

Can mediation

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transform societies?

Issues emerging
from the Oslo
forum

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“hd Can mediation transform societies?”

Contents

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

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1 | Introduction

The question of whether mediation can contribute to the long-term transformation of societies seeking to end violent internal conflicts is of great interest and concern to mediators. Where does their responsibility lie? Should they be primarily thinking about ending the violence and saving the lives of civilians or considering the long-term needs of societies in order to prevent them from relapsing into conflict? Are the two goals contradictory? Can mediators realistically pursue them both given the pressures of peace processes and the reality of limited resources and time? What can they do to, at the very least, avoid impeding a society's prospects for long-term transformation? It is a good time to ask these questions. As mediation and peacemaking are maturing, mediation professionals are exploring ways of improving current practice. This includes giving attention to mediation support and the development of tools to help mediators and their teams to be more effective. A discussion about the contribution of mediation to long-term transformation is part of this effort to improve peacemaking practice.

This paper argues that mediators do not need to “choose” between ending conflicts and transforming societies. Mediators can contribute to long-term transformation without crowding negotiations with a vast array of development,

Mediators do not need to “choose” between ending conflicts and transforming societies.

and institution-building, issues. There is no doubt that only so much can, or should, be squeezed into a mediation process. Mediators can contribute to long-term transformation by preparing the parties and the international community, as much

as possible, for the long-term challenges of implementing peace deals. This is important because peace agreements are likely to be flawed and incomplete. Given that a peace agreement is only one of several stages on the path to sustainable peace, mediators can help the parties build robust political processes and not simply “strike deals”. Such an approach requires that mediators and conflict parties recognise the challenges of implementation, including those posed by power-sharing arrangements and overly-ambitious agreements. It also means that, after assisting the parties to reach the best possible agreement, the international community needs to remain politically engaged in the post-agreement period.

Mediators face real pressures and constraints when it comes to addressing the many difficult reforms that post-agreement societies need to debate and implement in the medium- to long-term. Building sustainable peace entails complex tasks such as the reform of state institutions, the improvement of public security and services, the development of an inclusive political process, and the building of trust among elites and social groups. These tasks require extensive discussion and the engagement of multiple national, and international, actors for several years in order to even begin to make progress. Conversely, mediation processes are often short-lived and usually rely on relatively small groups of war-time leaders to craft agreements. If agreement is within reach,

mediators may opt for a “quick fix” instead of focusing on the long-term, structural issues facing a country. In addition, mediators are often constrained in their ability to include these issues in the mediation agenda due to the resistance of the parties at a time when it is important to maintain their confidence and keep them engaged in the process. Furthermore, humanitarian concerns, as well as pressure from the international community for the rapid signing of agreements, mean that mediators are often more focussed on helping to end the violence than the subsequent re-construction of the country. Therefore, in some cases, not only are mediation processes unable to address the long-term challenges facing societies, but should not do so if it will result in hastily-drafted, and unrealistic, agreements. As discussed later, the inclusion of such provisions can lead to difficulties in the implementation phase and disillusion among both elites and the public.

As a result of the pressures of the mediation process, mediators can find themselves in situations where they need to compromise long-term priorities. It may not augur well for sustainable peace if such compromises (including power-sharing agreements) are maintained over the long-term and become entrenched in state institutions. These compromises concentrate political power in the hands of those who brought the conflict about and who may have little interest in the political and social reforms necessary for avoiding future conflicts. As the International Crisis Group wrote, very aptly, in one of its reports, “mediators are caught in a moral and political conundrum, forced to treat murderers, rapists and their proxies as their political peers in order to save civilians whose lives are held hostage”.¹ It is not unusual for wartime leaders to be rewarded with important ministerial portfolios in post-peace agreement governments and to be given free rein to continue plundering their country’s resources. An example of this would be the widely-cited case of the Revolutionary United Front’s Foday Sankoh who emerged from the 1999 Lome Agreement which ended the Sierra Leone conflict as head of the Commission for the Management of Strategic Resources. Similarly, in Liberia, the National Transitional Government following the 2003 Accra peace agreement awarded the Movement for Democracy in Liberia (MODEL) the ministries for forest and mineral reserves.²

The 2010 Oslo forum gathering of mediation professionals, which is an opportunity to reflect on, and discuss, current trends and practice in the peacemaking field, provided a platform for exploring ways in which mediators can contribute to long-term political and social transformation without putting unrealistic expectations on mediation efforts. These included:

- Mediators can ensure they are well-informed about the long-term challenges of implementing agreements so they can prepare the parties for the developmental and institution-building issues which need to be addressed in the post-agreement period. This can be done by:
 - Seeking advice during the talks on how to prepare for the post-agreement period, including from international financial institutions and development actors.
 - Ensuring that during the negotiations the parties receive advice on the challenges of implementing the agreement.
 - Inserting robust implementation mechanisms into agreements.

