However, as noted earlier, it is always critical that agreements do not promise what elections might reject.

2.3 Power-sharing options for institutional design

Power-sharing can be achieved in different branches of government (for example, there can be executive, legislative and judicial power-sharing) and it can also occur in the wider public sector (for example, the civil service/administration and security forces). These different types of power-sharing are complementary and often occur together, but need not always be present.

By definition, power-sharing requires clear identities of ‘the group’. This might seem simple, especially to antagonists who believe that all members of a group are identifiable and unchanging – as they sometimes are. However, it can be particularly problematic in some situations as i) Rural clan groups may lose precise definition (and relevance) in urbanised, educated situations; ii) Definitional problems might arise for groups based on race or religion, especially as time progresses. iii) Groups may also split, on ideological or leadership grounds, with rival claimants for group representation.

For these reasons, some power-sharing arrangements have political parties as proxies for group power-sharing (for example, in South Africa after the 1994 elections in which President Mandela came to power). This might work well for power-sharing in political institutions, but it could be much more problematic in the judiciary if there is an expectation of non-partisan justice. Although each situation is different, it should always be assumed that, at some point, exact definitions of ‘membership’ and ‘the group’ could become problematic, threatening the basis of power-sharing.

The 2005 Comprehensive Peace Agreement for Sudan

Under the 2005 Comprehensive Peace Agreement for Sudan (CPA), the Sudan People’s Liberation Movement (SPLM) gained significant representation in the National Legislature and National Executive (28 % of seats in each), in the civil service (20 – 30 % of positions, including of middle and senior positions), ‘equitable’ representation in the National Security Service, in the Constitutional Court, the National Supreme Court and other national courts. The SPLM also gained the position of the First Vice President whose consent was required for major decisions such as a declaration of war; presidential appointments under the CPA; and the summoning, adjourning, or proroguing of the National Legislature. The SPLM gained significantly higher levels of representation in the South: 70 % of seats in the legislature and executive respectively (compared to 15 % each for the National Congress Party [NCP] and other political forces in the South). At the State level, the SPLM gained 70 % of seats in the legislatures and executives in the Southern states and 10 % in the Northern states (the reverse for the NCP, who were also entitled to one governorship and one deputy governorship in the South).

The institutional design was aimed at giving sufficient confidence to both parties to achieve key goals such as establishing political negotiations as the primary mechanism of resolving differences thereafter; and preparing for a 2011 referendum on the status of south Sudan. In the January 2011 referendum, the southerners chose independence. The previous process had, significantly, prevented a full resumption of conflict leading up to independence. However, the objective of establishing negotiations as the primary dispute resolution system was, in 2011 and 2012, still being tested in relation to the unresolved issues between the North and South (including resource allocation, borders and population migration) and the outbreaks of localised and extremely dangerous armed conflict. An ongoing example of the problems of defining ‘the group’ is the difficulty of deciding who, precisely, is entitled to vote in territories still under dispute, given that some groups are nomadic.

• Executive power-sharing

Power-sharing in the executive branch of government (whether in a Presidential system, a Cabinet in a parliamentary system, or in a mixed system) is one of the most crucial, and often most controversial, forms of power-sharing. Yet, in many cases, it is an essential part of any way forward. Although this publication does not detail all the issues, it must be recognised that there are critical differences depending on the constitutional nature of the Executive.

The formation of the Executive

Power-sharing can be achieved through specific procedures of executive formation. One of them is the use of a **mathematical formula** that allows parties to choose cabinet posts in sequential order based on the strength of their presence in a representative body (normally a legislative assembly). This method guarantees executive participation of all major electorally-represented parties/groups and avoids potentially protracted coalition negotiations.

The use of a mathematical formula: Executive formation in Northern Ireland in 2007

Since the conclusion of the 1998 Good Friday/Belfast Agreement, the formation of the executive in Northern Ireland happens through the use of the d'Hondt formula. This system allocates cabinet positions sequentially and proportionally. Parties choose cabinet posts in sequential order based on the number of seats they have won in the assembly until all cabinet posts are allocated. This prevents 'group locks' on particular areas (such as security or resources) and avoids complex bargaining among leaders desperate not to lose out in the allocation process. These issues were major problems in the Kenyan and Zimbabwe power-sharing arrangements, both in 2008.

This system works as follows: Every party's seat total is divided by one in the first round and hence the party with the largest number of seats in the Assembly wins the first seat on the Executive. In every subsequent round, the total number of seats won in the Assembly is divided by the number of seats won on the Executive plus 1. The Executive seat in each round is claimed by the party with the highest figure in this round, and in case of a draw, by the party with the higher vote share in the Assembly elections (Round 3 and Round 9: DUP won a total of 25.6% of the vote in the 2007 Assembly elections, compared to the UUP's 22.7%).

Round	DUP (36 seats)	Sinn Féin (28 seats)	UUP (18 seats)	SDLP (16 seats)	Alliance (7 seats)
1	36	28	18	16	7
2	18	28	18	16	7
3	18	14	18	16	7
4	12	14	18	16	7
5	12	14	9	16	7
6	12	14	9	16	7
7	12	9.33	9	8	7
8	9	9.33	9	8	7
9	9	7	9	8	7
10	7.2	7	9	8	7

Alternatively, there can be a requirement that the executive be **representative** of specific parties to an agreement. This option normally means that groups will need to negotiate a coalition agreement based on a consensus on rules (such as predetermined proportions between different parties/groups reflecting their power or based on census data, or proportions reflecting relative strength in a representative assembly). This option allows for a certain degree of flexibility in the formation of executives and enables parties to form governments on the basis of substantive policy agendas.

The 2008 Kenya National Accord and Reconciliation Act

This Act requires that i) the Prime Minister be an elected Member of Parliament and the leader of the largest party or coalition in parliament and that ii) each party in the coalition government has one Deputy Prime Minister post to be filled from among its elected members. iii) A cabinet is to be composed of the President, Vice-President, Prime Minister, all Deputy Prime Ministers and any other ministers. iv) As an additional safeguard, the removal of any coalition minister can happen only after consultation between, and with concurrence in writing by, coalition party leaders, while the Prime Minister or Deputy Prime Ministers can only be removed by a majority vote of no-confidence in Parliament. The composition of the coalition government also has to reflect a portfolio balance and the relative parliamentary strength of coalition parties.

However neat this looked on paper, in practice it was hugely problematic to institute because all key leaders were desperate to get posts. The size of the cabinet essentially had to be doubled to enable the agreement to work. This hugely expensive exercise appears to have held successfully, however, but it will end with the general elections currently scheduled for 2012.

A frequently used, but more rigid, form of facilitating executive power-sharing is by **pre-determining the composition of the government**. This assures the parties to the settlement that they will be represented in a post-war government. Due to its relative rigidity, this form of executive formation is almost exclusively used in transitional power-sharing arrangements.

Yet another option in the formation of power-sharing executives involves requiring the executive to enjoy **qualified and/or double (concurrent) majority support** in a representative assembly. Requiring a qualified majority in parliament for the formation of the executive means that the executive needs to have more than simple absolute majority support (50% + 1 vote) in the assembly and guarantees that groups whose representative parties are in a minority position in parliament are included in the process of executive formation. A requirement of double majority means that any executive formed needs to enjoy majority support in each of the groups whose consent is required. These groups are normally predetermined in peace agreements.

Pre-determining the composition of the government : four examples

Under the terms of the 2003 Liberia Peace Agreement, the Chairman and Vice-Chairman of the Executive are selected by all parties to the peace agreement by consensus from a list of three candidates for each position nominated by the political parties and Civil Society Organisations (CSOs) represented in the National Transitional Legislative Assembly. The Agreement also details the allocation of specific government portfolios and public corporations to the three warring parties, as well as some independent government agencies to political parties and CSOs.

A similar approach was taken in the 2008 Agreement between ZANU-PF and the two MDC formations in Zimbabwe. Of the total of 31 Ministers, fifteen were to be nominated by the Zimbabwe African National Union – Patriotic Front (ZANU-PF), thirteen by the Movement for Democratic Change – Tsvangirai (MDC-T) and three by the Movement for Democratic Change – Mutambara (MDC-M).

In Angola, the 1994 Lusaka Protocol determines the specific posts allocated to UNITA in the central, provincial and local administration as well as in the diplomatic service, including four ministries, and seven deputy ministries, in the central government.

Under the terms of the 1999 Lomé Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front, the leader of the RUF, Foday Sankoh, was given the Chairmanship of the Board of the Commission for the Management of Strategic Resources, National Reconstruction and Development and the post of Vice President. In addition, the RUF was incorporated into the elected government through allocation of one senior cabinet appointment, three other ministerial positions and four posts of deputy minister.

1 This form of executive formation was established under the 1998 **Northern Ireland Agreement** for the election of the First and Deputy First Ministers (the joint heads of government) and used until the revisions in the 2006 St Andrews Agreement. Members of the legislative assembly had to 'designate' themselves as part of either the Unionist or Nationalist denomination, and a majority in both denominations was required for the election of the First and Deputy First Minister. As similar procedure was proposed in **Macedonia** in 2007 as part of an agreement between ethnic Albanian and Macedonian parties (it is also referred to as the Badinter rule in Macedonia). Under this procedure, no government could be elected without a majority overall in parliament, "within which there must be a majority of the votes of Representatives claiming to belong to the communities not in the majority in the population of Macedonia."

2 It should be noted that this method does not *necessarily* result in the establishment of power-sharing executives (i.e. executives in which members of different groups participate in a meaningful way), but in practice it gives minority representatives bargaining power that ensures their participation in the establishment of the executive. This option also allows for flexibility in the formation of executives and enables parties to form governments on the basis of substantive policy agendas.

3 Executive decision-making

4 Executive power-sharing also extends to the substantive work of the executive. Meaningful power-sharing in this context relates to the collective nature of executive decision-making and can be further specified by requirements for qualified and/or double majority voting for all or particular executive decisions, ensuring that all groups' interests rather than merely those of the majority are reflected in the work of the executive. In turn, a high degree of autonomy for each member of the executive within his or her portfolio minimises the danger of executive paralysis, especially if executives are formed without formal coalition agreements.

5 For instance, under the terms of the 2008 Agreement between ZANU-PF and the two MDC formations in Zimbabwe, the power-sharing Cabinet is required to take decisions by consensus and to take collective responsibility for all Cabinet decisions, including those originally initiated individually by any member of the Cabinet.

• **Legislative power-sharing**

1 The nature of legislative power-sharing is dependent on both the nature of the legislative system (unicameral versus bicameral) and the method by which the legislature is selected. While it is clearly desirable to have free and fair elections for legislative assemblies, this may not always be possible (for example, in the course of transitions from civil war). In cases when other ways need to be found to establish a legislative assembly, it is of tantamount importance to ensure that selection criteria reflect concerns for both legitimacy and representativeness. This may be done by ensuring that different groups are represented in proportion to their numerical strength in the state overall and that those representing them emerge from a procedure that legitimises them in the eyes of their constituents (for example, selection by tribal chiefs or councils of elders).

Predetermining Parliamentary Representation : The case of Liberia

3 The 2003 Liberia peace agreement prescribed in great detail the composition of the 76-member National Transitional Legislative Assembly, which was to be composed of representatives from regions (15), the Government (12), the two armed rebel factions (12/12), existing political parties (18), and civil society organisations (7).

4 Power-sharing can also be achieved through the voting methods and legislative procedures in the assembly. As outlined in the section on executive formation, power can be shared in an assembly via a requirement for qualified and/or double majorities for specific decisions to be passed. Of equal significance are legislative procedures that influence the degree to which legislative power-sharing, given specific voting procedures, is actually meaningful. These include the procedures which establish when the use of special voting is required. For example, special voting procedures can be 'triggered' by a motion from a particular number of representatives (such as 50%+1 representatives of a particular group or x% of members of the assembly as a whole). They can also be pre-determined for certain areas of legislation (for example, the budget, education, culture and regional development).

Applying double-majority voting in Bosnia and Burundi

The constitution of **Bosnia and Herzegovina** offers an example of a particular trigger procedure for a double majority vote. Under the terms of the 1995 Dayton Accords, a bill before parliament may be declared to be detrimental to 'vital interests' of the Bosniak, Croat or Serb people by a majority of, as appropriate, the Bosniak, Croat or Serb members of parliament. To pass such a proposed decision then requires a majority of the Bosniak, of the Croat, and of the Serb members of parliament.

An example of a pre-determined area of legislation in which qualified majority voting applies is a provision in the 2000 **Arusha Peace and Reconciliation Agreement for Burundi**. According to this agreement, the country's constitution could not be amended except with the support of a four-fifths majority in the National Assembly and a two-thirds majority in the Senate, while organic laws could not be amended except by a three-fifths majority in the National Assembly and with the approval of the Senate.

Legislative power-sharing may also be accompanied by procedures that require **mandatory consultation of permanent bodies**. These permanent bodies may, or may not, be composed of members of the legislature alone (for example, mandatory consultation of/approval by a council of minority representatives).

Power-sharing can also manifest itself in the **distribution of key offices in the assembly**, such as speaker and deputy speaker(s), and chairs and deputy chairs of committees. Their election and/or selection can be conducted by any of the methods outlined for executive formation, while their particular powers to influence the working of the legislature will vary from case to case but should also be agreed upon in ways that reflect the meaningful participation of all groups concerned.

In bicameral assemblies, the **distribution of powers between the two chambers** is highly significant. Upper chambers can represent either territorial entities within a state (such as regions or federal states) or communities by giving them equal voting power regardless of the size of the population they represent or weighing their votes in terms of their relative population size. Lower chambers are usually based proportionally on population whereby each member represents the same number of citizens in each district or region. Key considerations

for power-sharing are the extent to which the upper chamber can veto the decisions of the lower chamber; the threshold for overturning such decisions in the lower chamber (for example, qualified and/or double majorities); and the degree to which upper chamber consent is required for particular decisions (for example, double and/or qualified support in both chambers for constitutional changes).

For instance, the 2005 **Comprehensive Peace Agreement for Sudan** included a provision that a three-quarter majority was required in both chambers for approval of constitutional amendments and a two-thirds majority in the upper chamber for legislation affecting the rights of States.

Qualified Majority Voting in Liberia's Parliament: Election of Speaker and Deputy Speaker

The 2003 Peace Agreement in Liberia includes a provision that for the Speaker and Deputy Speaker of the National Transitional Legislative Assembly to be elected a minimum of 60 % of votes in the Assembly is required. If no candidate achieves such a majority in the first round, a run-off between the three highest-scoring candidates is conducted, again requiring the winner to achieve a 60 % majority of the votes. If necessary, a second run-off between the two highest-scoring candidates from the second round can be conducted in which the winner is elected with a simple majority.

• Judicial power-sharing

Power-sharing in the judiciary acquires its importance from the role that judicial institutions play in any political system based on the rule of law and the separation of executive, legislative and judicial powers. The institutional arrangements outlined in this publication are also legally entrenched and protected. As such, an effective – and representative – judiciary is crucial to conflict prevention and resolution as it will act as an arbiter in many disputes.

Judicial power-sharing relates primarily to selection procedures for judges (and prosecutors) at all levels; qualified majority voting on courts; the specific types of courts that are established; the applicability of different judicial systems, such as the specific religious laws that apply only to followers of a particular religion or religious sect; and distinct procedure and sanction functions exercised by judicial institutions.

Selection of judicial personnel

The selection and appointment of judges and prosecutors can either be carried out by, and within, judicial institutions themselves, by organs of the executive, or by legislative bodies. Sequential and/or concurrent approval procedures may also be in place (for example, the executive selects personnel and the legislature approves the appointment). Another option is to establish special appointment panels comprised of representatives of stakeholder groups (such as the government, civil society and professional bodies as well as groups and/or parties representing them).

Power-sharing in selection and appointment procedures can either rely on pre-determined quotas or use mechanisms, such as language requirements, to ensure that different groups are represented fairly (and can engage with judicial institutions in an equitable manner). They can also utilise special voting procedures (such as qualified/concurrent majorities) or invoke mathematical formulas (such as the d'Hondt mechanism detailed earlier). Insofar as mathematical formulas in general can de-politicise the selection process, they might be particularly appropriate for the appointment of senior judicial personnel.

Court voting procedures

As a form of power-sharing in the day-to-day operation of judicial institutions, qualified majority voting on courts could be made mandatory in particular for decisions on constitutional matters and those that directly affect the operation of institutions agreed in a conflict settlement. Combined with appropriate selection and appointment procedures, this would ensure that minority interests are not permanently overruled by the majority.

Judicial institutions

Establishing different types of courts (i.e. criminal, civil, administrative, constitutional) can further improve the quality and visibility of judicial power-sharing. A constitutional and/or supreme court governed by special selection and appointment procedures and qualified majority voting provides visibility and satisfies power-sharing requirements. Dividing the court system between criminal, civil, administrative and constitutional branches will also minimise the dangers of politicising judicial practice outside constitutional rulings.

The ability to apply different types of judicial systems (e.g., Shari'a and non-Shari'a legal systems) is, in practice, dependent on the establishment of some form of territorial or non-territorial self-governance and further enhances the experience of power-sharing systems as it allows different groups, to the extent that they desire this, to exercise judicial powers according to their specific value systems.

Judicial Appointments in Liberia and Rwanda

The 2003 Peace Agreement in Liberia determines that nominations for all judicial appointments to the Supreme Court are to be made by the National Bar Association and subject to approval by the National Transitional Legislative Assembly. They are also to reflect national and gender balance. According to the 1992 Arusha Protocol of Agreement in Rwanda, the country's Supreme Court was to be chaired by a presiding judge, assisted by five deputy presiding judges. All of these were to be selected by the National Assembly based on a proposal by the government listing two candidates for each post and their appointment could not be terminated by the Assembly except with a two-thirds majority of votes.

The Parallel Use and Applicability of Different Judicial Systems

This can be done, for example, by enabling and simultaneously limiting the geographical or community-specific application of Shari'a law (for example, in **Aceh/Indonesia, Sudan and Nigeria**) or of so-called traditional justice systems (as in **East Timor**). In some cases, it is also possible to apply only elements of Shari'a law if individuals choose to do so (for example Shari'a family law in **Thrace/Greece**). So-called National Conciliation and Arbitration Boards of the (Muslim) Ismaili Community exist in **Afghanistan, Canada, France, India, Iran, Kenya, Madagascar, Pakistan, Portugal, Syria, Tanzania, Uganda, the United Kingdom and the USA**. Consisting of eminent volunteers from the Ismaili community, these boards adjudicate disputes between community members. In India, Kenya and Uganda, the official legal system recognises the Ismaili Community's jurisdiction over many aspects of personal law. In these countries, the Boards take on the role of tribunals with the authority to grant divorces and make custody orders.

1 • Power-sharing in the wider public sector

This form of power-sharing applies primarily to the degree to which public sector personnel **reflect numerical (and power) balances within a given state or sub-state entity**. Proportionality is usually achieved by either pre-determined quotas (such as targets for recruitment and/or representation) and/or by more indirect measures such as requiring that civil servants be bilingual. In addition to an overall degree of proportionality within the civil service, administration and/or security forces, the appointment of senior personnel should reflect concerns for visible power-sharing. The methods for such appointments are essentially identical to those previously discussed in relation to judges and prosecutors, but also depend on the structure of the civil service or armed forces. For example, broadening the meaning of 'senior' positions to include deputy heads of particular civil service departments increases the number of positions significantly and might facilitate equitable deals between groups (provided, of course, that deputies are able to exercise real powers). Equitable group representation in senior roles in the security forces is especially important.

3 Power Sharing in the Public Sector: The Case of Burundi

Under the terms of the 2003 Pretoria Protocol on Political, Defence and Security Power-sharing in Burundi, the CNDD-FDD (Conseil National Pour la Défense de la Démocratie-Forces pour la Défense de la Démocratie / National Council for the Defence of Democracy-Forces for the Defence of Democracy) was allocated three provincial Governor and five provincial Advisor posts, 30 local government Administrator posts, two ambassadorial and six secretary/advisor posts in the diplomatic corps, as well as 20 % of the personnel in public enterprises.

5 • Power-sharing in high office

Power-sharing in 'high office' cuts across the arrangements in the wider public sector and highlights an important consideration for each group – the need for power-sharing to be visible, for example in the **distribution of key posts with high and/or institutional public profiles across the different branches of the government, civil service and security forces**. This can be achieved by means of permanent or rotating cross-constituency distribution of senior government posts (such as the president, prime minister and the speaker of the legislature, as well as their deputies) bearing in mind the relative power of these offices. Other arrangements may include a collective presidency, with or

without a rotating chairmanship. In the judiciary, the post of chief justice and/or president of the constitutional court present similar opportunities. The same considerations can extend to senior posts in the security services, including chief of staff and chiefs of different armed/security forces.