1 International Crisis Group, “Liberia and Sierra Leone: Rebuilding Failed States,” Crisis Group Africa Report No 87 (Dakar/Brussels, December 8, 2004).

2 Mike Davis, “Why should mediators consider the economic dimensions of conflicts?” Background paper, Centre for Humanitarian Dialogue (Geneva: Centre for Humanitarian Dialogue, 2009) pp. 9-10.

- Mediators should be aware of the dangers of detailed, over-ambitious agreements which face significant implementation challenges. They can prepare the parties and the rest of the international community for these challenges.
- Mediators can ensure they understand that power-sharing agreements tend to obstruct the development of inclusive political processes, even if they are useful tools for ending conflicts. Mediators can emphasise, to other international actors, the importance of continued third-party engagement to assist the implementation of power-sharing agreements.
- Mediators can advocate for diplomatic activity and political engagement to continue after the agreement is signed. The aim of this is to assist the parties to build inclusive political processes which can, over time, address developmental and institution-building issues.

Within the context of the challenges faced during the implementation of peace agreements, this paper will address the above four ways in which mediators can contribute to societal transformation.

2

Why is this an important question?

- 3 Andrew Mack, "Global Political Violence: Explaining the Post-Cold War Decline," *Coping with Crisis*, Working Paper Series, International Peace Academy (March 2007) p.1.
- 4 Andrew Mack, pp. 3-4; Virginia Page Fortna, *Does Peacekeeping Work? Shaping Belligerents' Choices after Civil War* (Princeton: Princeton University Press, 2008); Barbara Walter, *Committing to Peace: the Successful Settlement of Civil Wars* (Princeton: Princeton University Press, 2002); Michael W. Doyle and Nicholas Sambanis, *Making War and Building Peace* (Princeton: Princeton University Press, 2006).
- 5 Human Security Centre, *Human Security Brief 2006*, (Canada: The University of British Columbia, 2006), p.2. See also Paul Collier, "Postconflict Economic Policy," in Charles T. Call and Vanessa Wyeth, *Building States to Build Peace* (Boulder: Lynne Rienner Publishers, 2008). Collier writes that there is a 40 percent risk that peace will collapse over the first decade after the signing of an agreement.
- 6 Human Security Brief 2006, p.21.
- 7 Martin Griffiths and Teresa Whitfield, *Mediation ten years on: Challenges and opportunities for peacemaking* (Geneva: Centre for Humanitarian Dialogue, 2010) p. 6.

In the past twenty years, the international community has achieved significant successes in its efforts to end conflicts. Between 1992 and 2005 the number of armed conflicts declined by 40 percent.³ Research suggests that, in the post-Cold War period, international efforts across preventive action, peacemaking, peacekeeping and peacebuilding have contributed to this decline.⁴ There has also been a significant increase in the number of negotiated settlements to wars with more conflicts resolved through negotiation rather than military victory. Despite these achievements, in the 1990s the wars that ended in negotiated settlements were twice as likely to restart within five years as those which ended in military victory.⁵ In fact, in the 1990s, 43% of all conflicts ending in negotiated settlements re-started within five years.⁶ However, this trend is reversing. In the new millennium "the percentage of peace agreements followed by a resumption of conflict within five years declined. Peace agreements are now the most stable form of conflict termination, despite continuing risks of reversal and challenges to implementation".⁷

Of course, agreements by no means guarantee security for civilian populations. The World Bank's forthcoming World Development Report (WDR) has found that there is a considerable increase in conflict-related deaths in "post-agreement" countries as well as a rise in other types of violence (including gang wars, drug trafficking and general criminal

8 The International Bank for Reconstruction and Development / The World Bank, *World Development Report 2011*. Forthcoming.

violence)⁸. As an example, the Central American region has experienced “successful” peace processes, but now suffers higher rates of violence and insecurity than during its countries’ civil wars. In trying to identify why countries are vulnerable to these sorts of reversals, the WDR points to a number of institutional weaknesses. These include a lack of functioning state structures; corruption; unreformed security sectors; a lack of judicial and electoral reform; the penetration of the state by drug traffickers; and a lack of progress in decentralisation, economic reform and job creation. Evidence suggests that if countries can implement the reforms necessary to address these challenges they will be more resistant to conflict, but in the short term a change or reform agenda may also create risks of a backlash. Given the significance of institutional weaknesses in influencing a country’s reversal to conflict, mediators could usefully think of ways in which they can assist parties to think about, and prepare for, institutional reforms.