Allocating High-profile Offices: Examples from Bosnia, Iraq and Malaysia

2 In Iraq, under the terms of the 2005 Constitution, a three-member Presidency Council was established (for one term only) that had a veto power so that the Parliament could not act in a purely majoritarian way. Simultaneously, an informal arrangement emerged (and was repeated after the country's second elections in 2010) according to which the offices of President, Prime Minister and Speaker of Parliament were divided between the three main ethnic and religious communities in the country (Shi'a, Sunni and Kurd). This echoes aspects of power-sharing in Lebanon in various forms for much of the 19th and 20th centuries, despite arguments that the system had entrenched 'confessional politics' rather than democratic accountability.

4 In Bosnia and Herzegovina, the Constitution that forms part of the 1995 Dayton Accords mandates a three-member collective presidency which involves a representative from each of the Bosnian, Serb and Croat communities, with the chairmanship rotating among them. By 2011, the arrangement was widely perceived as having failed to develop a political process that could function without external guarantees (by the EU) and without perpetual blockages of governance (mainly from the Serbs).

5 Malaysia has a rotating monarchy in place, moving between the royal families from each of the Muslim states so that none of them is permanently excluded. This is not, of course, 'power-sharing' in classical terms as it involves a non-executive Head of State. However, it has provided a mechanism for avoiding major disputes between the 'royals' about who should be the Head of State.

2.4 Conclusion

Reducing, preventing and perhaps even settling conflict through designing power-sharing institutions is possible – but the process is not necessarily easy and it is certainly not risk-free. The suggestions detailed in this publication about the use of different mechanisms for power-sharing are only part of the equation. The starting point for mediators is to identify the concrete issues that require resolution: What are individual groups' concerns? Why are they making particular demands? Are they prepared to negotiate, by what process, and to what end? With these fundamental parameters established, institutional designers can proceed to drafting a design for power-sharing mechanisms within which the key issues which have been identified can be addressed.

Critically, the implications of the design must also be considered, in particular whether individual options meant to address specific issues are compatible with one another and/or whether they need to be complemented with other arrangements, including self-governance, security sector reform, and economic development. Similarly, the implementation of a particular option may lead to complications that require further refinement of institutional designs to produce a comprehensive package of institutions that is functional and stable over time. In addressing the concerns, the short-term and the future need to be considered, as well as comparative experience all around the world. In particular, the risks need to be considered during negotiations. Many power-sharing arrangements are explicitly designated as temporary (for example, in Kenya and Zimbabwe in 2008, in Lebanon for much of the 20th century and in Fiji at independence in 1970) and are intended to be in place while confidence is being built. However, the arrangements have a way of becoming the terms on which the groups (or at least some leaders) expect to gain power, and they may lock societies into arrangements that show no signs of providing a durable basis for avoiding conflict, especially without external supervision.

Apart from considering the risks that are inherent in power-sharing arrangements, mediators often need to work with the parties to enhance their capacity to understand how particular risks can be avoided. Mediators also often need to instil in them a sense that, for power-sharing arrangements to be agreed and to function, compromises need to be made. Workable power-sharing arrangements are neither the default outcome of a negotiation process, nor do they implement themselves or function without the active co-operation of the parties.

At the same time, in many cases, the involvement of mediators will need to continue after a deal has been signed as problems of interpretation of particular clauses in peace agreements and delays in implementation timetables are the norm rather than the exception. Mediators can do some of the 'heavy lifting' beyond their core responsibilities during negotiations, but they also need to know their own limitations and seek support from other partners in a peace process. International financial institutions, donor countries and conferences, various regional and international organisations all have a role to play in making a success of any peace process. The more they are kept informed of what their contribution during, and especially after, negotiations can be, the more likely a conflict can be sustainably settled.



Chapter 3:

Justice in peace negotiations

Priscilla Hayner

3.1 Introduction

Accountability for past crimes may emerge as one of the most difficult issues that a mediator and the negotiating parties, must confront. In addition to individual criminal accountability, issues of justice are often linked to the challenge of national reconciliation, as well as fundamental reforms of the judicial system for the future. These raise difficult challenges, but there is a range of policy options that may help mediators to work out the best approach. This chapter intends to provide an overview of these issues, concerns and options.

The African Union has been engaged in many mediation contexts where issues of justice emerged. In some cases, the parties themselves raised the issue, identifying it as an important agenda item for the talks. Elsewhere, the challenge of accountability has been highlighted through the involvement of the International Criminal Court, raising questions of timing, sequencing and the challenges and potential consequences of mixing a peace process with justice processes.

Recent cases show that a proactive and creative approach by mediators can result in significant agreements to address past crimes and avoid promises of impunity. Equally important, these agreements might include a commitment to reform key justice and security institutions, including the police, army and judiciary.

In the rush of pressured negotiations, issues of justice and accountability may at first be seen as a stark choice between either prosecutions for war criminals

or broad amnesty. However, justice should be seen as extending far beyond criminal justice, as seen in the examples of many countries, and some aspects of justice may develop over time. Peace and justice might best be seen as fundamentally linked, as long-term stability will depend on functional systems of accountability and the rule of law. A country may also need to confront root causes of conflict, going beyond individual accountability, in order to make appropriate reforms.

Due to developments in international law and commonly accepted standards in relation to impunity and accountability after mass crimes, a mediator cannot easily ignore justice concerns. Any proposal for immunity for serious crimes is likely to confront immediate questions of legality and be at risk of violating the state's obligations under international law. The durability of a peace agreement may be in question if such central issues are left unattended.

The ascent of the International Criminal Court, the developing policy guidelines of various international institutions involved in mediation and the expectations created through an increased interest in the tools of 'transitional justice' may all create legal and political demands as well as constraints. Mediators should therefore be forward-looking in recognising the issue, while addressing the matter strategically in a manner that will not upset the larger peacemaking process.

The AU has repeatedly stated its commitment to countering impunity and to advancing justice in a holistic and impartial manner.¹ The outline of justice options in this chapter reflects these commitments.

3.2 Framing questions of justice

To help the parties craft a justice strategy, a mediator might consider the following four key questions.

1. What has been the nature and intensity of abuses in the conflict, and who committed such abuses?

What level of responsibility fell on either side of the conflict? Among those involved in peace talks, are some accused of being involved in serious abuses? Reporting by numerous independent sources should provide a general overview of this history. Further, do the abuses rise to the level of 'international crimes' – war crimes, crimes against humanity or genocide – which may result in specific legal obligations?

2. What demands for accountability may arise and from whom?

What is the likely interest of the parties: are they seeking justice for the crimes they suffered? What positions have been articulated by national civil society and victims' groups? Have position papers and policy notes been prepared by national or international advocates? Are the demands for justice centred on criminal accountability, on reparations for damages, on a non-judicial truth inquiry, or in other areas? What is the history of this country in undertaking such measures in the past and how familiar are national actors with the range of options available?

3. Who is well placed to offer policy options?

Outside experts may be well placed to set out specific policy options, through formal submissions to the talks, quiet assistance to the mediator, or in workshops with the parties. Civil society, legal experts, or other observers can provide comparative information on experiences elsewhere. Prior independent efforts in the country may have involved broad public consultation on these issues, giving strength to specific proposals and usefully providing input beyond the parties and organised civil society groups. For example, in Northern Uganda and the Democratic Republic of the Congo (DRC), public opinion surveys on justice provided a basis for discussions on justice policy.

4. What are the real options for justice and what should be done inside the peace negotiations to address these?

There are three types of initiative that should be considered: judicial options, non-judicial options and institutional reform.

• Judicial options

The mediator should carefully attend to any proposals for amnesty (addressed in more detail in Section 5 below). Avoiding amnesty is not likely to be sufficient to bring justice, however, particularly if the national judicial system is seen to be weak or politically compromised. What possibility is there for fair and independent justice in the national courts? Is there a possible role for the International Criminal Court, or any other international or foreign court? Is there any possibility that the negotiations will lead to the explicit rejection of abusive practices and impunity, such as stating a commitment to justice for crimes against humanity and war crimes?

The means and specific mechanism for criminal justice measures might be worked out at a future date. Sometimes it is many years before domestic systems are able to take steps towards criminal justice in the form of trials. One possibility in the short term, meanwhile, is for an independent inquiry that could

1 assess recent events and identify the needs for a criminal justice response. The Kenya agreement of March 2008, for example, set out a commission of inquiry to identify criminal liability for the post-election violence of the prior two months. Both parties to the accord expressed a strong commitment to the rule of law and accountability for any crimes. The commission report, which concluded six months later, recommended a special tribunal within the Kenyan judicial system or, alternatively and much less preferred, involvement of the International Criminal Court. When the Kenyan Parliament was not able to agree to the creation of a special tribunal, the ICC prosecutor opened an investigation and ultimately identified six high-level individuals for prosecution.² In early 2012, after pre-trial hearings, charges were confirmed against four of the accused.

2 • Non-judicial options

There is a range of non-judicial policy options that may be accepted by the negotiating parties. Procedures to establish the truth, provide reparations for victims, advance community reconciliation, or acknowledge victims through memorials or official apologies might all be considered (each of these are further described below). Most of these options are usefully broached and agreed in principle in a peace accord, but details might be left to a broader process of consultation to follow.

3 • Institutional reform

How can reform of the security and judicial sectors be ensured? Would it be possible to screen out from security and other state institutions individuals who were involved in past atrocities? What treaties or other instruments should the state adhere to in order to strengthen protection mechanisms for the future? Can the mediator put forward specific proposals to signal a clear intention for such reforms? Many of these proposals should be uncontroversial, but including them in the accord gives strength to those interested in instituting such reforms following an agreement.

3.3 Justice in peace agreements: experience to date

5 In recent years, there has been a marked increase in focus on justice issues, both during peace talks and in the implementation phase of a peace process. There have also been important developments that provide clearer guidance in these areas, in both political and legal spheres. These are seen in guidelines adopted by the UN Secretary-General, in decisions of international or regional courts, in declarations and policy guidance of other international or regional bodies and in the creation and growing strength of the International Criminal Court.

1 Envoys appointed by the UN Secretary-General may not be associated with agreements that provide amnesty for war crimes, crimes against humanity or genocide. This policy had a direct impact on the peace agreements in Sierra Leone and the DRC, for example, where UN officials made clear they could not sanction an amnesty for serious crimes. In Sierra Leone in 1999, the UN clarified its (recently established) position late in the talks; the UN representative then added a disclaimer, written next to his signature, stating that the UN would not recognise the amnesty contained in the accord as applying to international crimes. In the DRC, UN officials, joined by facilitators from the European Union and the United States, set out clear limitations to any amnesty. This position was guided by UN policy, the standards set out in the ICC statute and a broader analysis of international law.³

2 Both parties to and mediators of peace talks are likely to be under pressure to preserve international principles and respect international law in situations of gross abuse by the state or by non-state actors. At the same time, there remain many areas not prescribed by law and which allow a range of policy options for national actors. These are further explored in Box 1, Tools of Justice, below.

3 • Trends in peace agreements

Recent practice in peace negotiations reflects the quickly maturing field of transitional justice. Certain legal boundaries, particularly on the question of amnesty, have been considerably clarified in recent years. Other areas, such as truth commissions or reparations, are by nature more flexible, but minimum standards or basic guidelines are also taking shape in these fields.

4 The limitations to amnesties that are prescribed by international law, outlined below, also reflect current state practice in relation to peace agreements, which has changed over time as the legal parameters have become clearer. Very few general amnesties – providing immunity even for serious international crimes – have been included in peace accords since 2000. Meanwhile, the majority of recent peace agreements address questions of justice or accountability in some manner.⁴

5 The Liberia accord was silent on amnesty, but agreed to a truth commission and to vetting of the police on human-rights grounds. The agreement for Burundi set out intentions for a truth commission, an international commission of inquiry and a special tribunal. In the Democratic Republic of Congo, the Sun City Accords of 2002 included a truth commission, although it regrettably appointed members of the warring parties as members, which gave it a slim chance of success. The agreement in Aceh, Indonesia, signed in the form of

Box 1

Tools of justice

The field of 'transitional justice' refers to a variety of judicial and non-judicial means of accountability and responding to past crimes. These may be useful in post-conflict contexts (as emphasised here), or in a transition from dictatorship to democracy, or in an established democracy responding to historical wrongs. The implementation of these justice measures may overlap in time and sometimes it makes sense to sequence them so that one mechanism strengthens and feeds into the next. Rather than choosing between these, a 'holistic' approach, incorporating many of the following tools, is generally recommended.

Criminal accountability The record shows that most peace agreements do not include reference to specific prosecutorial initiatives, such as a special tribunal or special prosecutor. National courts are often very weak, lacking in resources or heavily politicised. Emphasis on strengthening the national courts may be welcome and appropriate, but this is a long-term endeavour and may be insufficient to respond to recent massive atrocities. Parties at a minimum might be encouraged to survey the abuses and recommend appropriate legal measures – a commission of inquiry, with powers to investigate and make recommendations may be a useful first step. The question of amnesty, which may be proposed to prevent prosecutions, is addressed in Section 5 below. Meanwhile, international prosecutorial efforts may function in parallel with negotiations and these will be beyond the control of the parties or mediators. (See Section 6 below on the International Criminal Court.)

Truth commissions A truth commission is a non-judicial inquiry into patterns of human-rights abuses or violations of international humanitarian law. These bodies typically operate for two to three years and may have powers of subpoena or search and seizure. The commissioners should be appointed through an independent and consultative selection process. A truth commission receives statements from thousands of victims or witnesses, may hold public hearings and ought to conclude with a public report with recommendations. While over 40 truth commissions have existed to date, each is unique and must be crafted in response to the national context.

Reparations Providing economic, material or symbolic reparations to victims or affected communities is often a critical aspect of recovery and advancing reconciliation. The state may also be legally obliged to provide reparations for abuses, especially for the harm done directly by state forces. In some countries, reparations have included educational benefits to the children of those killed, housing, medical or pension benefits for the families, or direct payments to surviving victims or their families. The benefits might be limited, relative to the harm done, but the act of acknowledgement is itself an important aspect of these programmes. Another symbolic form of recognition is through memorials to important events, persons or periods of history, which have sometimes been specifically noted in a peace accord.

Reform of the security and judicial sectors Deep institutional reform may be needed in several areas. This should aim to advance prospects for rule of law in the future, but should also take into account the involvement of state institutions, officials or armed forces in serious past human-rights abuses. An agreement between the parties would ideally commit the parties to a system of 'vetting' to screen and remove those individuals shown to be complicit in such abuses.

Demobilisation and integration of ex-combatants Programmes of disarmament, demobilisation and reintegration (DDR) should not further empower those complicit in past atrocities. If criminal accountability is not immediately possible, there should at least be no grant of immunity for serious international crimes. Reintegration into civilian life may also be strained if the receiving community is aware of the former combatant's crimes and if no accounting for such crimes is planned.

Indigenous or community-based justice Local traditions or processes might be usefully incorporated into national justice and reconciliation policies. These can open a rich avenue for the development of a holistic programme of justice. However, in some places these traditions may raise questions of discrimination or might even include within them abusive practices and thus should be incorporated with care.

1 a memorandum of understanding, called for a human rights court and a truth commission. The Sierra Leone accord settled on a victims fund as well as a truth commission – though no reparations programme was implemented for many years thereafter. (As mentioned above, the Sierra Leone agreement also included a controversial amnesty.)

2 In addition to such measures that may be included in the agreement, considerable discussion and developments on justice mechanisms are likely to take place in the months or years after a peace agreement is signed. A hybrid court, the Special Court for Sierra Leone, was first proposed by the Sierra Leone government ten months after it signed a peace agreement with the rebels, after renewed hostilities, and this court has since put ten persons (considered to be the ‘most responsible’) on trial. Burundi has seen intensive discussions on the parameters and inter-relationship of the structures agreed in general terms in the accord, including a UN report proposing changes to the plan. Years after the accord a formal consultation process gathered input to assess how best to move forward. This trend may reflect the desire of the parties to leave some of these difficult issues of accountability for future debate and decision. This also allows the possibility of opening up the discussion to a broader array of stakeholders, including civil-society organisations, victims and substantive experts.

3 • **How to strengthen implementation**

4 Peace agreements are often difficult to implement, whether due to limitations in human capacity, political will or resources. The justice components especially may meet political resistance or competing policy priorities. It is thus useful if an agreement is able to include explicit steps and a clear timeline for implementation. Vague wording, such as very general agreements for reparations which set out little to no specificity or lead responsibility, may make implementation difficult.

5 Successful implementation of the justice components in peace agreements is assisted by:

- ▶ clarity in the language of the agreement
- ▶ fundamental agreement on policy between all stakeholders, which incorporates international best practice and thus encourages international support
- ▶ a proper plan spelling out how these elements can be realised – usually developed in more detail after an agreement is signed – which reflects a realistic projection of human and financial resources
- ▶ international buy-in to the agreed institutions and processes, leading to the necessary financial assistance and political support to undertake such measures.

3.4 Process and participation

• **Engaging the public in peace talks**

1 The importance of providing space for civil-society representatives in peace negotiations has been addressed elsewhere. In brief, empirical evidence suggests that involving civil society in peace negotiations makes agreements more sustainable.⁵ In the realm of justice, civil society has brought its voice to the table in a number of ways, including but not limited to direct participation of delegates from civil society to the formal talks. Where possible, the mediator should seek broader perspectives on policy options for justice that go beyond the parties. This will strengthen the ultimate agreement and give it broader legitimacy and is more likely to gain the support of those whose involvement will be critical for successful implementation.

2 In Sierra Leone, the international community provided resources for national human-rights leaders to attend the talks. While they were observers rather than delegates, they took part in most of the formal meetings and proved to be a valuable source of information, policy proposals and ultimately advocacy in influencing both the government and armed opposition on key aspects of the accord. The Liberian talks attracted hundreds of activists, including many women from a neighbouring refugee camp, who put constant pressure on the parties to conclude the talks and end the war. A number of civil-society representatives were also granted official delegate status in the formal talks, which was an important balance to the three armed groups, all of whom were known for serious abuses in the war. These independent civil-society participants were critical to the justice elements that came through in the final Liberian agreement, including a truth commission, avoiding an amnesty and vetting of the security forces on human-rights grounds.

3 Implementation of justice elements of the Burundi agreement has stalled in the years after its 2000 signing. Disagreements over how to implement a call for a special tribunal together with a truth commission finally led to a national consultation process, as mentioned above, with the UN, the government and national civil society jointly steering the process. Earlier consultation and inclusion of a broader range of views could have saved time and clarified the intentions of the agreement.

4 Elsewhere, as in Uganda, civil society and the UN have undertaken surveys that have assessed the views of victims and the broader public on questions of justice, including prioritisation and timing. These surveys have taken place

even while peace negotiations were underway, feeding into the official discussions. The parties themselves also held public consultations during the period of negotiations.

• **International involvement in accountability**

The international community may play an important role in pushing for accountability, as well as providing support for implementation of the justice elements of an agreement. International participants in the talks may be well placed to set out key parameters, especially those reflecting current international law or best practice. However, most decisions regarding justice, especially on non-judicial measures, should be taken by national actors.

In Sierra Leone and Liberia, the parties sought and received comparative information about truth commissions and diplomats present at the talks who also made important inputs on the question of amnesty. However, the information provided was often insufficient or not fully correct; independent expertise would have served the mediators and the parties well. Such independent technical expertise is now available from the UN, international NGOs and others such as academic experts.

The implementation of the justice components of a peace agreement may also engage the international community directly. For example, a commission of inquiry or truth commission might have international as well as national members. A major effort to reform the judiciary or security sector, implying significant costs, may require international contribution of both resources and expertise. While some ad hoc special tribunals have been created with strong involvement of the international community, such as for Rwanda, Sierra Leone, Cambodia and the former Yugoslavia, the costs associated with such efforts make it unlikely that many similar ad hoc courts will be created in future. There is a greater focus now on the role of the International Criminal Court, addressed in more detail in Section 6 below, as well on models for incorporating international expertise directly into national judicial structures.

3.5 Understanding amnesties

Granting immunity from prosecution for the most serious human-rights crimes would be likely to be widely criticised. How the question of amnesty is handled in a peace agreement often receives immediate attention – often more attention than many of the other substantive issues addressed in an agreement. Where serious crimes have taken place, it is likely that the question of

amnesty will emerge in the talks in some form, and the outcome will be closely scrutinised by the many observers to the process. Amnesties for serious international crimes raise both legal and political problems, both of which must be considered.