9 Griffiths and Whitfield, p. 17.

The mediation community is very concerned about the challenges encountered in implementing agreements. Griffiths and Whitfield write that “a perception of a crisis in implementation in Africa has been fuelled by the proliferation of peace agreements reached but then almost immediately breached, neglected or distorted, even if not necessarily fully breaking down”.⁹ At the HD Centre’s African Mediators Retreat in March 2009, participants expressed concern that mediators might be postponing, or even perpetuating, conflict by having to focus on saving lives in the short term. They wondered whether the short term focus on managing conflicts undermined the longer term objective of durable peace.¹⁰ Therefore the discussion at the 2010 Oslo forum focused on what mediators can do to transform societies and increase the chances of sustainable peace.

10 Centre for Humanitarian Dialogue, *Meeting Report, African Mediators’ Retreat 2009* (Geneva: Centre for Humanitarian Dialogue, 2009) pp. 25–26.

3

What can mediators do to support the transformation of societies?

i. Be informed about the long-term challenges surrounding the implementation of peace agreements

The Oslo forum discussion addressed the tension between the sense of finality given by the signing of an agreement and the reality of its long-term, and often messy, implementation, cautioning that agreements created a false sense of finality. It was suggested that mediators have a responsibility to bear in mind the multiple risks entailed in agreements including, for example, the risk that they might result in governments that are unable to deliver their agreed commitments. Mediators should seek information about the risks and challenges lying ahead and ensure that parties are also aware of these challenges. This could be done in three ways:

a. Seek advice about how to prepare for the post-agreement period

Mediators are usually well briefed on the political aspects of a peace process, but are often not as well informed about the economic and social realities in the country, as well as the dynamic transformation the country may be experiencing. It has been suggested that mediators could be better informed about the developmental and institution-building issues that will need to be addressed in the post-agreement period; about possible ways of approaching these issues during the peace process; and about the preparation required for tackling them in the post-agreement period. They could also be better informed about the costs of provisions included in agreements as well as of the constraints in implementing these provisions.

More informed mediators will be in a position to offer solid advice to parties and to think of creative ways to influence the content of agreements. In certain situations, there might be political space to discuss and plan for the long-term issues. This might include situations where the mediator has a strong mandate or the parties are ready to bring these issues to the table. In such cases, informed mediation teams can make an important difference. For example, in the Guatemala process, the mediation process tackled the contentious socio-economic and institutional issues fought over by the parties. In other cases, such as Rwanda, the imperative of stopping the violence overshadowed all other considerations. Therefore, a mediator cannot always count on being able to address a standard menu of issues in each peace process he/she engages in. However, when the opportunity arises, being well

informed assists mediators to bring relevant issues to the table and to assist the parties to discuss these issues.

Oslo forum participants also pointed out that consultations between mediators, diplomatic and political actors on the one hand, and international financial institutions and other development actors on the other, have improved. However, they still remain inadequate and very much rely on the individuals involved in a particular process. There was general agreement among Oslo forum participants that peace processes would benefit from consistent co-ordination among these actors. Systematic briefings and the sharing of information would prevent the situation Alvaro de Soto and Graciana del Castillo describe regarding peacemaking and peacebuilding efforts in El Salvador: “the adjustment programme and the stabilisation plan on one hand, and the peace process on the other, were born and reared as if they were the children of different families. They lived under separate roofs.”

Consultations between mediators, diplomatic and political actors, on one hand, and international financial institutions and development actors, on the other, remain inadequate and rely on the individuals involved in a particular process.

The IMF and the World Bank did not consult with the UN on their economic programme and the UN did not consult the international financial institutions even when negotiating the economic and social parts of the accord in December 1991.¹¹ Not surprisingly, the authors warned that “a collision loom[ed] between the two separate processes that the UN and the Bretton Woods institutions [were] painstakingly shepherding in El Salvador”.¹² Despite the

fact that two decades have passed since the El

Salvador peace process, it has been emphasised that more can still be done to improve co-ordination among these different actors.

11 Alvaro de Soto and Graciana del Castillo, “Obstacles to Peacebuilding,” *Foreign Policy*, No. 94 (Spring 1994), pp. 12–13.

12 De Soto and del Castillo, p. 76.

13 A very useful discussion on how development actors and mediators can work together to support peace processes is currently taking place within the OECD DAC’s International Network on Conflict and Fragility (INCAF).