The law is becoming increasingly clear, as outlined in Box 2. International law generally prohibits amnesty for serious international crimes: genocide, war crimes and crimes against humanity. In addition, there may well be legal constraints to amnesty in national law. As of mid-2012, 121 states are party to the ICC and are obliged to prosecute such crimes. Provisions that violate the victims' right to take a case to court will violate many constitutions. This prescription applies equally to other immunity arrangements that may go by other names. In Burundi, the peace agreement granted an undefined 'provisional immunity' to combatants. Years later, still in force, this was feared to be providing broad, de facto amnesty over the long term. Regardless of what such provisions are called, the same restrictions under international law will apply.

A mediator may find that the parties still insist on an amnesty for serious international crimes, regardless of international law. In fact, national leaders may well have the political power to put a broad amnesty in place, through national legislation or presidential decree. In this case, a mediator could push for clarity on exactly what crimes would be included in such an amnesty, or whether there would be any conditions to such a benefit (for example, whether violating other aspects of the accord could void the amnesty). Setting out the exact crimes covered (or, alternatively, what crimes are explicitly excluded) may result in limiting the amnesty. Once the crimes are spelled out, a very broad amnesty may be less palatable.

Additionally, the mediator might set out the potential ramifications of a blanket amnesty, making note of the following.

- ▶ Such an amnesty would have no effect outside the country's borders – either in other countries that may take action under the principle of universal jurisdiction, or by international courts such as the ICC.
- ▶ In most jurisdictions, such an amnesty would be an open target for challenge in national courts and may be overturned. Thus, the legal protection could be limited.
- ▶ Past cases show that donor states may strongly object and may even refuse to fund the implementation of the accord.

- ▶ Those insisting on immunity for crimes such as genocide, mass rape or the massacre of defenceless civilians will lose credibility in the eyes of the international community as well as their national supporters. This could damage their future political prospects if they hope to join the democratic fold.
- ▶ A blanket amnesty is certain to be condemned internationally, colouring the reception of the peace agreement generally. The UN in particular is likely to protest strongly any deal which grants immunity for the most serious international crimes.

In fact, the distaste for broad-reaching amnesties has not been lost on the leaders of fighting forces worldwide. Participants in some peace talks, such as in the DRC, have described political dynamics which discouraged commanders from insisting on a blanket amnesty.⁶ Demanding an amnesty for specifically named crimes is sometimes perceived as admitting to such crimes, facilitators have noted. This is further backed by a general understanding that ICC-related crimes cannot effectively be amnestied in ICC member states, given the government's obligations in relation to any ICC request. For all of these reasons, blanket amnesties in peace agreements are very uncommon today.

Box 2

What is the law on amnesty?

It is widely considered a violation of international law to provide an amnesty for the most serious international crimes – defined as crimes against humanity, war crimes and genocide. While international law is constantly evolving, this understanding is drawn from the obligations of those states that have signed human-rights treaties, the decisions of international or regional courts, as well as law emerging from long-standing state practice, known as customary international law. The Rome Statute establishing the International Criminal Court, to which 121 states are party (as of August 2012), also by implication rejects immunity for these core crimes. An additional 32 states have signed but not yet ratified the Rome Statute, thus committing them to avoid acting against the principles of the treaty.

The crimes that must be excluded from any amnesty are defined as follows:

Crimes against humanity: acts such as murder, torture, forced deportation, rape, enforced disappearance and other serious crimes that are

committed as part of a 'widespread or systematic attack' against a civilian population (whether in a time of war or peace).

War crimes: serious violations of the 1949 Geneva Conventions (and the two Additional Protocols of 1977), which comprise in part the laws of war (also known generally as 'international humanitarian law'). This includes, for example: attacks on civilians, use of banned weapons, mistreatment of prisoners of war, inhuman or cruel treatment, or the taking of hostages.

Genocide: acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group (based on the Genocide Convention of 1948).

The United Nations has established clear guidelines that its representatives cannot support an amnesty for the above crimes. In addition, the United Nations prohibits amnesty for a broader category of crimes – gross human-rights violations – a conclusion based both on treaty law and state practice.

Other gross violations of human rights: this may include, for example, individual acts of torture, extra-judicial execution, slavery, enforced disappearance, systematic racial discrimination, or the deliberate and systematic deprivation of essential food, healthcare or shelter, even when these acts do not rise to the level of crimes in the above categories.

Granting amnesty for other crimes may be acceptable under international law. In non-international conflict, parties to Protocol II of the Geneva Conventions are encouraged to consider amnesties for crimes such as insurrection or treason, or other crimes arising merely from taking part in the conflict.

3.6 The International Criminal Court: implications for mediators

The International Criminal Court was created through a treaty agreed at an international conference in Rome in 1998. It came into force as an operational court on 1 July 2002, after 60 states had ratified the treaty and thus covers crimes that took place after this date (or after the date of ratification for those states that have joined since). Partly due to this restriction on its temporal jurisdiction,

1 the Court has been investigating cases where conflict is either still ongoing or very recent. In some of these situations, mediated peace talks have also been underway, thus raising potential difficulties.

2 The ICC is an independent body that cannot be controlled or directly influenced by outsiders, including mediators or any of the negotiating parties. Its actions might be seen as an unwelcome complication in the midst of a sensitive peace process. Mediators may worry that an international arrest warrant (or the threat of a warrant) against senior members of a negotiating party could have a chilling effect on talks. In some contexts, they may fear a violent reaction from the supporters of those targeted by the Court. The experience to date is mixed in this regard, with several cases still underway where the impact is difficult to judge.

3 Peace agreements are sometimes made possible by removing spoilers from the bargaining table. An international indictment can have this affect, as in Liberia with the indictment of President Charles Taylor by the Special Court for Sierra Leone and also in talks for the former Yugoslavia, where Bosnian Serb leaders Radovan Karadzic and Ratko Mladic were prevented from participating in the peace talks because of indictments by the International Criminal Tribunal for the former Yugoslavia. In both cases, the talks became more serious and a deeper political agreement became possible, because these key leaders were effectively prevented from playing a part in the discussion. Their influence after the negotiations was also much reduced.

4 There are other cases in which accountability is seen, at least by some, to hinder talks. In Sudan, the impact of the ICC is still playing out since the release of an arrest warrant against Sudanese President Omar al-Bashir. The AU has repeatedly expressed concern that the warrant could damage the peace process for Darfur. Independent observers agree that the warrant has had an impact, in part by affecting the calculations of the armed groups, but other difficulties in the negotiations have perhaps been greater.

5 Similarly, there was great concern in Northern Uganda after the ICC released warrants against Joseph Kony and other members of the Lord's Resistance Army. Northern Ugandans were worried that the peace process might be derailed as a result of the threat of prosecutions. The mediation team worked to ensure an alternative justice route at the national level, which was built into the peace agreement and would have taken precedence over the ICC. In the end, however, Kony's fear and distrust of the ICC warrants seemed to be one factor that discouraged him from signing the final agreement.

1 For those intending to escape the reaches of an arrest warrant, any proposal for a safe haven in another country could be viewed with suspicion. Since the arrest of Charles Taylor by the Special Court for Sierra Leone, after he had spent two years in exile in Nigeria, leaders elsewhere have been distrustful of such offers. Legally, states who are not party to the ICC Rome Statute would be allowed to receive and protect a person subject to an ICC arrest warrant. However, this is likely to be controversial where the accused person is well known for gross abuses and where the international community generally has pushed for justice, such as through engagement by the UN Security Council.

• Mediators and the ICC

2 Several questions relating to the ICC may be of particular interest to mediators and facilitators of peace processes, as detailed below and in Box 3.

Might a mediator or international observer of talks be compelled or subpoenaed to testify before the ICC?

3 Mediators may be concerned for their ability to do their work well and to engage the trust of the parties, if they might be compelled to testify or provide information later about confidential discussions. However, the ICC does not have the power to compel individuals to testify, be it by the prosecution or defence. Documents held by state parties to the ICC could be requested, but where these documents relate to a mediation role, these are likely to be determined to be privileged and thus blocked from any subpoena. On a policy basis, the first ICC chief prosecutor, Luis Morena Ocampo, whose mandate ended in June 2012, made clear that he would not ask mediators to testify. The new chief prosecutor, Fatou Bensouda, has not yet spoken on this issue. This question has not yet been tested as a legal matter in any case before the ICC, but generally the Court has limited powers to compel testimony or subpoena information, largely relying on voluntary co-operation.

Can a mediator continue negotiations with someone who is the subject of an ICC arrest warrant?

4 Yes. There are no general legal restrictions on speaking with someone who is subject to an arrest warrant. The exception to this would be representatives of ICC state parties, if they meet with the person in a context in which they have the capacity to effect an arrest, in which case they are required to do so. Direct contact continued between the mediation team and the head of the Ugandan Lord's Resistance Army, Joseph Kony, for example, during the 2006–2008 peace talks, after the release of the ICC arrest warrant for Kony. The UN however has directed its representatives to avoid any non-essential contact with such persons and the ICC prosecutor's office also discourages non-essential contact.

Box 3

Can an ICC arrest warrant, once issued, be withdrawn?

A situation may arise in which a person subject to an arrest warrant of the ICC asks that this warrant be lifted as a condition for further talks, or as a condition for signing a final accord. The actions of the ICC cannot be controlled by a mediator and he or she would have little power here. According to the Rome Statute, there are three ways in which an ICC arrest warrant, its investigations or even an ongoing trial can be suspended.

1. The Court may make a determination that a state has met the 'complementarity' test, if the state can show that it is able and willing genuinely to investigate or try these crimes in a national court.
2. The UN Security Council may pass a resolution that provides a one-year deferral of action on the case by the ICC, in order to facilitate the Security Council's role in advancing peace and security. Based on Article 16 of the Rome Statute, such a deferral would lapse after one year unless re-authorized by the Security Council.
3. The prosecutor may decide that it is not in the 'interest of justice' to take a case forward to trial. (Where an investigation has already been opened, this decision must be reviewed by the pre-trial chamber.) It is understood that this would be decided only in exceptional cases and will rely on factors such as the gravity of the crime, the interests of victims, age or infirmity of the accused and his or her alleged role in the crime.

3.7 Justice in peace negotiations: emerging lessons and best practice

Peace agreements reached in a wide range of circumstances have included proactive elements to advance justice, but others have remained silent on the question. Some have unintentionally including language that weakens or complicates the prospects for justice in the future. Only in retrospect has it become clear that further attention to these matters could have greatly strengthened the post-agreement implementation environment.

The inclusion or exclusion of justice elements in an accord does not seem to be determined primarily by the political constraints or inflexible positions of negotiating parties. The positions of the parties are key, but even where negotiators are ambivalent or initially resistant, much can be achieved by a proactive mediator who foresees these issues in advance.

• How to promote justice in peace agreements

The following points should be kept in mind in order to reach the strongest possible agreement in relation to justice issues.

1. Understand justice as a broad concept that extends beyond amnesty or criminal prosecutions.

- ▶ The possibility of prosecution for serious crimes should be preserved, but the discussion on justice should extend well beyond the question of amnesty or the possibility of criminal accountability.
- ▶ If the amnesty issue is raised, consider acceptable models that exclude serious crimes and, perhaps, explicitly identify what crimes would be covered (such as insurrection or treason).
- ▶ Consider complementary, non-judicial means to account for the past, including truth-seeking, a commitment to victim reparations and vetting of the security forces.
- ▶ Keep a long-term perspective. Recognising that justice initiatives may develop over time, aim to keep options open in the agreement, avoiding inappropriate immunities and setting out principles for further development after the agreement is signed. Justice initiatives might not develop immediately. It may also be necessary to consider stages of justice, with early initiatives leading to others later.

2. Focus on institutional or legal reforms that will help to prevent future human-rights abuses.

- ▶ A functioning, independent judiciary, as well as reformed police and security services, may need priority attention.
- ▶ These may require long-term attention for fundamental change. But by signalling these intentions in the accord, these reforms are likely to be addressed earlier and with more rigour by both the government and the international and donor community.

3. Provide clear guidance on critical issues.

- ▶ The mediator should be clear in advising on the demands and limits of international law.
- ▶ The mediator should also be clear in pointing to established best practice, urging the parties not to adopt models that have proved flawed elsewhere, such as institutions that will be compromised by their membership or the process for their appointment, lack of independence, or insufficient time and powers to complete the work.

• How to approach controversial issues

A strategic approach to controversial issues has proved most effective. Experience in relation to justice issues suggests the following lessons on timing and specificity.

1. Timing: when to approach the justice question?

- ▶ This is determined by the specific context, but a mediator can foresee and predict.
- ▶ If accountability issues are addressed too early, the parties may not yet have built sufficient trust, which may result in an unnecessarily limited agreement on controversial issues.
- ▶ During the later part of talks, the momentum that has developed and the pressure to conclude may assist in reaching agreement.
- ▶ If the parties have not put these elements on the agenda, the mediator may choose to raise them. This can include asking for the insertion of international principles, or justice-sensitive and victim-centred initiatives, that may not be a priority for the parties but would considerably strengthen the agreement overall.

2. Specificity: how detailed should the justice components be?

- ▶ This is delicate. Some plans require close policy, legal and even financial analysis, which is often not possible during the course of peace talks. However, clauses that outline general aims and lack any specificity risk being ignored in the implementation stage, or falling to the bottom of a priority list.

- ▶ It is thus recommended that justice provisions of an agreement outline clear principles and policy goals, with as much detail as is necessary on both process and intended result in order to help ensure implementation. A clear commitment from the state or from other actors should be reflected, with a timeline or specific deadlines for action, if appropriate.
- ▶ On some subjects, such as detailed aspects of a truth commission's mandate, it is important to allow for a later process of public consultation in the design, and such a process should be foreseen. For purposes of public ownership as well as allowing a process to get the terms of reference right, great detail should be avoided in these areas. But again, the main principles and policy commitment should be clearly set out within a peace agreement.

3.8 Conclusion

The demand for justice and the imperative of reaching peace are not always in tension. When mediators play a key role in setting the agenda and setting out the specific content and proposed language of peace agreements, a broad view of justice can be incorporated.

The negotiating parties will take the final decisions, but the mediator and her or his team should be able to offer sound guidance to ensure a greater commitment to justice policies. There is now an international consensus, in general terms, for the need to end impunity for the most serious international crimes wherever they may occur, which includes a strong opposition to blanket amnesties. This is seen in repeated references to countering impunity in many resolutions emerging from the African Union, the UN Security Council and other international bodies. This trend has changed the mediation environment, such that the credibility and perceived success of a mediation effort is now likely to be judged partly by the degree to which the final agreement addresses these challenging issues.



Chapter 4:

Negotiating ceasefires

Luc Chounet-Cambas

4.1 Introduction

In late January 2010 the Movement for the Emancipation of the Niger Delta (MEND) suspended a unilateral ceasefire until such time as the Nigerian government agreed to meet with a MEND delegation, as per previous governmental public statements. In doing so the MEND joined a long list of armed groups (understood within this publication to mean non-state armed groups that challenge the authority of the state)¹ that ask for guarantees of political talks before renouncing violence. Governments, meanwhile, usually argue for a ceasefire as a prerequisite to peace talks.

Whether an armed group's willingness to accept a ceasefire should constitute a central criterion for engagement is one of many dilemmas mediators address when helping broker ceasefires. Others include how detailed should ceasefire agreements be? Do they benefit both parties equally, or should they? How should ceasefires be incorporated into the broader peace process? What should the role of third-parties be in the monitoring and verification of incidents, if any? Should ceasefires attempt to deal with the question of disarming armed groups? These questions highlight the challenges presented to mediators seeking to understand and respond to the differing interests of parties to a conflict when negotiating ceasefire agreements.

This publication will focus on agreements, facilitated by a third party, that define the rules and modalities for conflict parties to stop fighting. This is how ceasefires are defined in this publication. It will examine the circumstances in which ceasefires are negotiated and the extent to which they may facilitate the transition from war to peace. A central consideration is that they are but one element of a wider political, social and economic process.

1 The diversity of conflict parties and peace processes makes identifying general principles applicable to the negotiation of ceasefire agreements a complex process. However, with due regard to case variation, the following sections examine the purpose and content of ceasefire agreements, discuss challenges mediators may face as they approach ceasefire negotiations and introduce some options available to them.

2 4.2 Purpose and content

3 Mediators face different demands from armed groups and states with regard to ceasefires. This is in part because ceasefires serve a range of purposes. Some of these purposes are limited (for example, to ensure the momentary safe passage of humanitarian aid) and others are broader in scope (for example, where they are part of the design of an overall peace process). Similarly, the content of agreements varies greatly. Some agreements – such as the Aceh Memorandum of Understanding (MoU) discussed below – are negotiated without a formal ceasefire between the parties. In other processes, very detailed ceasefire agreements may make a critical contribution to peace (for example, the 2002 Nuba Mountains ceasefire agreement) or not (e.g. the 2006 ceasefire negotiated as part of the Darfur Peace Agreement).

4 • Why negotiate a ceasefire and to what purpose?

5 Sharing a common experience of years of suffering and distrust, parties to a conflict may consider ceasefires for tactical as well as strategic reasons. Negotiating ceasefires does not imply that armed groups no longer see their military capability as a core source of leverage with the state. As a result of asymmetries in the perceived legitimacy of both sides, armed groups will want to hold onto their primary bargaining chip – their arms – for as long as they can. They may, therefore, frequently resist committing to a ceasefire agreement until progress has been made on the political front.

Yet one or several of the conflict parties might be willing to enter ceasefire negotiations for genuine reasons of appeasement. If the conflict has raged for some time, a ceasefire can be a practical entry point to a negotiated settlement and enable conflict parties to display their intentions to ease tension and commit to a non-violent solution. Ceasefires will at a minimum separate belligerents and suspend the cycle of violence. They give the parties an opportunity to ascertain their opponent's willingness to negotiate.

1 Conflict parties may also be ready to discuss ceasefires because they can no longer sustain the level of violence which the conflict has generated. They may need time, for example to re-supply weapons and ammunition, re-deploy military personnel, hire and train new recruits or gather intelligence on the enemy's forces.

2 States in particular may not be able to sustain the political pressure created by conflict-related violence. In such cases the respite that comes with a ceasefire can ease political tension. Governments frequently insist on unilateral ceasefires from the non-state armed groups in conflict with them as a prelude to political talks. They may argue that they are under pressure from a public that would not accept negotiations with an armed group that continues to perpetrate attacks on the national territory and population.

3 While armed groups may seek to exert pressure on an ongoing process of negotiations through the continuation of military activity, there may also be circumstances when a ceasefire is seen as an opportunity to demonstrate command and control. Doing so, usually through public unilateral ceasefires such as the one undertaken by MEND in late 2009, will display the effectiveness of the armed group's organisation and enhance its credentials as a legitimate partner in a peace process. Some groups will also be interested in the opportunity a ceasefire gives them to strengthen their presence in their area of operation. This was the case when the Tamil Tigers undertook a campaign to eliminate Tamil political opponents in areas they controlled after the signature of the 2002 ceasefire agreement in Sri Lanka.

4 If faced with persistent and increasingly effective armed opposition, states might resort to negotiating a ceasefire in order to reduce violence to a politically acceptable level, whilst making no political concessions. They may attempt to use ceasefire negotiations to create a status quo that would support their political aims. Alternatively, states may seek a commitment to a renunciation of violence – tantamount to a ceasefire – as a precondition to dialogue, often also insisting on the need for the armed groups to rapidly disarm.

5 The presence of multiple armed groups in a conflict brings with it particular challenges. During the 1990s the authorities in Myanmar negotiated a dozen bilateral ceasefires with the country's primary ethnic minority groups, in effect sustaining a policy of "divide and rule". Each agreement sought to reduce levels of violence by allowing the respective armed group to remain in control of the area where it operated and to open political offices in the capital (under close surveillance). This allowed the authorities to reposition troops in other

1 parts of the country and, from a position of strength, negotiate other bilateral ceasefires². From the perspective of the authorities, these ceasefires had proven to be, until recently, a very effective conflict management tool.

In light of these considerations, how can ceasefires contribute to conflict resolution? Virginia Page Fortna identifies three critical respects in which ceasefires can support peace processes³:

- 2
- ▶ By raising the cost of future attacks, through practical measures such as buffer zones and troop withdrawal, but also through public commitments to peace, ceasefire agreements make it difficult for parties to renege on their commitment. Indeed, whichever signatory party goes back to violence would face public condemnation and pressure. The bombing by the Basque separatist group ETA of Madrid's Barajas airport in December 2006, just nine months after it had committed to a "permanent" ceasefire, very much damaged its public credibility as a dialogue partner.
 - ▶ Ceasefires signal the parties' formal commitment to resolve their dispute peacefully. Agreements give the belligerents the opportunity to reassure one another by clearly communicating this commitment, and hence reduce uncertainty about actions and intentions.
 - ▶ Ceasefires entail a range of mechanisms that help prevent accidents (through separation of forces, for example) and control their scale and impact (through monitoring and verification mechanisms)⁴.

4 Other ways in which ceasefires can support peace processes include:

- 5
- ▶ Ceasefires offer the possibility for parties to work jointly to solve their differences and develop relations between individuals previously at war. A ceasefire can be a major confidence-building measure from which other arms and security management measures can flow.
 - ▶ Ceasefires save lives, at least in the short term. They can reduce tension (when undertaken at the beginning of a political process) and contribute to a more conducive environment for political dialogue.
 - ▶ Ceasefires best contribute to peace when they are part of a broader political peace process. In cases where there is no broader process, such as in Sri Lanka, ceasefires may be more of a conflict management than a conflict resolution tool⁵.

Sri Lanka: Mediating and monitoring a ceasefire in the absence of a peace process

After 20 years of fighting, Norway brokered a ceasefire between the Government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE) in February 2002. The LTTE insisted on being the sole representative of the Tamil people in a strictly bilateral process with the Sri Lankan state. Following the 2001 general elections, the LTTE announced a unilateral ceasefire, which was soon extended and reciprocated by the new government.

Both sides entered into the Ceasefire Agreement (CFA) with a view to gaining "breathing space" and consolidating their military positions. The LTTE had made military gains on the ground, needed political recognition and sought legitimacy through the ceasefire. The ceasefire was followed by six rounds of talks which rapidly stalled over the agenda itself and led to the LTTE pulling out in April 2003.

The LTTE had insisted that Norway establish and lead a monitoring mechanism (the Sri Lanka Monitoring Mission/SLMM) despite Norway's reservations about becoming both the mediator and the implementer of the ceasefire. In the absence of political talks the SLMM, although a technical mechanism, became the only avenue for consultation between the parties. The overwhelming majority of the ceasefire violations were attributed to the LTTE, but Norway and the SLMM decided against a process of "naming and shaming" to avoid appearing partial. They did not want to undermine Norway's role as a mediator and its relationship to the parties.

Violations were examined by Norway and the parties' principals, and drew significant political attention. Accused of downplaying LTTE violations, the SLMM drew harsh criticisms of partiality from the Sinhalese parties who were not part of the ceasefire agreement. These criticisms rapidly extended to Norway's mediation. In the meantime, the LTTE kept violating the ceasefire, which they knew the SLMM could not enforce as it did not have a mandate, and was not equipped, to do so. Under these circumstances, the ceasefire and its violations monopolised all the stakeholders' political attention, distracting them from the resumption of political talks.

1 • What goes into a ceasefire agreement?

Ceasefires come in a number of forms. In many cases they are part of a broader peace process, either as one of several agreements or as a chapter within a comprehensive peace agreement. In terms of content, the length and level of detail of ceasefire agreements also differs immensely. There are even cases of peace processes being concluded in the absence of any ceasefire agreement. The eight page Memorandum of Understanding (MoU) signalling the end of the conflict in Aceh in 2005 was, for instance, concluded without a formal ceasefire. It should however be noted that the Free Aceh Movement (GAM) had announced a unilateral ceasefire following the December 2004 tsunami. The word “ceasefire” was not used in the Aceh MoU, nor was it in previous agreements mediated by the HD Centre. The Government of Indonesia felt that to use it might imply that the parties were negotiating as equals and would confer legitimacy on the GAM.

Stopping the violence was only one of several topics negotiated by the Government of Indonesia and the GAM in 2005. The only provision in the peace agreement facilitated by former President Ahtisaari which related to ending the violence came under a broader heading of “Security arrangements” and simply stated that “all acts of violence between the parties will end latest at the time of the signing of this [agreement]”. Breaches of the agreement were even more simply defined as “any action inconsistent with the letter or spirit of this [agreement]”⁶. Five years later, the agreement still holds.

In most recent cases, ceasefire agreements address the following elements:

- ▶ **De-escalation measures.** These disengage forces and minimise contact between armed forces. More often than not, de-escalation will require detailed mapping and transparent information exchange between the parties in order to establish demilitarised areas that act as buffer zones between fighters.
- ▶ **A definition of what constitutes a ceasefire violation.** Examples of proscribed activities include: the use of weapons, as well as offensive actions such as supplying new weapons and ammunitions; regrouping troops; bringing in reinforcements; launching new attacks; and laying new minefields.
- ▶ **Monitoring, incident verification and dispute settlement mechanisms.** These can take a variety of forms and can entail joint mechanisms, depending on the nature of the conflict.

- ▶ **The geographic coverage of the ceasefire as well as a specific time-frame for implementation.** This is increasingly included and defined in detail to pre-empt a range of difficulties that might otherwise arise at the implementation stage.
- ▶ **Most recent ceasefires also extend to other non-military acts and outline specific concerns for the protection of civilians.** For instance the 2002 Sri Lankan ceasefire specifically forbids “hostile acts against the civilian population, including torture, intimidation, abduction, extortion” (article 2.1). Such concerns sometimes specifically extend to the personnel of humanitarian agencies, as was the case in the ceasefire concluded in Liberia in 2003.
- ▶ **Ceasefires increasingly extend to bans on verbal attacks.** These include agreements to “use civilised and dignified language” (ceasefire code of conduct signed in Nepal in 2006, article 13) and avoid “hostile propaganda and incitement to military action” (ceasefire agreement part of the Darfur Peace Agreement, 2006, p.45).
- ▶ **Specific text may further outline how the ceasefire is linked to the rest of the peace process.** This may include political and security transformation processes (e.g. disarmament and security sector reform). However, the ceasefire agreement might not necessarily enter into details.
- ▶ **Additional clauses most often make provision for unhindered access for humanitarian assistance and stipulate modalities for the release, or exchange, of prisoners.**

Ceasefires aim, as a minimum, to stop the fighting and prevent its resumption. However, interviews with selected mediators highlight the need for ceasefire agreements to more systematically combine and detail most of the above features in order to lend themselves to easier implementation. Such a recommendation echoes Page Fortna’s findings that “strong ceasefires”, that is agreements that address as many of these features as possible and at an appropriate level of detail, have more chance of success than ceasefires that only address a few of these considerations and include limited details about their implementation.

Despite this, the forty pages of “comprehensive ceasefire and final security arrangements” within the 2005 Darfur Peace Agreement provide a useful reminder that length and detail alone are no guarantee of durability. The agree-

ment describes at length what the ceasefire applies to (“acts such as mobilization, recruitment or initiatives that are likely to jeopardize the peace process including offensive military actions, movements, deployment of forces... and hostile propaganda”) as well as implementation modalities and a timeline. Its subsequent lack of implementation is a reminder that:

- ▶ Detailed wording cannot compensate for weak commitment by the conflict parties. Indeed it could be argued that parties that readily agree to extensive and detailed restrictions, prohibitions and sanctions, may do so on the understanding that such clauses are unlikely to be implemented.

Other cases touched upon in this publication also remind us that:

- ▶ The commitment of conflict parties to the spirit of a ceasefire does not necessarily need reflection in detailed provisions within an agreement (e.g. the 2005 Aceh MoU).
- ▶ However, a detailed ceasefire agreement will facilitate the work of the mediation team and the ceasefire monitors in cases where it builds on a genuine political commitment by the parties (which was the case in the 2002 Nuba Mountains ceasefire agreement).

4.3 Challenges

Among the many challenges mediators face in ceasefire processes, this publication will focus on the following six: whether ceasefires benefit all parties equally; whether they can stop war or simply postpone it; at what stage of the process they will be opportune; blind spots that may affect the parties’ ability to implement aspects of the ceasefire; the type of monitoring arrangements required; and whether ceasefires should entail disarmament.

• Do ceasefires favour states?

Are armed groups and states equal when it comes to ceasefires? Examples abound of governments advocating for early ceasefires in order to satisfy political supporters and public opinion as well as minimise the concessions they may be required to make in negotiations. When ceasefires are signed early in a process, they risk promoting the status quo rather than reform and tend to benefit the government more than its armed challengers. If, and when, a ceasefire enhances a state’s reluctance to implement change, an armed group may decide to resume violence. A group that remobilises its combatants is

likely to bear public responsibility for breaking its commitment and causing harm. This was the case for the Irish Republican Army in February 1996, when it ended a 17 month ceasefire after the period of relative normality which had followed the 1994 ceasefire.

Ceasefire mechanisms preventing the acquisition of military hardware can also favour states in so far as they tend to place greater restrictions on armed groups. In Sri Lanka, for example, the government was able to procure arms and equipment after the 2002 ceasefire while the LTTE was severely restricted in its ability to “re-tool”. Mediation teams will be aware that their ability to control, let alone stop the supply of weapons to conflict parties will always be limited.

In addition, mediators involved in the early stages of a process may face reluctance from an armed group to initiate talks that primarily focus on a ceasefire as opposed to their core grievances. The recognition inherent in their participation in a negotiation process may sometimes be enough for a group to accept the loss of the leverage inherent in its suspension of violence. In addition, measures such as the delivery of humanitarian aid to an armed group’s constituency might build confidence in a ceasefire process. Throughout the process, a mediator will seek to avoid the impression of partiality and make the case for clear links between the ceasefire and the peace process writ large.

• Conflict management versus conflict resolution?

Mediators work under pressure to negotiate ceasefires that save lives and allow for substantial humanitarian improvements. Such results bring reputational benefits for the mediator and his/her parent organisation. However, in some cases an early cessation of hostilities may not contribute to tangible progress towards a lasting political settlement and this presents the mediation community with an acute dilemma. In March 2009, African mediators gathered in Zanzibar debated whether mediators focus too much on saving lives in the short term and whether this focus on conflict management might actually perpetuate conflict and postpone settlement⁸. Such considerations highlight the difficulties associated with correctly assessing the extent to which a ceasefire can be part of a broader process or if it is the only possible outcome of a negotiation.

“A ceasefire agreement should not create military or other disadvantages for either party and should not prejudice the options for the final resolution of the conflict.”

Jeremy Brickhill | Advisor to the African Union, 2006 Abuja peace talks on Darfur⁷

Cyprus offers a clear example of the classic ceasefire dilemma: Can the ceasefire be part of a broader process that tackles the root grievances of the conflict or can it only regulate the behaviour of the parties and try to avoid large-scale violence? The ceasefire agreement reached in 1974 was probably as far as the parties were willing to go. It has evidently proven to be a very effective means for avoiding the resumption of violence. However, it “froze” the conflict to the extent that the peace process stalled for decades, despite the efforts of a succession of United Nations mediators.

Conflict management and resolution are not contradictory alternatives but rather complementary goals which have been achieved in several peace processes. However, there are situations in which the management of a conflict might be the only possible outcome of a ceasefire negotiation. Whether it will fail to provide incentives for the parties to negotiate further, by creating a *modus vivendi* and removing the pressure of war, remains difficult to assess. The answer will always be context-specific and will ideally derive from what one mediator termed a “cold-blooded analysis... undertaken by the mediator together with the parties”⁹. Thorough analysis will be important to understand both what can realistically be achieved through a ceasefire, and which sanctions and rewards may have the best chance of helping maintain the ceasefire¹⁰.

At least four significant factors will determine whether, and when, ceasefires can be facilitated and the extent to which they may contribute to the broader peace process:

- ▶ **The military capability of the belligerents and whether one of them can defeat the other(s).** For instance, the “all-out” offensive by insurgents in El Salvador in November 1989 highlighted the military stalemate with Government forces and made the need for a peace process clear to all sides.
- ▶ **The size of the constituencies whose aspirations the armed group(s) claims(s) to represent.** Typically, the larger and more influential these constituencies (as in El Salvador or Northern Ireland) the more legitimacy is assumed by the non-state opposition and the more difficult it is for the state to argue that political compromises are not required.
- ▶ **The political capacity of the negotiators on both sides as well as the nature of the group(s).** This is in addition to issues such as their ability to control territory. Questions of command and control weigh heavily in an armed group’s capacity to enter into ceasefire discussions.

Burundi: Between ceasefires and organised surrender?

The 2000 Arusha Peace and Reconciliation Agreement approached the political settlement of the conflict through power-sharing arrangements. While specific clauses carried the principle of security arrangements, the absence of critical armed groups at the negotiation table meant that technical aspects were left to the implementer. The main armed groups which were party to the agreement were the National Council for the Defence of Democracy (CNDD) and the Party for the Liberation of the Hutu People (PALIPEHUTU). Splinter groups – the CNDD-FDD (Democracy Defence Forces) and the PALIPEHUTU-FNL (National Liberation Forces) – refused to sign. They contested the validity of a process they were not part of and which did not address their primary concern around reform of the security apparatus.

Following Arusha, the Burundian Government signed a series of bilateral ceasefire agreements with further splinter groups between 2002 and 2008. Ceasefires were negotiated in exchange for inclusion in the political process and the power-sharing government, even as the Government deftly avoided the compromises on security reforms which the groups demanded. The Burundian army, which opposed security reforms that would threaten its privileges, launched offensives aimed at weakening the armed groups and pressured them to accept the terms of the ceasefire. The groups suffered from in-fighting between supporters of, and opponents to, ceasefire negotiations. The facilitation team enlisted regional countries (Gabon, Tanzania) and UN experts to help the Government and the main armed groups negotiate. Aware that the ceasefires did not bring about needed security sector reform, the facilitators chose to end the violence and worked on agreements that entailed disarmament and reintegration coupled with political appointments for the groups’ leaders. Most Burundian ceasefires were short-lived and had to be renegotiated¹¹.

Peace was not achieved with the CNDD-FDD until the signing of the Comprehensive Ceasefire Agreement in 2006. The PALIPEHUTU-FNL only stopped fighting in 2009 in exchange for recognition as a political party. While bilateral negotiations and combined political and military pressure led to ceasefires and disarmament, the reintegration of combatants has led to mixed results and the Burundian security sector has yet to be reformed.

1

► **A shared belief in the rationale for non-violent dialogue, sometimes brought about by a recent catalytic event.** The 9/11 terrorist attacks on the United States had clear repercussions on the conduct of a number of armed groups. For example, positively influencing the process in Northern Ireland where the IRA was sensitive to being labelled as a terrorist organisation. In Aceh the December 2004 tsunami was a key factor in the move towards a peace settlement.

2

• **When to negotiate a ceasefire? Timing and sequencing**

Ceasefires are often implemented at the beginning of a process as a prerequisite to a more substantive dialogue. The conventional assumption is that a ceasefire is “one of the first and necessary steps in a peace process... that paves the way for negotiation of issues that cannot be addressed during times of hostilities”¹². This flows from a humanitarian imperative – at times felt more acutely by the mediator and other members of the international community than the conflict parties – to stop the conflict as soon as possible in order to prevent the further loss of life. Armed groups will also sometimes declare a unilateral ceasefire when talks are initiated in order to lessen the tension and contribute to an environment more conducive to negotiations.

3

While violence reduction frequently facilitates the initiation of dialogue, it is by no means always the case. In Liberia more than a dozen ceasefires broke down between 1990 and 1995, raising the question of whether they should have remained the primary focus of the negotiation effort. Negotiating in the absence of a ceasefire is also possible and has been undertaken, with varying degrees of success, in Burundi, Guatemala¹³, Northern Ireland and El Salvador. The latter case offers a compelling example of a ceasefire which was negotiated only after the conflict parties had agreed to a broad agenda of political reform.

4

The need to consider the specifics of each conflict situation is sharply illustrated by the case of Colombia where, in 2002, the Revolutionary Armed Forces of Colombia (FARC) invoked the Salvadoran precedent to reject the introduction of a ceasefire in advance of talks. President Andrés Pastrana agreed to the FARC's demand for ‘talking while fighting’ until a political agreement could be reached. As a sign of good will, the Government conceded a large demilitarized zone to the FARC. However, in the absence of agreed mechanisms to monitor activity in the demilitarized area, the FARC used it as a safe haven to regroup, pursue criminal activities and kidnappings, as well as launch attacks. Not surprisingly, the talks soon collapsed.

Although some ceasefires are very successfully negotiated at the beginning of a process, the Salvadoran experience (and the Irish experience discussed later) are useful reminders of the need to remain open to the possibility of challenging the model of an “early ceasefire”. In each case the sustainability of the settlement was rooted in (i) the armed groups’ significant and legitimate demands for reforms; and (ii) the opportunity offered by a broader political settlement to respond to these demands and promote political and societal change in the country.

5

• **Blind spots**

In some cases, governments and third parties fail to grasp that an armed group's inability to comply with some of the requirements of a ceasefire does not necessarily mean that it rejects the ceasefire itself. It could be that its own characteristics impede implementation. This may be because combatants will not accept/comply with what is demanded of them, or because the group's organisational structure renders implementation impossible.

3

In any context in which an armed group or groups are composed of a network of tactically independent formations, groups or cells (or simply amorphous entities with loose command and control), some standard ceasefire mechanisms become extremely difficult to implement. During the HD Centre-facilitated process in Aceh in the early 2000s, for example, creating a buffer zone and expecting the GAM to relocate its fighters from a number of different locations proved an impossible undertaking. This was not the result of a faltering commitment by the GAM but a consequence of it being a diffuse movement living in the midst of the civilian population (as opposed to in outposts and garrisons to which it could have relocated). However, accusations of GAM's non-compliance by the state reflected its perception of GAM's lack of political will, rather than its inability to implement a specific element of the agreement¹⁴.

4

Ceasefires pose practical difficulties for conflict parties. Their implementation requires efficient communication to the rank and file in sometimes difficult terrain. It may also involve difficult adjustments at the individual level. Suspicion is high and combatants are likely to wonder if, and when, they may next be attacked.

5

A thorough understanding of the characteristics of the armed group which may become part of a ceasefire arrangement may call for a reassessment of even the most common ceasefire features. In some cases the objectives and principles of the armed group may, for example, directly counter consideration of a ceasefire. In the Philippines, the Communist Party of the Philippines/National Democratic Front/New People's Army (CPP/NDF/NPA) is not amenable to the

idea of ceasefires lasting for more than a few days. The very idea of a ceasefire would entail renouncing its right to violence as a legitimate means to pursue the struggle. Indeed it would contradict the party's key ideological commitment to what it refers to as "protracted people's war"¹⁵.

• Ceasefire monitoring arrangements

Ceasefire monitoring arrangements may involve conflict parties in the monitoring and verification of how an agreement is being implemented, as well as the investigation of possible ceasefire violations. In other circumstances, local bodies which may or may not be active in conflict resolution in their area of operation may monitor the implementation of the ceasefire and report to a centralised Joint Military or Monitoring Commission (JMC).

The composition and power of each JMC depends on the context. In the Philippines, local monitoring teams (LMTs) include representatives from the local government, the armed group and civil society leaders. Grassroots ceasefire watchdogs ("Bantay ceasefire") complement the work of the LMTs and all report to a central Joint Coordinating Committee on the Cessation of Hostilities (JCCCCH). This ceasefire implementation body works with a third party monitoring contingent, the International Monitoring Team, and both bodies report to the overall peace panel which convenes representatives of the belligerents. In other conflicts, participation in a JMC might be broadened beyond the conflict parties. Liberia's Joint Monitoring Committee, set up in 2003, included representatives from the Economic Community of West African States, the African Union, the United Nations and the International Contact Group on Liberia, as well as the conflict parties.

The 2002 Nuba Mountains ceasefire agreement innovatively placed the primary responsibility for monitoring and verification on the conflict parties themselves, as part of a Joint Military Commission which was supported by the third-party. A similar joint approach was seen in Nepal where the United Nations helped the parties implement the 2006 Agreement on the Management and Monitoring of Arms and Armies (AMMAA). A Joint Monitoring Coordination Committee (JMCC) gathered both armies' representatives under UN chairmanship and, supported by Joint Monitoring Teams (JMTs), this proved critical to the monitoring process. The parties' explicit request for UN support in implementing the AMMAA, combined with their day-to-day involvement in the JMTs and JMCC, led to a very effective arms monitoring process. However, the absence of progress in the broader political process hampered the potential of these arrangements to contribute to the broader goals established within Nepal's peace process¹⁶.