There is also a role here for mediation support professionals who are currently developing a number of capacity-building programmes for mediation actors including the United Nations, the African Union (AU) and the Economic Community of West African States (ECOWAS). The mediation support field could contribute to the effort to increase the information available to mediators. It could also strengthen the capacity of mediation teams to consult with other actors in the midst of extremely busy negotiation processes. For example, mediation teams could be structured in ways which improve the regular flow of ideas and information on long-term issues. They could assign specific team members the responsibility of liaising with development actors and attach advisory groups on long-term issues to their teams. Development actors can make a useful contribution by providing the fora for mediators and their staff to be exposed to the long-term issues facing a country and an analysis of how they can be addressed.¹³

b. Inform the parties of the challenges of implementation

Mediators can also usefully help the parties understand the difficulties lying ahead in the post-agreement period. Parties are often concerned by issues such as disarmament and power-sharing and not adequately prepared, both politically and technically, to consider the longer term issues. Mediators could bring experts on long-term issues into the negotiation process as well as the

perspectives of other actors (such as those from civil society) to help ensure the parties have realistic expectations. This may enhance their trust in the implementation process.

The negotiations leading to the Comprehensive Peace Agreement (CPA) in Sudan provide a useful example. Observers have noted that the Joint Assessment Mission (JAM) led by the World Bank and the UN while the CPA negotiations were ongoing provided an important opportunity for the parties to work together on technical issues, which “formed the basis for common thinking and trust in negotiations”.¹⁴ The JAM also established “a useful frame of reference for acknowledging the centrality of the need to address poverty, inclusion and good governance.”¹⁵ However, Oslo forum participants pointed out that the SPLM would have appreciated more discussions on “what could have gone wrong in implementing the CPA” and how they could prepare for these difficulties.

14 Institute for State Effectiveness, *Recent Experiences in Linking Diplomatic Peacemaking with Development Efforts* (Washington DC: Institute for State Effectiveness, 2008) p.21.

15 Institute for State Effectiveness, p. 21.

c. Include in agreements robust implementation mechanisms

All peace agreements, no matter how detailed, remain incomplete contracts. As Stephen Stedman writes, “almost every peace agreement has important silences, some points of agreement that are described in banal language open to multiple interpretations and, in worst cases, contradictory dictates”. He also notes that “implementation environments are rife with uncertainty, incomplete information, and risk for the parties”.¹⁶ As a result, multiple disputes inevitably emerge when agreements are interpreted and implemented.

16 Stephen John Stedman, “Introduction,” in S. Stedman, D. Rothchild, and E. Cousens, (eds.), *Ending Civil Wars: The Implementation of Peace Agreements* (Boulder: Lynne Rienner, 2002), p. 9.

Peace agreements should ideally discuss the mandate of third parties in the implementation period as well as contain provisions for conflict resolution mechanisms to be utilised when the parties disagree in their interpretation of the agreement. For example, the El Salvador and Guatemala agreements, signed in 1992 and 1996 respectively, gave the UN the role of “the guardian of the integrity of the agreement as a referee and a source of positive and negative incentives for the parties.”¹⁷ The 2002 Democratic Republic of Congo agreement provided for an International Commission to Accompany the Transition (CIAT) which “gradually emerged as a central actor in the political process leading up to the elections held in late 2006, undertaking mediation tasks and publishing regular communiqués that hoped to maintain pressure on the parties to abide by their commitment.”¹⁸ However, several peace processes including Kenya and Nepal, have “suffered from a lack of robust implementation architecture”.¹⁹ However, putting in place such an architecture is not straightforward and resistance by the parties can be expected, as noted by Brahimi and Ahmed:

17 Jean Arnault, *Good agreement? Bad agreement? An implementation perspective* (Center of International Studies, Princeton University, undated) p.1

18 Teresa Whitfield, *Friends Indeed? The United Nations, Groups of Friends, and the Resolution of Conflict* (Washington, DC: United States Institute of Peace, 2007) p. 247.

19 Griffiths and Whitfield, 2010, p. 17.

“...as the host government rebuilds its legitimacy and strength over time, it understandably and rightfully might see international mediation as undermining its authority. Ideally, the ground should be prepared with the host government long in advance to assure them that the objective remains for the peace operation to phase out, as quickly as possible, including on the political front, and that mediation assistance can be provided in more discreet ways that pose no threat to the government’s authority” Brahimi and Ahmed, *In Pursuit of Sustainable Peace: The Seven Deadly Sins of Mediation* (New York: Center on International Cooperation, New York University, 2008) p. 12.