El Salvador: Non-linear thinking

In 1989, the revolutionary armed groups which formed the Farabundo Marti National Liberation Front (FMLN) launched the largest offensive of El Salvador's decade-long civil war. The offensive demonstrated to the FMLN's commanders that they could not hold on to the ground they had seized for an extended period of time, while the Government realised that the army was in no position to win the war militarily. Pressure by the US Congress to investigate crimes involving Salvadoran army officials, as well as a decrease in military aid, further contributed to the Government's decision to stop demanding a ceasefire as a precondition for talks (as had been the case in previous dialogue attempts).

Rather than starting with a ceasefire and ending with a political settlement, the Government agreed with the FMLN that a ceasefire would not even be on the agenda but would be discussed separately once progress had been made on the political front. The parties first negotiated a range of agreements related to the rules, procedures, agenda and timetable of the talks, as well as human rights, military and constitutional reform. Allowing the parties to keep fighting during these negotiations paradoxically provided an element of trust and contributed to the security to the process (an argument repeatedly made by the UN mediator, Alvaro de Soto, to US officials who pushed for an early ceasefire). Only after 22 months of negotiation did the FMLN bring its commanders into the process to discuss ceasefire modalities. These talks took place less than a month before the signing of the January 1992 peace agreements which formalised the outcome of a two-year negotiation¹⁷.

A human rights field monitoring mission, deployed throughout the country early on in the talks, contributed to building confidence and led to a reduction of violence. When the implementation of the ceasefire actually began in February 1992, it was accompanied by the disarmament of the FMLN as well as a parallel process of drastic force reduction within the Salvadoran army as agreed in the broader political negotiations. The ceasefire came as a last step in the peace process, as a formal translation of both sides' commitments, and no violations occurred.

While joint mechanisms may seem obvious good practice, a mediation team's initial analysis will reveal when alternatives need to be considered. Joint mechanisms may not be relevant when – possibly armed – personnel are required not only to monitor, but also to enforce, compliance with a ceasefire, due to one or more of the following factors:

- ▶ A state party to a ceasefire does not exert its responsibility to protect its citizens (Liberia in the early 1990s);
- ▶ Some signatory groups have repeatedly demonstrated their lack of willingness to abide by the ceasefire agreement (Sierra Leone's Revolutionary United Front in the late 1990s);
- ▶ Peacekeepers are in active conflict with one or several signatory parties to the ceasefire agreement;
- ▶ Peacekeepers are forced upon one conflict party, while the other belligerent has not committed to a ceasefire (the Kosovo Verification Mission which monitored the compliance of Serbian forces to a ceasefire that was not recognised by the Kosovo Liberation Army in 1998–99).

In such cases, joint mechanisms may not be appropriate and may endanger the peacekeepers involved in monitoring the agreement.

• Ceasefires and disarmament

Ceasefire discussions give mediators and parties an opportunity – indeed, some see it as an obligation – to negotiate security-related arrangements as part of the peace process. However, there is a risk of overreach when ceasefire agreements also seek to achieve the disarmament of armed groups.

Planning for disarmament as part of the ceasefire negotiation in effect amounts to modifying the balance of power between the conflict parties. This is why groups such as the FMLN undertook disarmament only at the end of the peace process, as part of the ceasefire implementation and in parallel to major reform of the Salvadoran army. The disarmament of the Irish Republican Army (IRA) in Northern Ireland further attests to the sensitivity of the issue. Initially, the IRA did not hand over weapons but rather made its arms and ammunition depots accessible to international inspection by former Finnish president Martti Ahtisaari and ANC leader Cyril Ramaphosa. The two men were able to confirm publicly that depots were secure, their content not being used and that the IRA was honouring its commitments. This helped build confidence and was followed by

the start of a formal disarmament process in 2001 – three years after the signature of the Belfast/Good Friday Agreement – that was only completed in 2005.

Whether ceasefires that entail disarmament of the groups are negotiated at the beginning or the end of a process, they still represent a security threat for members of the armed group(s). The Colombian movement M-19, for instance, saw a number of its cadres assassinated after the movement disarmed¹⁸.

In the absence of any tangible sign of political reform by the state, mediators should generally be wary of disarmament initiatives being introduced at the beginning of ceasefire negotiations. As A. G. Nourani wrote of the Kashmir conflict in 2000, “Militants fear that if they agree to a ceasefire first and, more, lay down arms, they would lose all leverage against the government in the negotiations that follow and would be in a hopeless situation if it reneged on its assurances”¹⁹. As a result of armed groups' likely opposition to build disarmament into a ceasefire, doing so may not only lead to the agreement of provisions which cannot be implemented but also erode the mediators' standing. It is not suggested that armed groups should not in the end disarm, but rather that ceasefires should lay the ground for broader security reforms (of which disarmament will be but one element) that ceasefires alone cannot supplant. The fact that disarmament initiatives present additional sets of difficulties, including frequent controversies over the numbers of combatants eligible for benefits, is one more reason not to tackle them as part of already complex ceasefire agreements. A critical concern for mediators contemplating ceasefire negotiations will be how best to approach the reduction of the spoiler capacity of conflict parties. If it appears that armed groups represent significant constituencies, negotiations that include disarming these groups but postpone broader questions of security sector reform to a later stage may put the entire peace process at risk.

“Back in the days, as a young [republican] volunteer, I was taught to give up my life before I'd give up my weapon. Giving up weapons was an anathema.”

Gerry Kelly | Sinn Féin

4.4 Options for mediators

The options available to a mediator will depend on a range of factors including, but not limited to, the number of the parties to the conflict; the influence the mediator has over the parties and the leverage from other actors in the international community he or she can draw on to support it; the support third parties

can lend to a ceasefire monitoring and verification process; and the extent to which the parties are willing to link the ceasefire to a broader peace process.

- **Allow parties to save face**

For a number of armed groups, agreeing to a ceasefire is a huge concession to the state. The capacity of mediators to secure the parties' participation in a process in which none of the belligerents loses face will be of critical importance to the success of a ceasefire. This can be done through the involvement of entities other than the state, the army or the mediator, whose appeal for a ceasefire may be more acceptable to the armed group. In Northern Ireland, the IRA declared a ceasefire in response to a request from its political surrogate, Sinn Féin. In Colombia, the involvement of the Catholic Church has on several occasions been critical for the FARC to agree to a ceasefire, albeit temporarily.

- **Introduce the Mitchell principles**

In processes where one, or several, of the parties remain(s) opposed to negotiating a ceasefire but they are inclined to curb the level of violence and reassure others of their commitment to peace, the Mitchell principles offer an opportunity. Named after US Senator George Mitchell who introduced them in Northern Ireland in 1996, these six principles can be agreed upon by conflict parties and reflect a de facto commitment to the essence of a ceasefire. They entail i) resolving political issues by democratic and exclusively peaceful means; ii) disarming all paramilitary organisations; iii) submitting such disarmament to verification by an independent body; iv) renouncing and opposing efforts to use force or threaten to use force to influence the course or the outcome of all-party negotiations; v) abiding by the terms of any agreement reached in all-party negotiations and resorting only to democratic and peaceful means to try and alter aspects they may disagree with; vi) urging that "punishment" killings and violence stop and taking effective steps to prevent such actions²⁰.

- **Start small: localised ceasefires**

Mediators may explore the option of localised ceasefires as a confidence-building measure acceptable to the parties. A localised ceasefire can serve as a means for the parties to ascertain each other's interest in, and willingness to work on, a negotiated settlement. Supported by clear monitoring and verification mechanisms, it can open the way for sustained dialogue between the parties.

Programmes aiming at armed violence reduction have utilised "peace zone" initiatives which, while they are not as comprehensive as localised ceasefires, require the conflict parties to agree to a set of rules that can apply to demilitarised areas. Such localised peace zones may be regulated by a variety of rules,

Joint monitoring in the Nuba Mountains

In 2001 the United States appointed Senator Danforth as Special Envoy for Peace in Sudan, to explore the possibility of confidence-building measures between the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A). Following consultations with the conflict parties, the region and European countries, the Nuba Mountains emerged as a test case where a localised ceasefire could be negotiated.

A major oil pipeline ran across the area and, although neither side was able to hold it entirely, they were not ready to concede. Building on the pressure the parties were under post 9/11, the mediation team pushed for detailed ceasefire mechanisms that the parties eventually agreed to, leading to the signature of the ceasefire in January 2002. The Swiss-US mediation team anticipated that the parties would use the ceasefire to redeploy troops to fight in other areas. To pre-empt this, they not only suggested buffer zones and the withdrawal of troops, but also that the parties stay within the boundaries of the Nuba Mountains, where they bore primary responsibility for sustaining the ceasefire through a Joint Military Commission (JMC).

The JMC gathered the conflict parties and members of the international mediation group. It enforced compliance through systematic joint local patrols, and was complemented by a complaints registration system. To further reinforce local ownership and avoid escalation, incidents and complaints were systematically addressed by commanders at the lowest possible level. This highly collaborative set-up drew upon the leverage the US-Swiss team enjoyed in the aftermath of 9/11. The United Nations and powerful states also pushed for compliance through a process of naming and shaming. The ceasefire agreement further included very detailed geographic co-ordinates and implementation timeframes.

The six-month ceasefire was renewed for more than three years. The joint mechanism resulted in military personnel from both sides working together and emphasised local responsibility in monitoring and investigating violations. Such mechanisms were absent from the CPA security arrangements, where UN monitors no longer patrolled with local forces.

1 ranging from banning the carrying of weapons to banning their use, as well as regulating the movement of troops. In some instances they also provide for a framework to promote local dialogue mechanisms and other confidence-building measures. Such localised mechanisms have been used both during conflict (in Aceh and Colombia) as well as in post-war situations (in El Salvador). While peace zones appear to be effective mechanisms at the implementation stage, their usefulness as confidence-building measures in the absence of strong monitoring and verification mechanisms remains questionable.

2

- **Build the parties' responsibilities into the monitoring mechanisms**

When working on a ceasefire process, mediators also have the opportunity – if not the duty – to remind the parties of their primary responsibility for making the ceasefire hold, as well as for monitoring its implementation and verifying possible ceasefire violations. From a mediator's point of view, the parties' commitment can translate into a series of practical steps that bring them to work with each other to address the challenges of implementation. The

2002 Nuba Mountains ceasefire provides interesting lessons in terms of putting the onus on the parties, including through joint monitoring mechanisms, with the mediators' formal role being only one of support. In this example, involving the conflict parties' military commanders in the planning stage of the ceasefire as well as its implementation, contributed to the success of the process. This positive example was, as noted above, drawn upon in Nepal where the Joint Monitoring Coordination Committee involved representatives of the Nepal Army, the Maoists' People's Liberation Army and the United Nations.

The processes in the Nuba Mountains and Nepal stand in contrast to the monitoring arrangements of the 2002 Sri Lankan ceasefire. In the latter case, low levels of support from the parties translated into a structural problem as exclusively Scandinavian monitors bore the brunt of the monitoring responsibility, while the conflict parties were only represented in an advisory capacity.

3
4
5
"Attitudes changed over months. They [the National Congress Party and the Sudan People's Liberation Army negotiators and commanders in the Nuba Mountains] understood each other much better. It did create trust. It made the starting of the CPA talks much easier."

Julian Hottinger | Swiss mediator

- **Use wide ranging security expertise to build the capacity of the parties**

Security expertise should ideally be broader than purely military expertise and include both disarmament and security sector reform. In some situations mediators can usefully enlist country specialists who have an in-depth knowledge and understanding of the conflict at hand. This can complement the work of security advisers who may be called upon to advise the mediation team as well as the parties on (i) understanding the specifics of their conflict environment and requirements and; (ii) devising ceasefire mechanisms that address these specific points and are linked to the broader security elements of the peace process.

Mobilising the right security expertise will enable a mediation team to offer conflict parties the technical capacity they need and ensure that they understand the implications of the measures and technical components they are negotiating. It may also encourage parties to include in the agreement a degree of detail that clarifies possible sources of dispute which may arise during implementation. Following the 2002 Machakos Protocol in Sudan, for example, the mediation team organised separate workshops on security arrangements for senior military officers in Khartoum and SPLA commanders in the south. During the 2006 Darfur talks held in Abuja, the African Union similarly called upon a team of advisers to help the Darfur groups develop a better understanding of what the ceasefire would entail²¹. When negotiating the 2002 Cessation of Hostilities Agreement (COHA) in Aceh, the HD Centre enlisted the services of a retired US General, a private security consultancy firm to provide expertise throughout the process, as well as former Indian military personnel to devise mechanisms related to weapons placement. Throughout these processes, the use of individuals with security and military expertise (including former combatants) was beneficial both to the mediation team as well as the parties themselves.

- **Pre-empt implementation challenges**

Mediators are in a position to prepare the parties for the difficulties of implementing ceasefire agreements, especially those that lack the necessary level of detail. They can help the negotiators think through the specific requirements of their process and devise suitable mechanisms that pre-empt some of the challenges which may arise during implementation.

Difficulties in implementing ceasefires relate less to the shortcomings of the monitors and more to the lack of clarity of the original agreement including crucial terminology, responsibilities and mechanisms. To avoid any misinterpretation, the mediators of the Nuba Mountains ceasefire agreement defined the structure, composition and responsibilities of the Joint Military Commission in

great detail and decided to make it an integral part of the agreement, signed by both parties. In cases where contentious details have been left out of the ceasefire negotiation or mediators have resorted to “creative ambiguity”²² to overcome parties’ disagreements, personnel in charge of implementing and monitoring the ceasefire have later faced real difficulties. In 2002, the HD Centre helped parties to the conflict in Aceh sign a Cessation of Hostilities Agreement (COHA) which provided no detail on the significant aspect of “placement of [GAM] weapons to designated sites”. At the implementation stage, the parties’ respective understanding of what it meant could not be reconciled sufficiently to overcome mutual suspicion and misunderstandings. Creative ambiguity in the COHA process in Aceh, resulted in what one member of the implementation team recalled as “a critical mass of disagreements at the implementation stage, which convinced the parties that a genuine meeting of minds had not been achieved during negotiations.”²³

- **Work on public information**

Mediators usually facilitate a joint dialogue and negotiation process between two or more parties. They may play a different role when, in internal conflicts, the government might not agree to a reciprocal ceasefire that it fears would amount to formal recognition of its armed challenger. In this case, the mediator’s work may consist of facilitating a process of parallel, unilateral moves. On the one hand, helping an armed group think through and implement a unilateral ceasefire, while on the other helping the state carve out and deliver public information messages that support the process and acknowledge the armed group’s accomplishments. The use of efficient communication will significantly contribute to confidence-building for the conflict parties themselves as well as for their constituencies. Specific mechanisms to disseminate information to the rank and file of the fighting forces are important in order to maintain group cohesion throughout the process.

Avoiding triumphalism and provocative statements on both sides will be a major part of a mediator’s work. He or she can, both at the negotiation and during the monitoring stage, work with the parties to decrease the use of hostile propaganda and inform broader constituencies about the spirit and letter of the ceasefire agreement. This has proved to have a direct and positive impact on a number of negotiation processes and has been done through radio broadcasts, leaflets, TV programmes, as well as the use of theatre. In so far as it encourages the groups’ leadership to communicate clearly and regularly on the process and its achievements, public information ensures wider exposure and can contribute to enhanced accountability.

Public information in Aceh

In December 2002, the Free Aceh Movement (GAM) and the Government of Indonesia (GOI) signed the Cessation of Hostilities Agreement (COHA). The COHA was expected to bring the violence to an end in preparation for an «All Inclusive Dialogue» in which civil society groups and the GAM could negotiate and amend the existing autonomy law in Aceh. Despite an initial dramatic drop in hostilities and casualties, the COHA ended after six months.

The security arrangements for the COHA included the establishment of the Joint Security Committee (JSC). The JSC was composed of 50 international monitors, 50 commanders from the GAM, and 50 military and police officers from the GOI. The tripartite team travelled throughout Aceh responding to incidents and trying to prevent their escalation.

The entire operation was overseen by the Centre for Humanitarian Dialogue along with support from the Swedish Rescue Services Agency and contracted security experts. The HD Centre had facilitated the agreement and was also in charge of its implementation. The parties had not agreed upon clear mechanisms to undertake the placement of the GAM’s weapons at the time of the signature of the agreement and the HD Centre was tasked with working out the demilitarization process which included cantoning the GAM’s weapons and repositioning forces from the GOI.

For the duration of the COHA, the HD Centre established a semi-autonomous body referred to as the Public Information Unit (PIU). Led by an international media specialist and composed of approximately 30 persons, the PIU was responsible for all information and public relations activities. It was established to hold the parties accountable for implementing the agreement and promoted understanding of the agreement among the parties’ supporters, clarifying possible areas of misunderstanding. The PIU held weekly press conferences together with representatives of the parties and conducted regular programmes on radio and television. They operated alongside the JSC in six field offices established throughout Aceh. A similar Public Information Unit was set up by the Aceh Monitoring Mission (AMM), the body responsible for monitoring and verifying the implementation of the subsequent 2005 Memorandum of Understanding.

1 It is worth noting that parties are increasingly broadening the definition of what constitutes a ceasefire violation to include propaganda. The extent of a ban on propaganda remains very country specific and might include the national media as well statements made outside the country²⁴. In the case of conflicts where religion is a factor, religious propaganda might also be banned²⁵.

2 • **Non-military ceasefire violations related to sexual violence**

Ceasefire agreements increasingly reflect concerns for the protection of civilians. Most include intimidation, extortion and crimes against civilians in the definition of what constitutes a ceasefire violation. While gender mainstreaming should not be limited to the ceasefire implementation mechanisms, in the Nuba Mountains the presence of a female senior police adviser to investigate sexual crimes committed by the parties – as part of the monitoring force – reportedly caused a noted reduction of the number of rapes within less than three months²⁶. An Indian all-female police unit played a similarly positive role when deployed as part of the peacekeeping contingent in Liberia. Such examples suggest that sexual violence can be more systematically included as part of the non-military ceasefire violations and efforts made to curb it when i) ceasefire monitors are trained to investigate cases of sexual violence as part of the ceasefire violations; and ii) more female monitors are deployed in contexts where sexual violence is prevalent.

3 An argument can also be made that joint monitoring mechanisms of ceasefire agreements, incorporating belligerents from both parties, should include female combatants. Doing so would publicise the existence of female combatants and may contribute to countering their frequent “disappearance” during subsequent disarmament processes²⁷.

4 4.5 Conclusion

Ceasefire agreements are a central element in peacemaking. They can significantly contribute to a reduction in tension levels and benefit the peace process at large. In cases where they are recognised as an important mechanism to address and treat the symptoms of a given conflict (the violence) and bridge – not supplant – the broader political, economic and social process that is needed to address its root causes, ceasefires have contributed to more sustainable peace.

As ever, patience and timing are vital. Mediation teams will need time to build enough trust with the belligerents for them to disclose and map vital information about the scale and location of their troops as well as their arms. Drawing

on specific security expertise will help mediators build this relationship and facilitate joint planning of a ceasefire that will be better understood by the parties, contribute to their increasing co-operation, and open the door to a reduction of violence. It will also contribute to ceasefire agreements that are sufficiently detailed to lend themselves to effective implementation.

Clearly the challenges to good practice remain considerable. Mediators are, in many respects, dependent on the commitment of the parties and their ability to exert command and control over their troops. A thorough analysis of the conflict environment and its possibilities, ideally conducted in collaboration with the parties, is needed to ascertain what the parties expect from, and are willing to invest into, a ceasefire. It should also suggest the extent to which a ceasefire can be a tool both for the management of the conflict and for its sustainable settlement.



Chapter 5:

Elections and mediation in peace processes

Dr Christopher Fomunyoh
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5.1 Introduction

The end of the Cold War era in the late 1980s, combined with the widespread embrace of political pluralism, raised the significance of elections as the vehicle of choice for renewal of political leadership. More recently, the 'Arab Spring' of 2011 and the subsequent pursuit of electoral pathways to the anticipated transitions in countries such as Tunisia, Egypt, and Libya, as well as peaceful transfers of power after highly contested elections in Zambia and Senegal, underscore the consensus around credible elections as the prime tool for peaceful and orderly management and transfer of power in transition environments. These global trends reinforce the link between elections and mediation. Successful mediation can mitigate the negative element of the competitive nature of election processes in fragile environments, curb violence, and contribute measurably to the legitimacy of electoral processes and outcomes. This chapter revisits the role of mediation in the electoral cycle and offers guidelines on potential entry points for mediators.