Mediators, therefore, could prepare the parties (as far as possible) to recognise the usefulness of implementation mechanisms.

ii. Be aware of the challenges posed by ambitious peace agreements

There is an ongoing debate among practitioners and researchers regarding the relationship between the content of peace agreements and lasting peace. There are those who argue that detailed agreements provide the necessary legal frameworks for implementation and offer indispensable support to the work of those international actors which implement them as well as national civil society. In some cases, mediators feel that agreements should be as comprehensive as possible in order to put on paper what the parties aspire to achieve, even if not all of the provisions are expected to be implemented. However, others have found that the inclusion of specific provisions in agreements does not always correlate with the implementation of these provisions.²⁰

20 Tonya L. Putnam, "Human Rights and Sustainable Peace," in S. Stedman, D. Rothchild and E. Cousens, (eds.) *Ending Civil Wars; the Implementation of Peace Agreements* (Boulder: Lynne Rienner, 2002).

As part of the Oslo forum, participants examined several challenges posed by detailed and ambitious agreements. They emphasised that the experience of the past ten years points to the fact that agreements often pose unrealistic demands on new and weak governments. Such governments not only lack legitimacy in the eyes of their populations and are faced with tremendous internal divisions, but they also lack the institutional capacity to implement all the aspects of the agreements they have signed. The danger in such cases is that the credibility of these governments is undermined early on in the post-agreement period. It was argued that it was presumptuous to think that societies facing a myriad of problems could solve them all at the same time within a short timeframe. Mediators should resist the temptation to include in an agreement something they know cannot be implemented. Confidence in implementation will be dangerously eroded if the number of provisions that cannot be achieved is expanded unnecessarily.

Concerns have also been raised about the dangers of "mission creep" in mediation, where it is assumed that mediators know how to solve the multitude

There is a danger in "mission creep" in mediation, where it is assumed that mediators know how to solve the multitude of problems facing post-peace agreement societies.

of problems facing post-peace agreement societies. This is reflected in the fact that the international community faces tremendous difficulties in achieving the "simple" task of ending conflicts and helping parties negotiate ceasefires. Creating the process (and building the necessary trust) needed to bring the parties to the table for the negotiation of a ceasefire is already an enormous task. In addition, once negotiated, ceasefires often collapse, they are often poorly monitored and there is a lack of adequate

confidence-building measures among the parties. This serves as a reminder to mediators that more complicated reforms negotiated during peace processes are even more difficult to achieve and are bound to face even more difficult challenges during implementation.

The difficulties created by placing demanding agreements on institutionally weak parties are demonstrated in the example of the CPA in Sudan and the ability of the Government of South Sudan (GoSS) to implement it. Following the signing of the CPA, “the SPLM [was] in disarray, still coping with its transition from a rebel movement to a government and from the untimely death of its late Chairman Dr. John Garang on 30 July 2005.”²¹ In this context, it was confronted with the implementation of the CPA:

21 International Crisis Group, “Sudan’s Comprehensive Peace Agreement: The Long Road Ahead”, *Africa Report* N°106 (March 2006), p.1.

“The CPA is a highly detail-oriented and complex agreement, brought about through intense negotiation. While this was in large part the work of the parties involved, capacity for implementation was still not carefully thought through on the developmental side. The agreement is highly demanding and would have stretched even an incredibly capable state to the limits. Also, prioritization regarding implementation tasks has been a problem.” Institute for State Effectiveness, *Recent Experiences in Linking Diplomatic Peacemaking with Development Efforts* (Washington DC: Institute for State Effectiveness, 2008) p.20.

Another reason for urging caution against ambitious agreements is that political and social transformation is an indigenous process and cannot be imposed “from above” by external actors. Said Djinnit, the United Nations Secretary General’s Special Representative in West Africa, emphasized this issue in his interview with the HD Centre in early 2010:

*“the goal of the peace process is merely to create the conditions for the national stakeholders to reconcile and take charge of their own destiny. I do not believe in mediation solving the problems for the people, but mediation can and should be expected to contribute to restoring dialogue and to setting the parameters of this dialogue in a way that enables the people to solve their problems. We are only there to facilitate.”*²²

22 “Life as a peacemaker; A frank conversation with Said Djinnit, Graca Machel and Hassan Wirajuda,” Oslo forum 2010, background material (Geneva: Centre for Humanitarian Dialogue, 2010) p. 21.

There is no doubt societies often need help to achieve transformation. This may be financial and developmental assistance, or assistance in designing the political processes through which elites and societies can debate and resolve disagreements. This may also require continued engagement in the post-agreement period. However, a balance needs to be found between accompanying or “shepherding” (as some Oslo forum participants phrased it) a national process on the one hand, and imposing solutions, deadlines, as well as the pace of reforms on the other. As an example, it was suggested that Kenya would have benefited from gentle, yet active and well-defined, shepherding by international actors following the mediation efforts in early 2008. The discussions recognised that, while agreements are important instruments, in some cases they should simply put in place political processes for continued dialogue among the parties. Agreements should be general frameworks of governance as opposed to detailed policies, concretely-defined governance institutions and ambitious implementation timelines.

Long-term transformation needs to be an internal process and to result from internal dynamics. Mediation and third-party political engagement can contribute by “shepherding” the parties as they work to strengthen political processes and to create the political space within which long-term development, institution-building and reconciliation issues can be discussed. This work starts during the mediation efforts and continues during the implementation period. Third parties do not need to offer definitive solutions to specific disagreements among the parties. The role of mediators is not always to help the parties ‘seal a final deal’ but rather to help them build political processes for continued engagement after the signing of peace agreements. They can encourage dialogue among all relevant parties, as well as inclusive political processes, moderation and the creation of a political space to tackle long-term issues such as the building of institutions, the strengthening of the security sector and the improvement of service delivery.

In writing about the role of the UN in mediation, Gowan and Jones similarly argue that “the UN and its international partners are rarely, if ever, able to create comprehensive peace. Instead, the goal is to design and implement political processes that act as credible alternatives to violence”.²³ They add that “even where the UN can help forge an agreement to halt or avoid conflict, the chances that it will unravel or be poorly implemented remain very high. In this context it is necessary to emphasize that the UN’s overriding goal in any pre-conflict or conflict situation is to create a sustainable political process that creates conditions for peace”. The underlying logic behind this argument is that societies need time and space, after the signing of agreements, to discuss the issues facing them and to design legitimate solutions to common problems. If they are to succeed, new state policies and institutions need to result from national political processes in order to enjoy domestic legitimacy and cannot be hastily drafted or externally imposed.

23 Richard Gowan and Bruce D. Jones, *Back to Basics: The UN and crisis diplomacy in an age of strategic uncertainty* (New York: Center on International Cooperation, New York University, 2010) p. 9.

Mediation can contribute to long-term transformation by "shepherding" the parties as they work to strengthen political processes.

Most peace agreements are compromises among elites who wield military power. They usually outline ways in which political, military and economic power is to be divided among these elites. Following the signing of agreements, a gradual expansion of political participation beyond the signatories can take place to include non-signatory armed groups, civilian elites and political parties which were not included in the peace talks, as well as civil society and the public. Such an expansion of participation can take place before elections take place and new constitutions are adopted. During this period, political processes can provide for inclusive decision-making mechanisms to work on electoral laws and constitutional issues; rules governing the appointment to state institutions of people who committed crimes under the previous regime; the creation of a unified army and police; and the reform of public administration. The public can also participate in several phases of the post-agreement process including through the appointment of interim governments as a result of national conferences (as in the Afghan Emergency Loya Jirga and several West African national conferences); the drafting of constitutions through public forums and national dialogue efforts (as in South Africa and Afghanistan); and the implementation of peace agreements (as in Guatemala). Such efforts to expand political participation and dialogue can

contribute to a society's efforts to transform deeply-rooted institutional, and other, problems.

iii. Be aware of the challenges associated with power-sharing agreements

It is a source of regret to mediators that their work often involves rotating “bad” elites in power or allowing them all to stay in government through power-sharing agreements. How can society escape the clutches of predatory elites, if peace agreements recognise them as the legitimate governors of their countries? Given that war-time elites control military power, do mediators have any choice other than to facilitate a peace that is acceptable to them and to allow them to stay in power (at least in the short- to medium-term)? There is an important debate going on between those who argue pragmatically for using power-sharing to win acceptance of a peace agreement by recalcitrant parties and those who warn that such compromises may impede the long-term transformation of war-torn societies.

It is important for mediators, and the international community in general, to bear in mind that making power-sharing governments work is not a straightforward endeavour. The government partners share few, if any, common interests. They also have low expectations about their partners' reliability and are plagued by security fears. Power-sharing is designed to make decision-making slow and consensus-based in order to reassure parties that they will be consulted on matters of importance. Power-sharing governments usually fail to embark on reconstruction and reconciliation as they have divergent interests and each party has effective veto powers. They tend to stagnate and are often unable to take decisions. Members of power-sharing governments may also be under pressure from extremist elements within their constituencies who oppose compromise with opponents. Thus, power-sharing institutions may foster ‘outbidding politics’, where extremist politicians within a group make radical demands on moderate leaders of their own group who participate in the government. In such cases, reaching joint decisions is extremely difficult and leaders do not have strong incentives to move beyond the positions they held during peace talks.