Recent years have seen increased mediation efforts around election processes worldwide. Senior officials of the African Union (AU) and the Economic Community of West African States (ECOWAS) worked to ensure inclusive elections in Côte d'Ivoire in 2000. Mediation was used to enable dialogue between the incumbent government and opposition parties in Thailand before the July 2011 elections. Most recently, there has also been an increase in high-profile post-elections mediation in Africa, most notably in Kenya (2007), Zimbabwe (2008) and Côte d'Ivoire (2010/11).

Election processes are cyclical, beginning well before votes are cast, and continuing long after (Figure 1).¹ Contestations around elections that warrant mediation are likely to emerge during the following four phases of the electoral process:

1. the pre-election period, on issues pertaining to the electoral framework
2. the lead-up to elections during the operationalisation of the framework through election preparations and campaigning
3. on polling day
4. in the post-election period up until the acceptance of the results and the establishment of a new administration.

Experience has shown that mediation can be of value in all these stages of the electoral cycle.²

Figure 1 : The election cycle



While some authors or analysts believe that matters requiring mediation are solely political, some issues that would call for mediation could be of a technical or political nature, or both. A proper prior analysis of the nature and causes of a crisis would help determine both the skillset required for the mediator and the various mediation mechanisms that would be most effective in the specific context. These mechanisms will vary depending on whether the mediation is intended to prevent conflict throughout the election process, or manage and resolve a conflict already arisen concerning the electoral outcome. The actors engaged in the given conflict around the elections will also determine the approach of the mediation process – whether a high-level or grassroots-based, open or discreet mechanism is more appropriate.

Significantly, the nature of actors is an important factor in determining the nature of the mediation intervention. The 'level', size and skills of mediation teams will vary depending on the level of the political competitors. In Senegal in 2012, in the lead-up to a very charged presidential contest, a panel of personalities sponsored by the AU Panel of the Wise in conjunction with the ECOWAS panel led by former Nigerian President Olusegun Obasanjo was deployed for mediation. However, if aggression is expected at grassroots level, well-trained mediation teams need to be deployed to resolve the issues locally.

Too often, delicate compromises are negotiated as part of the process of adopting the electoral framework – particularly in post-conflict or fragile-state settings. Frequently, unrealistic timeframes accompany these agreements, with an assumption that an early election will build confidence in a democratic transition or new constitutional order. More often however, the level of arms in the country and the networks for violence remain and are employed in the political contests around the elections. Therefore, the implementation of agreed compromises, if not meticulously respected, may increase the likelihood of crises or reduce the ability of the existing framework to manage and resolve potential disputes.

This chapter looks at all aspects of conflicts that arise around elections, and how mediation can mitigate them before they descend into violent conflict. Therefore, while some of the technical mechanisms for dispute resolution are referenced, the focus of the chapter is on how to practice mediation more effectively at all stages of an election. The rest of this chapter is organised in three main sections. Section 2 frames the debate around election disputes and mediation efforts, including dilemmas facing mediators. Section 3 focuses on questions to consider when designing mediation efforts, and Section 4 looks at different options for mediators, using case studies as illustrations.

5.2 Framing the debate

During the 1990s there were 281 legislative and 114 presidential elections worldwide.³ There were even more in the next decade as more developing countries engaged in transitions from authoritarian rule to democracy. Moreover, by increasing the focus on election processes as a critical indicator of democratic progress in countries experiencing political transitions or exiting from conflict, Western donors and development partners have added significance to elections. Between 2005 and 2010, the European Union spent nearly €600 million on electoral assistance,⁴ and the US government budget for political competition and consensus building nearly doubled between 2007 and 2008.⁵

• Managing contentious elections

Poorly conducted elections can sometimes be sites of conflict when the electoral process is not understood or fully respected by all contestants and their supporters. In some countries, elections can trigger increased or renewed violence. Often, election-related crises indicate that citizens lack confidence in other existing institutions such as courts and political parties. Electoral processes test the strength of institutions of governance in every country. For example, this includes the professionalism of security services in acting justly, the independence of the judiciary in adjudicating election-related litigation fairly, the ability of citizens to exercise the freedoms of association and movement, and the effectiveness of the legislature in defining an impartial legal framework for elections.

How these rights and responsibilities are enjoyed by citizens can determine the probability of discord and violence, given the propensity of elections to intensify pre-existing stresses. Maintaining healthy relationships among the various stakeholders often requires the intervention of neutral actors to mediate differences and diffuse tensions before they escalate. These national and neutral actors could be permanent institutions such as the election management body or an Ombudsman; they could also be ad hoc such as inter-party dialogue or advisory bodies established in the lead-up to an election.

In many states emerging from armed conflict, the negative effects of a conflation of realities or perceptions of competition for political power generate a zero-sum approach to elections. In such transition societies, access to economic power is dependent on winning political power, and elections engender both political and economic zero-sum calculations that can exacerbate tensions and lead to violence. In Africa, for example, the increase in competitive elections in recent years has also seen attempts by some incumbent regimes

to circumnavigate unfavourable results – sometimes violently. Consequently, there is a growing focus on better managing disputes related to elections, including how to develop dispute-resolution mechanisms that can generate peace and adherence to democratic governance after an election. Other efforts focus on supporting inter-party dialogue in advance of elections, sponsoring good offices, and mediation by internal and external actors.

The past two decades have seen the development of management techniques and systems for credible elections globally, including the creation of independent election management bodies and use of new technology.⁶ However, this has not always been matched by an expansion of political space or the development of political systems in which all players willingly agree to abide by election rules and submit to the outcome. For countries in transition or emerging from conflict, and where governance institutions, including electoral bodies, are weak or corrupt, the rules of the game frequently do not engender the same confidence (or political space) in all parties. The institutional backdrop against which elections are conducted is fragile and not capable of withstanding the shocks of a flawed process.

The contexts in which contested elections emerge also differ, depending upon the power (im)balances of the actors involved. If elections are manipulated by a strong ruling party, this will require a different sort of intervention (and raise different challenges) from a case where high levels of violence and chaos have impeded the polling, or have erupted around the results. The choice of how to establish a mediation process will be partially determined by the power of these different actors. In many cases where the power is slanted towards the ruling party, any attempt at external mediation will be strongly resisted, and will not succeed without significant high-level pressure.

• Dilemmas for potential mediators

Election-related disputes often present key dilemmas for potential mediators. These dilemmas vary depending on the phase of the election and the national political context. For example, mediation in the pre-election period may encounter constraints enshrined in the legal framework of the country, including its constitution. Mediation in the immediate post-election phase, if not properly handled, could undermine the election results by advocating for compromise when a clear winner ought to be determined and rewarded politically.

Obviously, the approaches to adopt depend on the specific focus of the mediation. Preventive mediation before elections – good offices and work to ensure acceptance of the results of an election by all parties – will have a very different

agenda from post-election crisis mediation. The use of force and violence during contestation of an election result adds another layer of complications to the mediation effort.

Box 1

DRC, November 2011 : the mediator's dilemma

On 28 November 2011, the Democratic Republic of the Congo (DRC) conducted highly contentious presidential and legislative elections, marred by allegations of fraud and mismanagement, and severe election-related violence. There were 11 candidates for president, and close to 19,000 candidates representing more than 250 registered political parties vying for 500 legislative seats. In a nation with 32 million registered voters, 63,000 polling sites, and 169 compilation centres, the conduct of the election proved to be a huge logistical challenge for the recently formed Independent National Election Commission (CENI). Moreover, most CENI members were affiliated with political parties loyal to President Joseph Kabila, and had been accused of partisanship and lack of transparency.⁷

Incumbent President Kabila was declared the victor with 49 % of the vote, compared to 32 % for the leading opponent Etienne Tshisekedi. The results were challenged before the Supreme Court, which quickly ruled in favour of Kabila who was sworn in on December 20. The quick confirmation of Kabila's election by a Supreme Court filled with Kabila appointees was highly criticised, citing the Court's failure to fully investigate evidence of irregularities also identified by domestic and international observer groups such as the Carter Center and the European Union. These two bodies questioned the credibility and legitimacy of the poll results,⁸ which the Catholic Church, which had deployed about 30,000 observers, depicted as 'not founded on truth or justice'.⁹

Questioning the legitimacy of President Kabila's administration, Tshisekedi declared himself president, taking the oath of office in his residence.¹⁰ Despite calls to address opposition grievances and increasing polarisation, the government is content with its declared victory and wants to focus on going forward.

Other preliminary matters to consider include 'root cause' issues, and which actors nationally or internationally to draw into a mediation process. Generally, 'root cause' issues relate to pre-existing grievances that may have contributed to political polarisation before an election, and that may resurface at the peak of tightly contested elections. A recent example of such an issue includes land reform in Zimbabwe, which the ruling party advanced as a pretext for not ceding power to the opposition after losing at the ballot box. Similarly, the ruling party in Côte d'Ivoire tried to use the uncompleted disarmament of former rebels as an issue that needed to be resolved prior to any mediation of the dispute surrounding the 2010 polls.

The economies of elections or the economic impact of possible remedies must also be considered by mediators in seeking a breakthrough. While not an immediate element of the election process in question, these factors, like a hanging cloud over the national political landscape, have the potential to incite violence and conflict around an electoral process; they can also determine the political flexibility of mediators and affect their chances of success. In many cases, the dilemma is compounded when some of the main political stakeholders refuse to acknowledge the existence of a stalemate or the necessity for mediation (Box 1).

5.3 Mediation challenges and opportunities

One of the main challenges for a mediator in election-related conflicts is to determine the connection between mediation and the credibility of the election, to avoid undermining the broader democratisation effects of elections both nationally and regionally. It is therefore important for a mediator to appraise the situation and ascertain the broader implications of proposed solutions that arise from an electoral mediation. The following are some of the most pertinent questions to consider before mediation efforts are undertaken:

- ▶ Are the mediation and the mediator acceptable?
- ▶ When is the right time to act?
- ▶ What is the scope of the mediation? What is being mediated?
- ▶ How to make peace last beyond one election?
- ▶ Is power sharing appropriate?

• **Acceptability of mediation and the mediator**

When considering mediation, it is important to review the national landscape, the parties involved and the basis of their respective claims, and to identify any existing national processes of dialogue (formal or informal), which could be complemented by external third-party intervention.

Choosing a mediator

It is particularly important that early research before potential mediation focuses on civil society and informal mediators and interventions. Therefore, the mediation team should consult broadly and constitute a pool of actors, including leaders of women's groups, youth organisations, professional associations, traditional authorities and religious bodies, as well as the traditional interlocutors within political parties and government.

In many cases however, contested elections cause so much polarisation that it can be difficult to identify national consensus builders or figures that could be accepted as mediators by all sides. It may be that individuals are not trusted because of their ethnicity, past affiliations, role in the elections, or simply that they alone do not possess the clout to bring the parties to the table. In such cases, external mediators can be of particular value. Alternatively, in sticking with domestic mediators, it may be necessary to form a team of mediators rather than a single individual. The choice of team members should be based on each individual's suitability to one or all of the parties in competition, with the understanding that the working terms of reference would stipulate that decisions of the team are made by consensus.

Gaining acceptance

The first hurdle is the acceptance of a mediator, or a mediation process of any form (particularly if this is to be public) around an electoral crisis. The example of Kenya's December 2007 elections is instructive as there was strong resistance from the government and the ruling party to the high-level envoys, including sitting and former heads of state and eminent persons, who descended upon Nairobi in early January 2008. Only through a combination of concerted pressure by regional and international players, and a recognition that the crisis had rendered the country truly ungovernable, did the positions shift and the AU Panel of Eminent African personalities, under Kofi Annan, was accepted.

Quite often, before or during an electoral crisis, the party feeling most successful (usually the incumbent party) will resist the involvement of a mediator until the balance of power shifts away from them. Opposition parties are more apt to press for greater involvement of external mediators in hopes of levelling the playing field

around the elections – as in Burundi in mid-2010, for example. As challenging as it may be, gaining agreement for the mediation by all parties remains a required first step. Determining the sources of resistance can help the mediator, or institution setting up the mediation, to decide on the best approach. In such cases, the mechanism being presented is as important as the acceptability of the mediator. Good offices behind the scenes and 'informal' structures for mediation in these preventive environments can leave the parties with the confidence that they are retaining some flexibility in the dialogue process.

Usually, national figures working behind the scenes will emerge as important potential allies for a mediator in gaining acceptance for external involvement and potentially a more formal mediation role.¹¹ Other factors influencing the acceptability of a mediator include previous engagements in the country or the region, nationality, gender, political history and institutional affiliation. For example, attempts to utilise the good offices of Kenyan Prime Minister Raila Odinga in the mediation process in Côte d'Ivoire following the 2010 electoral crisis were based on the expectation that Odinga would benefit from his perceived role in the Kenyan 'solution' to a similar crisis. However, the outright rejection of the Kenyan power-sharing model by Ivorian stakeholders made Odinga's mediation unacceptable and untenable in Côte d'Ivoire.

Beyond the acceptance of national stakeholders, it is also essential to gain international and regional support for a mediation process – particularly one led by an external envoy or institution. The stark contrast between the high level of consensus around the Kenyan 2007 election mediation and the divisions around the intervention in Côte d'Ivoire in 2010 speaks to this difference. International actions ought to support national processes and build on national knowledge in order to develop a critical mass of domestic actors committed to the outcome of the mediation and capable of owning its implementation and sustainability.

• **Timing of a mediation intervention**¹²

Despite the emergence of early warning systems, the need for mediation most often arises after the fact – that is, after a disputed election process or result. In a few rare cases, parties on both sides of an issue may anticipate a stalemate or deadlock, and seek third-party intervention to facilitate mutual understanding of expectations. In such cases, good offices, high-profile assessment or fact-finding missions and other less structured, ad hoc interventions may be enough to diffuse tensions and avoid violence. Preventive mechanisms are now increasingly building mediation efforts into electoral processes expected to be contentious or violently contested.

Challenges and opportunities of pre-crisis or preventive mediation

Pre-crisis mediation, if successful, mitigates the potential crisis by building consensus around the electoral framework way ahead of the elections. As noted in the 2011 World Development Report,¹³ pre-election dialogue, which encourages co-operation and reduces the zero-sum nature of the outcome of elections, can have a positive impact on electoral processes. Examples would include supporting mediation around an inclusive constitutional reform process and negotiating an electoral system in a post-conflict environment, in which a win-win formula is included for all major contestants.

Establishing preventive mechanisms for dialogue among electoral contestants, either directly or through third-party mediators, provides outlets to reduce tensions and ensure communication between parties before an election, and also between the parties and other stakeholders such as the election management body, security services or the Courts that could be called upon to oversee adherence to the negotiated outcomes. The dilemma for the mediator, however, is that parties in competition may not see the need for mediation and compromise – when the election seems distant, or when they perceive their own good prospects of winning. Moreover, even if invited to assist, the mediator must ensure that dialogue or early negotiations at this level do not undermine the democratic freedom of choice enshrined in the elections process by pre-determining outcomes.

In countries emerging from armed conflict, provisions may be made for pre-assigned mediators or facilitators (including international actors) to accompany the parties in the implementation of the peace agreement from the end of hostilities to the holding of inclusive elections and the acceptance of election outcomes. This has the added benefit of enabling the mediator to identify potential flashpoints early on, without waiting for any reluctant political party or actor. For example, in Sudan, upon signing the Comprehensive Peace Agreement in 2005, a group of international partners¹⁴ was charged with the responsibility of shepherding the implementation of the accord between the Sudanese government of Khartoum and the former rebels of Southern Sudan until the referendum which would determine Southern Sudan's independence in 2011. Several times during those seven years, the group of experts engaged in preventive mediation concerning the electoral framework and timeline, and to keep the two parties engaged in the electoral process. Many believe that this facilitation and ongoing mediation guaranteed the ultimate holding of the referendum on time, and adherence by both parties to the outcome.

In some instances, national mediators are identified, agreed by all parties, trained in conflict-management skills, and deployed to offer their services across the country during and around elections. In a rather creative initiative in partnership with election-management bodies in Southern Africa, the Electoral Institute of South Africa (EISA) trained and deployed thousands of micro-level mediators in local communities during national elections, working with conflict mediation panels in South Africa (2009), Zambia (2001, 2006), and Lesotho (2002, 2005).¹⁵ At the peak of this effort in the DRC, 3000 mediators were deployed during the 2005 referendum and the 2006 presidential election. To its credit, South Africa has provided an institutional framework for such mediation by legislating to empower the Independent Election Commission to resolve electoral disputes, complaints or infringement of the Code of Conduct through conciliation or mediation.¹⁶

Common flashpoints for conflict in the pre-election period include voter registration, electoral boundary delineation, and campaigning. It is important to allow enough time and effective judicial recourse for individuals, candidates and political parties to channel their grievances via institutions and formal mechanisms.¹⁷ Similarly, disputes may arise during voting, counting and the announcement of results. Courts and election management bodies need to have sufficient capacity and independence to handle disputes within a reasonable timeframe in order to prevent escalation to violence. While many of these mechanisms may exist, they may not be adequate to manage all disputes or allegations arising, particularly in post-conflict situations. This may require external mediators or the creation of special courts or institutions to handle appeals or challenges to electoral outcomes, sometimes including international participation, as was the case in the 2004 presidential elections in Afghanistan.

Ripeness

Linked to preventive mediation is the choice of timing of mediation, and the ripeness of the moment, and what this means for the approach adopted by the mediator. When approached too early by mediators, many political actors and contestants are likely to reject offers of assistance. On the other hand, if the mediation offer arrives long after the crisis has surfaced, then it may be too late for electoral mediation, particularly at national level, to be effective. At this point, parties may be calling upon the more formal offices of the AU and UN, or the International Criminal Court (in cases of deaths or gross human rights violations). These bodies may claim jurisdiction, especially if that is likely to strengthen or consolidate their position in the matter under consideration.

1 One approach to determining ripeness is to elicit the opinion and proactive support of independent-minded non-parties to the electoral competition, such as civil-society leaders or academics who tend to be more forthcoming in their analysis of in-country political developments. In countries in which religious leaders enjoy broad respect among citizens, they too can provide essential and balanced information during preliminary consultations, especially if the range of those consulted reflects the multiple and sometimes divergent denominations in the country. These actors can also engage the parties in the earlier stages, and support preventive mediation efforts.

2 However, the main political actors must support any dialogue. Short of specific incentives or threats of penalties that would force the parties to the table around a mediator this early in the process, each side must see, or be convinced to see, the risks and consequences of a full-blown crisis as high for them. To facilitate buy-in by the political contestants, the mediator must also ascertain that the proposed or anticipated outcome conforms to the broad constitutional or legal framework of the country.

3 For example, in 1990, two years ahead of national elections in Senegal, opposition parties threatened to boycott all elections in the country if the government did not undertake major electoral reform. They also threatened strikes and demonstrations that could become violent if the government did not respond. Although the electoral process had not begun in earnest, the Senegalese government was open to technical assistance on the matter and invited the National Democratic Institute for International Affairs (NDI) to facilitate dialogue among the contestants on electoral reform. The Institute conducted extensive consultations with Senegalese political and civic leaders and issued a report with recommendations that diffused tensions and laid the foundation for consensus-driven electoral reform in Senegal. Many Senegalese attribute the peaceful election and alternation of power in 2000 to the facilitation and technical assistance provided by NDI a decade earlier.¹⁸

5 • Defining the scope of electoral mediation

In many cases, disputes arise because of serious flaws in electoral processes. However, mediation should not be viewed as a replacement for democratic processes, and the primary objective must be to avoid undermining electoral processes. Where a clear winner has emerged through a credible process, the outcome of the election must not be up for negotiation.¹⁹ However, when an incumbent regime contests an election outcome, mediators face the conundrum of how to mediate without re-negotiating an outcome that the majority of the voters have called for and accepted.

1 Often, the crisis around an election is exacerbated by the existence of broader grievances and social divisions, which tend to require a broader approach to mediation. These considerations could also be affected by where the mediation effort sits in the election cycle. In a post-election crisis, there may be enough time and space to address the broader grievances. By contrast, preventive mediation may be focused on the immediate crisis around the envisaged election. There are two schools of thought about whether mediation should address root causes of an electoral conflict.

- 2 1. Some mediators consider that by tackling all the root causes of political polarisation in a country, one gains the confidence of the parties and therefore enhances prospects for long-term commitment to the negotiated outcome around the election.
- 3 2. On the other hand, such an all-encompassing approach would most likely fail to address any issue within the timeframe of the election cycle, and could eclipse the main focus of the electoral competition.