In addition, the members of power-sharing governments often have no interest in the genuine expansion of political participation. They may lack grassroots support and may be seen by the population as competing to share the spoils of power, rather than moving the country toward reconstruction and reconciliation. As leaders are guaranteed representation in power-sharing governments, they have few incentives to engage their constituencies in discussions on the future of the country. The combination of a lack of public participation with the squabbles of a stagnating power-sharing government runs the risk of disillusioning the population and leading to its disengagement from the peace process.

Powersharing agreements are, in many cases, necessary for settlements to be reached but that should be transitional and their implementation should be accompanied by sustained third party engagement.

Mediators may, therefore, consider a pragmatic approach which recognises that power-sharing arrangements are, in many cases, necessary for settlements to be reached but they should be transitional and their implementation should be accompanied by sustained third-party diplomatic and political engagement. The idea of “shepherding” is also relevant in this case. During the transition to elections and new constitutions, third-parties can facilitate dialogue among the partners of power-sharing governments and encourage them to implement the agreements they have signed. Third parties can also assist power-sharing governments in negotiating with other important political actors who demand representation and influence in the post-agreement period. Assistance by third parties is often needed to bring non-signatory armed groups into the peace process, as well as encourage power-sharing governments to allow unarmed opposition groups and the wider public to participate meaningfully in the transition process. Power-sharing arrangements can, therefore, be useful vehicles through which the parties continue talking and negotiating.

The power-sharing arrangement in Burundi demonstrates the importance of sustained international engagement in post-agreement periods. Burundi’s power-sharing transitional government was inaugurated in November 2001 and stayed in power until August 2005. Throughout the transitional period, South African and regional engagement in the peace process was a key factor in bringing non-signatories into the process and pressuring all actors to advance the process. For example, in the discussions leading to the agreement on the new constitution in 2004, the role of international pressure and South Africa’s sustained engagement proved indispensable.²⁴ The South African mediation team applied sustained pressure to move the process forward and regional summits of heads of state firmly endorsed agreements reached, thus leaving little space for manoeuvre by parties critical of these agreements and preventing future re-negotiation.²⁵

Overall, there is reason to believe that through careful implementation and international assistance, power-sharing arrangements may facilitate the transition to a political process that relies on informal coalitions and electoral politics (as opposed to the rigid representation of warring parties in power-sharing governments). Over time, power-sharing institutions may grow roots and generate norms of trust and co-operation.²⁶ Mediators could consider agreements which define the expiration day of power-sharing arrangements and which, during the transitional period, mandate the gradual expansion of political participation beyond the signatories of agreements.

24 Reyntjens, Filip, “Briefing: Burundi: a peaceful transition after a decade of war?”, *African Affairs* Volume 105, Number 418 (January 2006) p.121.

25 International Crisis Group, “Elections in Burundi: the Peace Wager”, *Crisis Group Africa Briefing*, (Nairobi/Brussels: International Crisis Group, 2004) pp.5-6.

26 Donald Rothchild, “Assessing Africa’s Two-Phase Peace Implementation Process: Power Sharing and Democratization,” Manuscript, (Los Angeles: University of California, 2003) p.4; Timothy D. Sisk, “Power Sharing,” in Guy Burgess and Heidi Burgess (eds.), *Beyond Intractability*, (Boulder: Conflict Research Consortium, University of Colorado, September 2003) p.2

iv. Stay engaged after agreements are signed

The international community seems to underestimate the need for third-party political engagement following the signing of peace agreements. Considerable attention is paid to talks leading up to peace agreements while the negotiations taking place during the transitional period are not always equally supported. Signing an agreement is often seen as the return to ‘normality’ and as the beginning of reconstruction and other ‘post-conflict’ activities. Often, the personnel deployed in the post-agreement periods do not have relevant skills for the tasks of mediation and political engagement. This reflects the exhaustion of international actors following lengthy peace talks and the hope that peace agreements will bring an ‘end’ to the mediation process. This approach is unfortunate given that the track record of transitional governments put in place by peace agreements shows that they often require substantial support to achieve their goals. Peace agreements are often drafted and concluded in haste in order to stop the fighting as early as possible which inevitably means they only begin to address the political problems facing the country. It is therefore inappropriate “to treat agreements born out of such haste as conclusive and comprehensive, rather than as what they are, namely elaborate cease-fire agreements or interim political arrangements”.²⁷

27 Brahimi and Ahmed, 2008, p. 16.

Again, the implementation of the CPA in Sudan is a relevant example. In South Sudan, diplomatic attention was not sustained after the signing of the CPA and, as a result, development initiatives have suffered.²⁸ The International Crisis Group observed the following in 2006:

28 Institute for State Effectiveness, Recent Experiences in Linking Diplomatic Peacemaking with Development Efforts (Washington DC: Institute for State Effectiveness, 2008) p.20.