4 As elections are time-sensitive, it is advisable to disaggregate or disassemble the issues so that the election-related crisis is isolated and resolved first, rather than combining all pre-existing grievances with the pending election dispute. If the immediate election-related cause can be resolved first, this can contribute to an increased sense of justice and fairness and therefore provide the legal authority and legitimacy needed to tackle the less immediate, and usually long-standing, grievances.

5 Mediators will often need to define the scope of mediation against the will of some of the parties. For example, in the dispute about the outcome of the 2008 Zimbabwean elections, the incumbent government wanted to reopen discussion on the root causes of political tensions in the country, something which would have taken the parties back to land reform and 1979.²⁰ Conversely, opposition parties wanted the mediation to focus on the conduct of the polls and the violence and intimidation inflicted on their supporters during that electoral period. During the dispute over the 2010 presidential elections in Côte d'Ivoire, then-incumbent President Gbagbo wanted the completion of disarmament efforts written in the 2007 Ouagadougou Agreement whereas opposition parties wanted the mediation efforts to focus specifically on which candidate had the winning vote in the 28 November poll.

In such circumstances, one reputable mediation technique consists of adopting a two-track approach. This focuses on obtaining consensus immediately on the issues relating directly to the polls, while also seeking agreement on

the need to expand negotiations and the mediation effort on other subsidiary issues beyond the end date of the election cycle. Box 2 illustrates how the two-track approach was used in Kenya's electoral crisis following the December 2007 elections.

Box 2

Two-track approach : Kenya, 2007 – 2008

The focus of the mediation, though limited formally to the political parties contesting the elections, included a very broad agenda, most importantly what came to be known in Kenya as Agenda Four. This fourth item on the mediation agenda, was 'Long-term issues and solutions', encompassing:

- constitutional, legal and institutional reform
- tackling poverty and inequity, as well as combating regional development imbalances
- tackling unemployment, particularly among young people
- consolidating national cohesion and unity
- undertaking land reform
- addressing transparency, accountability and impunity.²¹

The various agreements that arose from this agenda item in the mediation process were accompanied by a broader implementation schedule. Many of the details in each of these were held over to the work of different independent commissions and other bodies, with a view of therefore also broadening participation in these reforms.

• Elections as the prize : mediating cyclical election crises

To be successful and likely to have a long-lasting impact, a mediation effort must do more than focus solely on the numbers game of who had the most votes on election day, which traditionally cast elections as a prize, and hence as a zero-sum proposition. It should make recommendations to address the reasonable grievances of the losing party so that these can be incorporated into a comprehensive package of reforms to which the victorious party must conform as part of the agreement to diffuse the immediate crisis.

In the Senegal example cited above, incumbent President Abdou Diouf won the first presidential election after the NDI intervention of 1991 ; he brought opposition leader Abdoulaye Wade into government and continued to undertake other

reforms to the electoral framework that eventually contributed to an opposition victory and a peaceful transition of power in the 2000 presidential poll. In the Dominican Republic, incumbent President Joaquín Balaguer was declared the winner after flawed elections in 1994. International mediators brokered negotiations that led to an agreement known as the 'Pact for Democracy'. This shortened the presidential term to two years, thereby allowing for additional reforms and new elections in 1996 in which Balaguer, who had dominated Dominican Republic politics since 1966, would not run.²² The underlying principle of this approach is to make sure that disputes resolved around one election do not resurface in subsequent elections.

• The dilemma of power-sharing : transitional process or outcome ?

Related to the question of what is to be mediated, a central concern for mediators around electoral crises is the question of when it is appropriate to look at power-sharing solutions. Determining the impact of such mediated outcomes on the integrity of election processes should be a central consideration for mediators, as such processes invariably have wider regional and international resonances. For example, because the power-sharing agreement in Kenya was seen in the short term as creating a win-win outcome for all political contestants, it brought forth a precedent that was easily adopted for Zimbabwe a few months later when violence broke out after a hotly contested election. Had public opinion not soured on these two cases of power-sharing because of the lack of progress in resolving major issues of dispute, it is very likely that power-sharing models would be recommended for other cases in the region.

The dilemma for mediators arises when the standoff or crisis around elections is directly a contestation of results where it is difficult to ascertain with clarity which party or candidate won the polls. The mediator must therefore weigh the very delicate balance between finding a solution acceptable to the parties in dispute and not undermining electoral integrity. At the same time, she or he must find ways to address underlying issues and pre-existing grievances.

Under certain circumstances, a mediator may have to consider a power-sharing proposition, and the criteria to be used in such arrangements. In the case of Kenya's 2007 presidential election, the mediator felt that recounting, rerunning, or re-tabulating the election results could not reliably determine a winner. Only after discarding all of these options did he opt for a power-sharing arrangement. In the case of Côte d'Ivoire, an example with a different outcome, this dilemma presented itself to mediators to a lesser degree, as the winning candidate was more easily determined.

Box 3

Elections in peace agreements

Many disputes or doubts about elections have arisen, directly or indirectly, from mediated peace processes and occur in a post-conflict environment. Therefore, mediators should be considering the same dilemmas, opportunities and issues throughout peace processes more generally, and not only when mediating electoral crises.

A primary question on the placement of stipulation of elections in peace processes relates to timing. Often, many parties press for early elections to avoid reinforcing a potentially unaccountable or illegitimate regime, or to broaden the base of participation in government after a peace agreement. In many such circumstances, elections are closely related to other events – a constitutional referendum or, as in Sudan, two referenda in quick succession, the second being on the independence of South Sudan.

Each peace agreement must balance the desire to specify every detail of the conduct of elections with allowing enough flexibility for political actors in country to manage the electoral process according to prevailing circumstances. Sudan provides an instructive example, with the situation at the time of the elections being vastly different from when the elections were incorporated into the peace talks and Comprehensive Peace Agreement. Further, the overwhelming focus on the referendum for southern Sudan's independence overshadowed much of the focus on ensuring a credible and fair election, as more attention was on just holding a peaceful election (irrespective of its degree of perfection) in order to move towards the referendum on independence. Many in Sudan have seen this as undermining democratic development, rather than advancing it.

The 2005 Liberian elections also remind mediators of the dangers of stipulating too stringently in peace agreements (or in this case in the Liberian constitution) the exact timing and details of elections. While the primary intent may be to provide a legal framework for the electoral process, the net result of these strict guidelines in the Liberian case was to create crises around the electoral process which almost destabilised the country by throwing it back into violence.

In many ways, such cases provide an opportunity for mediation processes to look at the elections or other governance failings that may have contributed to the crisis. As highlighted in the World Bank's 2011 World Development Report, systems that enable greater coalition building and inclusion prior to electoral events are more resilient when tested by conflicts arising from elections.²³ Mediation processes in the immediate post-election period do offer opportunities to address such systemic issues. Stand-alone power-sharing agreements between political actors without an appendage of reforms on other broader issues miss the point, and therefore are likely to offer only short-term solutions.²⁴

5.4 Practical tips and options for mediators

• Preparing for mediation before it is ripe

A number of tools have been used to 'tee-up' or ready a mediation process in the event that mediation is required during or after an election. Such tools include early warning and comprehensive pre-election analysis. For example, the early warning unit of ECOWAS, ECOWARN, monitors political developments in countries in West Africa, especially in the lead-up to national elections. ECOWARN's reports, shared with member states and other key stakeholders, seek to highlight possible flashpoints or triggers of violence or contention throughout the electoral cycle. ECOWAS was credited with mitigating major political crises in Togo in 2005 and Guinea in 2007 through early warning and preventative mediation.²⁵ Similarly, many electoral observation missions recognise the importance of 'early warning' elements to their observations, and now deploy long-term observers to countries several months before an election.²⁶

However, for such early warning and analysis to be valuable to mediation efforts, they must be linked to other preventive actions. For example, analysis should pave the way for the deployment of discreet 'good offices' visits by prominent personalities to undertake informal dialogue and pass along key messages to political leaders of all parties. An effective good offices mission can build trust among parties in the electoral system by creating cross-sector channels of communication or other mechanisms that may facilitate the resolution of disputes before they become full-blown crises.

The analysis emanating from early warning systems can be followed by training to build in-country capacity to provide potential mediators should the situation degenerate further. For example, as early warning and analysis highlighted signs of growing tensions in the lead-up to presidential elections in Guinea in 2003, International Alert and Swisspeace engaged in mediation training in

advance of the elections.²⁷ In Somaliland, early warning led to several steps to increase the capacity of formal institutions and civil society in electoral dispute resolution (EDR), which contributed to a process resulting in acceptance of the election's outcome (Box 4). The National Cohesion and Integration Commission in Kenya is looking at similar models for the upcoming 2013 elections.

This training can play an important role also in identifying 'insider mediators' (as discussed above). Such figures and activities can be used to link good offices from regional or international actors in the early preventive stages before elections, and can assist mediators in determining what approaches are most apt for the given context.

- **Identification of national consensus figures**

National consensus figures can be critically important in sending messages of unity in a divided society in times of heightened tensions that often arise during competitive elections. Such figures usually emerge from civil society, religious organisations, traditional leadership and women's groups. In some cases, they may even be members of electoral institutions whose reputation and credibility are highly regarded by all stakeholders.

For example, the leadership of the Chairman of the National Elections Commission in Nigeria, Attahiru Jega, was particularly important in quelling potential crises in the lead-up to the 2011 elections. The trust placed in him from all sides and his record as a civic leader and non-partisan academician maintained calm through delays and logistical challenges during the parliamentary and senatorial polling. Similarly, the National Elections Chairman in Somaliland, Isse Jusuf, was able to rebuild credibility in the electoral process through his demonstration of impartiality during the election preparations.

- **Panels of wise and eminent personalities**

Regional and international institutions are paying increasing attention to peace-making around elections, as demonstrated in multiple public interventions in different phases of the electoral cycle. In Africa, the work of regional groups such as the AU Panel of the Wise and ECOWAS Council of the Wise, and the Organization of American States in the Americas, provide examples of early good offices. Judging by the efficacy of the ECOWAS model, technical support to the electoral divisions of regional organisations should be closely co-ordinated with the political affairs divisions, and both linked to early warning capacities and analyses to ensure a coherent view of the electoral landscape, as early in the electoral cycle of a given country as possible.

Box 4

Somaliland, 2010: multi-level mediation

The 2010 Presidential elections in the self-declared autonomous region of Somaliland precipitated an ongoing crisis in the region, as numerous challenges to the process and subsequent delays heightened political tensions. When the elections did take place, almost one year late, there was serious concern that the result would be both very close and seriously contested. In an effort to diffuse tensions, Somaliland and external actors established a range of support measures.

Recognising the importance of improving the capacity of formal institutions to address any grievances swiftly and transparently, training and support on electoral dispute resolution (EDR) were provided to the National Elections Commission and the Supreme Court. Guidance on a code of conduct led also to the establishment of a political party liaison committee, and a senior-level Electoral Monitoring Body was established through the agreement of the Code of Conduct of the Parties, which also provided further space for dialogue over contested issues.

The role of civil society in pressing for a smooth election, and in supporting mediation at the community and polling-station level, was equally important, ensuring that localised problems were not escalated to the national political arena. Some 600 community mediators were trained and deployed throughout the region. Behind the scenes, regional and international actors, including Ethiopia, the US and the UK, contributed political pressure and shuttle diplomacy. This was critical to progress in the electoral process, and for the acceptance of the results, particularly by the incumbent president, who ultimately lost the election to his opposition challenger.

EDR was embraced by all actors in this process, reflecting its resonance with local traditions of conflict resolution and the population's determination to avoid further conflict. The successful process, outcome and acceptance of the elections highlight the importance and success of this co-ordinated and multi-pronged approach on mediation in elections.

Ad hoc structures of panels of eminent personalities have also been used, particularly by the African Union, to mediate electoral crises. In Kenya in December 2007, a Panel of Eminent African Personalities was created immediately in response to the election crisis. Composed of former UN Secretary-General, Kofi Annan (Chair), former President of Tanzania, Benjamin Mkapa and former South African First Lady, Graca Machel, the panel was instrumental in bringing the conflicting parties to the negotiating table.²⁸ Similarly, the AU High Level Panel in Sudan, composed of three former African heads of state (former President Thabo Mbeki of South Africa, former President Pierre Buyoya of Burundi, and former Head of State of Nigeria General Abdusalami Abubakar) developed recommendations for achieving peace in Darfur, and has been charged with overseeing their implementation. These panels and the leaders that serve on them have the potential to wield tremendous influence and convening power, and present a prototype model that could be replicated in other circumstances.

- **Role of election management bodies**

Election management bodies (EMBs) play a central role in mediating election disputes, as they are the first buttress against descent into violent conflict. As stipulated in most election laws, should disputes arise during elections, EMBs are the natural first place at which parties can air their claims. However, in countries in which election institutions are weak, ineffective or poorly regarded by significant segments of the population, citizens are apt to seek redress through other means, some of which could be violent. Therefore, the credibility and good standing of EMBs can make or break the peaceful resolution of disputes. In Kenya, Zimbabwe and the DRC, weak, discredited or inefficient election commissions exacerbated election-related problems and limited the success of mediation efforts.

Whether composed of neutral technocrats or representatives of political parties, it is critically important that EMBs are credible and enjoy a high degree of confidence and trust within society. This occurs when they are viewed as independent, impartial, competent, efficient and transparent. EMBs also gain credibility by communicating regularly and in a timely manner with political parties, candidates, civil society and voters on policies, election guidelines and procedures through all phases of the election process.

EMBs can also be instrumental in creating mechanisms that respond to conflict. For example, Conflict Management Panels (CMPs) operate under the supervision of EMBs, with panellists drawn from jurists, clergy and other civil society members trained in conflict resolution and national election process

and laws. EMBs have served as the first source of mediation during elections in South Africa, Zambia, Lesotho, the DRC and Somaliland.²⁹

- **Inter-party dialogue and commitments from the parties**

In recent years, EMBs and political parties have adopted several mechanisms to facilitate regular and open dialogue among political contestants of all parties, and between parties and the election body. For example, in Ghana in 1994, the Election Commission (EC) created an Inter-party Advisory Committee (IPAC) whose effectiveness has increased with every new set of national elections. While IPAC is non-statutory and has little enforcement power, the fact that all political parties are represented and participate in its deliberations lends it legitimacy in the eyes of Ghanaians. IPAC meetings are presided over by the chairman of the Election Commission and the Committee continues to provide a venue for preventive mediation should candidates, parties or their supporters have grievances about the electoral process. In the run-up to, and during, the very competitive elections of 2008, the convening of IPAC on several occasions allowed the EC to communicate and consult with political parties on crucial decisions during the process. This contributed measurably to the acceptance of results in the very tightly fought presidential race.³⁰

Increasingly, dialogue between political parties involved in electoral competition has led to the negotiation of codes of conduct that specify public commitments to the basic principles of proper behaviour during all phases of the electoral process, thereby enhancing prospects for peaceful and credible elections. While the provisions of the codes are self-regulatory and do not carry penalties or fines, politicians are conscious of the negative public opinion of leaders who violate their public commitments. Also, by embracing such codes of conduct, political leaders and their supporters feel empowered to portray good behaviour and a commitment to settling their differences during the electoral period through peaceful means and respect for the rule of law.

In countries in which parties have signed codes of conduct, such public commitments also offer a window of opportunity for mediators to begin a longer dialogue process through the elections and into the post-election period, if needed. For example, in Somaliland in 2010, discussions about the code of conduct during the presidential elections fed into broader discussions by the National Elections Commission and the political parties about establishing an Inter Party Advisory Committee and an Electoral Monitoring Committee. Both entities contributed significantly to continued dialogue among the parties throughout the electoral period (See Box 4).

• **Role of civil society**³¹

The role of civil society in election dispute mediation is continually expanding as civil society organisations (CSOs) in Africa and elsewhere enhance their capacity to intervene in electoral processes. CSOs play a vital role in monitoring and reporting on the performance of political candidates, parties and their supporters during elections. Where codes of conduct are adopted, CSOs can report on compliance and issue regular 'score cards' likely to influence voter perceptions and views on competing candidates.

CSOs can also be instrumental in convening dialogues between political parties and other actors. For example, in the lead-up to national elections in Guinea in 2010, civil society initiated a platform for dialogue between citizens and senior officers of the armed forces and security services. The Civil-Military Committee (CMC) that emerged from the platform was actively involved in mediating disputes between security agents and candidates.³² Also, through election monitoring activities, civil society organisations have become adept at deterring electoral fraud or reporting on it where it exists, as well as reporting accurately on all aspects of the electoral process.³³ The use by CSOs of modern election monitoring methodologies such as parallel vote tabulations (PVTs) in countries such as Georgia, Ukraine, Ghana, Nigeria, Zambia, and Zimbabwe, has diffused tensions and curbed violence in verifying the accuracy of the vote tabulation and therefore making it easier for contestants and their supporters to accept defeat at the polls.³⁴

As African CSOs have increasingly gained election observation experience, some of them have established systems for intervention in which observers communicate with EMBs in real time in order to trigger immediate interventions in situations of potential violence. In Senegal in 2012, CSOs created a 'situation room' through which citizen election observers could report findings using SMS. Information on critical incidents was then transmitted immediately to election authorities who, in turn, initiated a rapid response to the polling units involved.

While election-day observation missions receive a great deal of attention, the role of long-term observers (LTOs), who deploy several months before an election, is especially critical as their monitoring and reporting can serve as early warning in the run-up to elections. LTOs can also serve as a non-partisan source of information for mediators as they often have a better sense of the actors and the political dynamics than someone fresh to the context.

While electoral observation is an important component of supporting credible election processes, how this interacts with mediation around elections also needs careful consideration. In some cases, pre-electoral observation missions

can play an important 'good offices' role, and deter or diffuse conflict by identifying potential flashpoints and trouble spots, and drawing institutional and public attention to them. For example, in Kwazulu Natal, South Africa during the 2009 elections, civil society experts in conflict resolution worked in partnership with a high-level delegation led by former Nigerian President Olusegun Obasanjo to diffuse rising political tensions. While this may not have been a 'standard' observation mission, the ability of the team to engage behind the scenes and preventively offers an important example of how mediators can draw upon electoral observation to enhance mediation efforts.³⁵ However, the act of observation, and of making findings public, can place observer missions in a difficult situation regarding mediation, as observers often take positions on the credibility of elections. Therefore, mediators can draw important information from observer missions, but need also to keep their roles separate and distinct.

• **Role of the international community**³⁶

In the last two decades, the international community has contributed increasingly in different phases of elections, alongside regional and national institutions, and with sensitivity to issues of national sovereignty. The role of international entities varies, depending on host-country contexts, but domestic groups including EMBs, political parties, CSOs and regional organisations often work in tandem with international non-governmental organisations (INGOs) and international organisations such as the United Nations and other development partners. Organisations such as the Carter Center, the International Institute for Democracy and Electoral Assistance (IDEA), the National Democratic Institute (NDI), and the International Foundation for Electoral Systems (IFES) have helped develop and build the capacity of many of the institutions described above, and have used their convening power to encourage dialogue between groups. The United Nations, through the auspices of peacekeeping missions and the office of the Secretary-General, has also played a direct role in encouraging mechanisms that promote mediation of election disputes (Box 5).

However, the international community's involvement in mediation processes can sometimes delay or impede a speedy resolution of an election-related conflict, especially if a consensus to act does not emerge quickly. A divided United Nations or the inability to achieve a critical mass of political will among international actors can allow for parties to the dispute, especially the incumbents, to capitalise on the status quo without fear of repercussions from the international community. In addition, international actors must be wary of appearing to dictate resolutions from outside, as such an action could hinder the acceptance of the outcome of mediation efforts by some of the parties, reduce the legitimacy of the ultimate victor, and lead to further instability or conflict.

Box 5

Liberia, 2011 : dialogue to reduce electoral tension

In the lead-up to the 2011 national elections in Liberia, growing polarisation in the political system was threatening to destabilise the country. Tension among political parties and their leaders increased as the elections drew closer. Growing concern about the aggressive rhetoric between parties led to a discussion within the international community, led by the UN Mission in Liberia (UNMIL), on how best to ensure the establishment of consensus among political actors, their commitment to a free, fair and transparent electoral process, and acceptance of the final results. While it was obvious that dialogue would not erase all the deeply rooted mistrust and disagreement among stakeholders, it was believed that dialogue could assist political leaders to manage the tensions more effectively.

While UNMIL maintained its good offices in Liberia, Special Representative of the Secretary-General Ellen Margrethe Loj requested the Centre for Humanitarian Dialogue (HD Centre) to organise a platform for informal and discreet dialogue between the various parties to complement the efforts of the UN. The HD Centre, in close co-ordination with UNMIL as well as the ECOWAS Special Envoy to Liberia, engaged political and other actors, at all levels, in a constructive dialogue on several issues associated with the electoral process. Further, conjointly, the international stakeholders urged the political leaderships to tone down their rhetoric and avoid inflammatory language, play a positive role in the electoral process, ensure a peaceful outcome and accept the final result.

Despite the international community's efforts, a political crisis erupted after the first round of the elections and resulted in the main opposition party boycotting the second round. Nonetheless, UNMIL, ECOWAS and the HD Centre, together with key civil society actors and members of the diplomatic community, were able to use the pre-electoral dialogue developed by the HD Centre to manage the situation and reduce the tension. Furthermore, through dialogue, and mediation between the party leaders, the stakeholders were able largely to avert violent confrontation between the ruling and opposition parties.

5.5 Conclusion

In fragile environments and emerging democracies, elections are both the recognised path towards a peaceful transfer of power and the source of potential for further destabilisation and conflict. In such contexts, mediation can play an important role in preventing electoral disputes from growing into full-blown conflict.

This chapter offers a comprehensive, although not exhaustive, list of questions to consider when designing a mediation effort. From choosing an acceptable mediator to determining when to act, mediation efforts should be conducted with a view to both resolving the immediate conflict and also contributing to a more sustainable and peaceful process in future elections.

Critical factors must be weighed to ensure mediation efforts around elections are not derailed. The following recommendations aim to summarise the key points of enhancing the chances of success.

- ▶ Intervene when political circumstances are ripe.
- ▶ Select credible and impartial mediators (or mediation teams) acceptable to all parties.
- ▶ Pre-determine the scope of the mediation effort, balancing between focusing on immediate triggers and addressing root causes.
- ▶ Negotiate buy-in and national or local ownership in order to guarantee adherence and sustainability.
- ▶ Avoid zero-sum outcomes.

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With a background in history, and a Master's degree in Conflict Studies, Ms Preston McGhie began her career working with the Naga in Northeast India and with ethnic minorities in Burma. She has worked with various UN agencies and NGOs in Kenya, Sudan and Somalia, focusing on developing new approaches to post-conflict reconstruction, DDR and small-arms control, with a

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Endnotes

Chapter 1: Media strategy in peace processes

1. The Kony 2012 video, viewed by more than 100 million people within the first two weeks of its release, is an effective example of how individuals can suddenly bring huge attention to a crisis ongoing for over a generation. The operational effectiveness of this campaign has yet to be determined.
2. See page 5 below and relevant footnotes for more information on the multitude of people who contribute information in times of crisis.
3. For further information on the impact of media and information politics on peacekeeping and peacemaking in the United Nations (UN) see Ingrid A. Lehmann, *Peacekeeping and Public Information – Caught in the Crossfire* (London: Cass, 1999); for the specific case of Rwanda in the mid-1990s see Linda Melvern, *Conspiracy to Murder – The Rwandan Genocide* (London: Verso, 2004).
4. The UN Department of Political Affairs lists 12 possible roles for media in supporting peace processes: 1) channelling communication between parties, 2) educating, 3) confidence building, 4) counteracting misperceptions, 5) analysing conflict, 6) de-objectifying the protagonists for each other, 7) identifying the interests underlying the issues, 8) providing an emotional outlet, 9) encouraging a balance of power, 10) framing and defining the conflict, 11) face-saving and consensus-building, 12) solution-building (from *Operational Guidance Note: Addressing the Media in Peace Processes and Agreements* (UN/DPA, 2006); see www.peacemaker.un.org).
5. See Ingrid A. Lehmann, *Peacekeeping and Public Information – Caught in the Crossfire* (London: Cass, 1999), chapters 3, 4 and 7.
6. See Miklos Haraszti, *The State of Media Freedom in Kosovo: Observations and Recommendations*, 3 July 2006 (<http://www.osce.org/fom/19738>).
7. A good example for a very informative online service is Global Voices Online, a community of over 400 bloggers and translators around the world who gather reports from blogs and citizen media 'shining light on places and people other media often ignore' (www.globalvoicesonline.org/about/).
8. Most armed groups now tend to have their own websites on which they broadcast their own news and narratives.
9. Nik Gowing, "Skyful of Lies" and *Black Swans – The new tyranny of shifting information power in crises*, Reuters Institute for the Study of Journalism Challenges Series (Oxford, UK, 2009).
10. See Gowing, *ibid.* and the multitude of people who contribute in times of crisis to networks such as Ushahidi, an open-source crisis-mapping platform where contributors post to the Ushahidi website during periods of violence or after natural disasters (www.ushahidi.com); and Jessica Heinzelman and Carol Waters, *Crowdsourcing Crisis-Information in Disaster-Affected Haiti*, US Institute of Peace, Special Report 252, (October 2010).
11. This section draws on Ingrid A. Lehmann, *Managing Public Information in a Mediation Process*, which appeared in the Peacemaker's Toolkit series (Washington DC: US Institute of Peace, 2009) pp.11–17.
12. Silvio Waisbord, 'News Coverage of the Darfur Conflict: A Conversation with Jan Eliasson, United Nations Special Envoy to Darfur', *The International Journal of Press/Politics* 2008, 13, 75.

13. Following the UN experience in Rwanda and Burundi, there is heightened sensitivity in the international community to block hate messaging. See also Tim Querengesser, 'Cellphones spread Kenyans' messages of hate', *The Globe and Mail*, 29 February 2008.
14. Luc Chounet-Cambas, *Negotiating Ceasefires – Dilemmas and Options for Mediators*, Mediation Practice Series (Centre for Humanitarian Dialogue, March 2011), p.33. (www.hdcentre.org/files/HDC_MPS3_EN_web_0.pdf).
15. Public opinion surveys were externally commissioned by the UN on its operations in DR Congo, Burundi, Sierra Leone and Liberia.
16. Written inputs by Susan Manuel who was, until June 2012, Deputy Director of Communications, UN Peacekeeping Mission in Darfur.
17. Marianne Kearney, written inputs to the editor, May 2012.
18. See Elisabeth Lindenmayer and Josie Lianna Kaye, *A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya* (New York: International Peace Institute, 2009) for an in-depth analysis of the process, including Annan's skilful handling of the media ([kenyamediation_epub.pdf](http://kenyamediation.epub.pdf)).
19. This 'Peacemaker's PR Matrix' was designed by Mark Arena of the PR Verdict (www.thepverdict.com), a website tracking PR issues. Rights to reproduce this matrix and use it in the present publication have been gallantly shared by Mark Arena.

Chapter 3: Justice in peace negotiations

1. Important iterations of the AU policy on justice can be found, for example, in the *Report of the African Union High-Level Panel on Darfur* (October 2009), which was endorsed by the AU Peace and Security Council on 29 October 2009.
2. The Commission for the Investigation of Post-Election Violence, chaired by Kenyan Justice Philip Waki, suggested names for possible prosecution; this list was given in a sealed envelope to Kofi Annan, who had brokered the peace agreement and was monitoring implementation. Seeing no movement for justice at the domestic level, Annan later passed the envelope to the ICC prosecutor to open an investigation.
3. The Americas region has standards on justice established through the decisions of the Inter-American Court and Inter-American Commission on Human Rights. Decisions of these bodies have overturned or limited national amnesty laws and established guidance for national policies and peace accords. They have also set out requirements for victim reparations and truth-seeking.
4. Leslie Vinjamuri and Aaron P. Boesenecker, *Accountability and Peace Agreements: Mapping Trends from 1980–2006* (Geneva: Centre for Humanitarian Dialogue, 1 September 2007).
5. Thania Praefgenholz, Darren Kew and Anthony Wanis, *Civil Society and Peace Negotiations: Why, Whether and How they could be Involved* (Oslo Forum 2006, Centre for Humanitarian Dialogue, available at www.osloforum.org).
6. See Laura Davis and Priscilla Hayner, *Difficult Peace, Limited Justice: Ten Years of Peacemaking in the DRC* (International Center for Transitional Justice, March 2009, available at www.ictj.org).

Chapter 4: Negotiating ceasefires

1. For a more comprehensive discussion, see Teresa Whitfield, "Engaging with armed groups, Dilemmas & options for mediators", *Mediation Practice Series N° 2*, (Geneva: Centre for Humanitarian Dialogue, 2010).
2. Negotiating ceasefires in Myanmar was done without third party involvement and goes beyond the scope of this publication. It remains, however, an instructive example of how a succession of bilateral ceasefires allowed the state to perpetuate itself. The recent move aiming at turning

- the armed groups into a border corps, under increased government control, may affect the durability of these ceasefires. For more details, see Zaw Oo & Win Min, "Assessing Burma's Ceasefire Accords", *Policy Studies* 39, (Washington: East-West Center, 2007).
- 3 Virginia Page Fortna, *Peace Time: Ceasefire agreements and the durability of peace*, (Princeton: Princeton University Press, 2004) pp. 21–23.
 - 4 Virginia Page Fortna (2004) p.23.
 - 5 For an illustration, see Samset, Ingrid, "Trapped in the peace process: ceasefire monitoring in Sri Lanka", Working Group on Peace Support Operations (AFO), Nordic Research Programme on Security (AFO Paper n° 5), (Oslo: 2004).
 - 6 See the 2005 *Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement*, article 4.1 and concluding line.
 - 7 Jeremy Brickhill, "Protecting civilians through peace agreements, Challenges and lessons of the Darfur peace agreement", *ISS paper 138*, (Pretoria: Institute for Security Studies, 2007)
 - 8 The African Mediators Retreat organised as part of the HD Centre and Government of Norway's Oslo forum series, 24–27 March 2009 in Tanzania. See Centre for Humanitarian Dialogue, *Meeting report, African Mediators' Retreat 2009* (Geneva: Centre for Humanitarian Dialogue, 2009) pp. 25–26.
 - 9 Interview, James Lemoine, 9 November 2009.
 - 10 See Antonia Potter, "Ceasefire Monitoring and Verification, Identifying Best Practice", *Background paper, Oslo Forum 2004* (Geneva: Centre for Humanitarian Dialogue, 2004).
 - 11 For more details on the negotiation of the security elements see Richard Barltrop, "The Negotiation of Security Issues in the Burundi Peace Talks", *'Negotiating Disarmament' Country Study N° 1* (Geneva: Centre for Humanitarian Dialogue, 2008).
 - 12 Shane Smith, "What is a Ceasefire and why is it Important?" in Guy Burgess and Heidi Burgess (Eds.) *Beyond Intractability* (Boulder, Colorado: Conflict Research Consortium, University of Colorado, 2003).
 - 13 Prior to the signature of a ceasefire in Guatemala, the process leading to the final peace agreement in December 1996 entailed a range of confidence-building measures such as an agreement on human rights (that entailed a UN verification mission), agreements to stop attacking civilian targets, the demobilisation of state-aligned paramilitary units and the forced retirement of selected army officials. For details on the peace process in Guatemala, see Jean Arnault, *Good Agreement? Bad agreement? An implementation perspective* (Princeton: Center on International Studies, Princeton University, 2003).
 - 14 Interview, Mark Knight, 3 May 2010.
 - 15 The NDF typically agreed to only day-long "ceasefires" for the duration of a round of talks, for the sake of facilitating the release of prisoners, or over the Christmas holidays. Such stalemate was further made possible by the approach of successive Governments seeking to lower levels of violence to a manageable level without trying to accommodate some of the legitimate grievances of the CPP/NDF/NPA constituencies.
 - 16 For a more detailed discussion of the Nepal case, see Teresa Whitfield, *Focused mission: not so limited duration. Identifying lessons from the United Nations Mission in Nepal* (UNMIN), (New York: Center on International Cooperation, 2009).
 - 17 For more detail on the negotiation of the security elements, see Cate Buchanan and Joaquin Chavez, "Guns and violence in the El Salvador peace negotiations", *'Negotiating Disarmament' Country Study N°3* (Geneva: Centre for Humanitarian Dialogue, 2008).
 - 18 The assassination of M-19 members increased after the agreement was signed, to a total of about 17% of its demobilised members. See Garcia Duran, Grabe Loewenherz & Patino Hormaza, "M-19's Journey from Armed Struggle to Democratic Politics: Striving to Keep the Revolution Connected to the People", *Berghof Transitions Series N° 1*, (Berlin: Berghof Conflict Research, 2008), p.35.
 - 19 A. G. Noorani, "Questions about the Kashmir ceasefire", *Economic and Political Weekly*, 35 (45) (2000), pp. 3949-3958.
 - 20 See George Mitchell, John de Chastelain and Harri Holkeri, *Report of the International Body on Arms Decommissioning*, 22 January 1996.

- 21 For a compelling account of the importance of mobilising security expertise in the Abuja process, see Jeremy Brickhill (2007).
- 22 See Nicholas Haysom and Julian Hottinger, *Do's and Don'ts of sustainable ceasefire agreements*, presentation to IGAD Sudan peace process workshop on detailed security arrangements in Sudan during the transition,(2004) p. 1.
- 23 Interview, Mark Knight, 30 November 2010.
- 24 The Liberia 2003 ceasefire agreement bans all acts of "hostile propaganda amongst the Parties, including defamatory, untruthful or derogatory statements, both within and outside the country".
- 25 Article 2.2 of the 2002 *Agreement on a ceasefire between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam* bans "ideas that could offend cultural or religious sensitivities".
- 26 Interview, Brig. Gen. Jan Erik Wilhelmsen, 8 October 2010.
- 27 Interview, Mark Knight, 30 November 2010.

Chapter 5: Elections and mediation in peace processes

- 1 The election cycle diagram is courtesy of the Elections Division, National Democratic Institute (NDI).
- 2 For more information on mediation at different stages of the election, see C. Fomunoy, *Mediating Election Related Conflicts* (Geneva: Centre for Humanitarian Dialogue (<http://www.hdcentre.org/files/Election%20paper%20modified.pdf>)).
- 3 'Democratic Electoral Systems around the World, 1946–2000' https://files.nyu.edu/mrg217/public/es_long.pdf.
- 4 *European Commission 2011 Annual Report* (http://ec.europa.eu/europeaid/files/publications/europeaid_annual_report_2011_en.pdf).
- 5 *Department of State Annual Performance Report Fiscal Year 2008* (<http://www.state.gov/documents/organization/114172.pdf>); *USAID Annual Performance Report Fiscal Year 2008* (<http://www.usaid.gov/policy/budget/apr08/>); *Department of State FY 2007 Annual Performance Report* (<http://www.state.gov/documents/organization/107556.pdf>).
- 6 While technological advances have improved some election-management processes on the continent, these also risk creating systems that are not well understood, and so viewed with suspicion by voters fearing further manipulation of the system. These advances therefore cannot have the desired effect without overall transparency of the process. For more analysis, see: 'Biometrics – the black box approach' in Astrid Evrensel (ed.), *Voter Registration in Africa – A Comparative Analysis* (<http://www.eisa.org.za/PDF/vrafrica.pdf>).
- 7 Mvemba Phezo Dizolele, 'Joseph Kabila and where the election in Congo went wrong', *Foreign Affairs*, 28 November 2011 (<http://www.foreignaffairs.com/print/133974>).
- 8 The Carter Center, 'DRC Presidential Results Lack Credibility', Press Statement 10 December 2011 (<http://www.cartercenter.org/news/pr/drc-121011.html>); EU Observation Mission, 'The Election Observation Mission of the European Union deplores the lack of transparency and irregularities in the collection, compilation and publication of results', Press Statement 13 December 2012.
- 9 Rukimi Callimachi, 'Growing Criticism of Congo Vote', Associated Press, 12 December 2011 (<http://www.google.com/hostednews/ap/article/ALeqM5jhnYq0qU9g97XmHPSLBtoPTS2hKA?docId=05cbad897e094d5db90c7866efd64f6f>).
- 10 'Congo's opposition leader holds own inauguration ceremony', *Guardian* 23 December 2011 (<http://www.guardian.co.uk/world/2011/dec/23/congo-opposition-leader-holds-inauguration?newsfeed=true>).
- 11 See Simon Mason, *Insider Mediators: Exploring Their Key Role in Informal Peace Processes* (Swisspeace, 2009).
- 12 For more information on timing and sequencing, please see the chapter focusing on options in designing a peace process in upcoming volume 3.

- 13 See <http://wdr2011.worldbank.org/fulltext>.
- 14 The United States, the United Kingdom and Norway – known as the Troika.
- 15 See Ilona Tip, 'Do No Harm: Conflict Sensitive Election Design' in Andrea Iff (ed.), *Bullets or Ballots: Potential Limitations of Elections in Conflict Contexts*, Conference Paper 2011 (http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Conference_Paper_2010.pdf).
- 16 Section 103A of the Electoral Laws Amendment Act No. 34 of 2003 (<http://www.info.gov.za/view/DownloadFileAction?id=68011>).
- 17 Carter Center, 'Guide to Electoral Dispute Resolution' January 2010 (http://www.cartercenter.org/resources/pdfs/news/peace_publications/conflict_resolution/Election-Dispute-Guide.pdf).
- 18 See *Senegal: An Assessment of the Electoral Code, March 1991* (<http://www.ndi.org/node/12651>).
- 19 Khabele Matlosa and Victor Shale: 'Uneasy Interface between Elections and Power-Sharing Arrangements in Africa' (http://www.general.assembly.codesria.org/IMG/pdf/Khabele_Matlosa_and_Victor_Shale.pdf).
- 20 'Zanu-PF Launches Manifesto', *The Herald* (1 March 2008).
- 21 See annotated agenda, Kenya National Dialogue and Reconciliation (www.dialoguekenya.org).
- 22 See R. Espinal and J. Hartlyn, 'The Dominican Republic: The Long and Difficult Struggle for Democracy', in L. Diamond et al., *Democracy in Developing Countries: Latin America* (2nd edn) (1999).
- 23 *The World Development Report 2011: Conflict, Security, and Development* (<http://wdr2011.worldbank.org/fulltext>).
- 24 See Khabele Matlosa and Victor Shale: 'Uneasy Interface between Elections and Power-Sharing Arrangements in Africa' (http://www.general.assembly.codesria.org/IMG/pdf/Khabele_Matlosa_and_Victor_Shale.pdf).
- 25 K. Aning and A.S. Bah 'ECOWAS and Conflict Prevention in West Africa: Confronting the Triple Threats', Center on International Cooperation, September 2009 (http://www.humansecurity-gateway.com/documents/CIC_ECOWASConflictPrevention_WestAfrica.pdf).
- 26 In addition to the European Union observer missions, which often deploy one to two months in advance, increasingly regional observer missions in Africa are posting observers for months prior to the elections. The AU deploys fact-finding missions up to six months in advance of elections, and SADC deployed observers three months in advance in the elections in Lesotho.
- 27 <http://www.international-alert.org/news/mediation-during-guinean-elections>.
- 28 <http://www.dialoguekenya.org/home.aspx>.
- 29 See Ilona Tip, 'Do No Harm: Conflict Sensitive Election Design' in Andrea Iff (ed.), *Bullets or Ballots: Potential Limitations of Elections in Conflict Contexts*, Conference Paper 2011 (http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Conference_Paper_2010.pdf).
- 30 See European Union Observation Mission Final Report (http://www.eeas.europa.eu/eueom/pdf/missions/eu_eom_final_report_ghana.pdf).
- 31 More details on this topic can be found in volume 1, see the chapter focusing on civil society involvement in peace processes.
- 32 See Krienbuhl, Lukask 'Doing Something for Peaceful Elections – But what Exactly? A Case Study of Guinea', in Andrea Iff (ed.), *Bullets or Ballots: Potential Limitations of Elections in Conflict Contexts*, Conference Paper 2011 (http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Conference_Paper_2010.pdf), page 36.
- 33 The 'Declaration of Principles for International Election Observation' and 'Code of Conduct for International Election Observers' created a standard of practice for observation missions.
- 34 A PVT is an advanced observation technique to characterise accurately the quality of voting and counting processes and to project what the valid election outcome should be within narrow margins of error and with high confidence levels. A PVT is based on direct observations by trained observers stationed all day at a statistical, random sample of polling sites, who rapidly report their observations and the count of actual votes cast.
- 35 *The 2009 Kwa Zulu Natal Election: A Drop in Levels of Intimidation and Violence?* (The African Alliance for Peace 2009 Observer Mission, University of Kwa Zulu Natal and ACCORD, 2009).
- 36 Please see volume 1 for more information on liaising with external actors in peace processes.

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