“The most worrying trend is the lack of political engagement around the implementation of the CPA. The international role was critical to the success of Naivasha, in the form of strong working partnership between the IGAD mediation and the quartet, with the broader IGAD Partners Forum working behind the scenes to support the process as needed. This partnership monitored every aspect of the negotiations, and was there to help break deadlocks, hold the parties to their earlier commitments, and pressure and cajole the parties through some of the toughest areas of talks. That level of engagement and interest has completely disappeared since the signing of the CPA. But it is crucially needed given the current equation around the CPA: a strong NCP with the capacity but lacking the political will to implement, and a weak SPLM with the will but lacking the capacity.” International Crisis Group, Sudan’s Comprehensive Peace Agreement: The Long Road Ahead (International Crisis Group, 2006) p.27

Similarly, the agreement reached with the assistance of Kofi Annan in Kenya in early 2008 “left little leverage for the mediation itself beyond the agreement’s signing.”²⁹ The 2009 African Mediators’ Retreat participants noted that, although the 41 days of the Kenyan National Dialogue and Reconciliation (KNDR) process represented a ‘picture perfect’ mediation process, the actual implementation of the accord had been very different. Kenya had not seen adequate implementation of the agreements, nor had

29 Griffiths and Whitfield, p. 17.

30 Centre for Humanitarian Dialogue, Meeting Report, African Mediators' Retreat 2009, (Geneva: Centre for Humanitarian Dialogue, 2009) p.20.

reforms been pursued.³⁰ Since 2009, a major milestone has been achieved in the form of the constitutional referendum but implementation of a large number of issues is still pending and new elections are now less than two years away.

Third-party political and diplomatic engagement following the signing of agreements can contribute to societal transformation by assisting and encouraging national actors to develop inclusive political processes. These enable the multiple interests to be represented and, in the longer-term, new leaders to emerge. Mediation may, for example, facilitate the inclusion of a wider spectrum of political groups and civil society representatives in decision-making bodies and processes such as interim legislatures, constitutional commissions, electoral commissions, and national dialogue processes. The establishment of each of these bodies is often a crucial step in a country's political development and determines who can influence decision-making. Expanding political participation to groups which did not participate in the peace process (and to the public) is typically resisted by governments installed by peace agreements as incorporating new views and interests in the political process disturbs the delicate balance of power negotiated in the peace agreement. This resistance may frustrate the opposition and lead to the eruption of violence. There is, therefore, a very important role for third parties in this process as they can advocate for wider political participation and mediate between transitional governments and other political actors.

In order to play this role, the UN (or other bodies involved in implementation) must ensure some continuity of personnel from the negotiation to the peacebuilding phase. In the immediate post-agreement phase, it is especially helpful to retain the core elements of the previous mediation team in order to ensure the relationships built, and knowledge accumulated, by the mediation team will not be lost with a handover to the implementation team. The work of Jean Arnault in Guatemala, and Ambassador Lakhdar Brahimi in Afghanistan, are examples where such continuity was important in the early stages of implementation. Of course, the decision on whether to retain the same SRSG, at least for an initial phase, will depend on his or her relationship with the parties. However, some continuity within the envoy's team can also reduce these risks during the handover. In addition, the critical mediation tasks in the post-agreement period do not all need to be carried out by the head of the international mission. In some cases, it may be more appropriate to rely on alternative mediators with specialised knowledge and less visibility.³¹

31 Elizabeth Cousens, "It ain't over 'till it's over: what role for mediation in post-agreement contexts?" *Background Paper*, Oslo forum 2008, (Geneva: Centre for Humanitarian Dialogue, 2008) p.6.

Of course, third-party political engagement in the post-agreement period is neither neutral nor without risks. Excessive interference or inappropriate contributions from third-parties in the political process can have many negative consequences. Instead of encouraging national leaders to initiate inclusive political processes, external actors may prevent adequate consultations from taking place by imposing deadlines which suit their own timetables; they may favour the participation of certain political groups and leaders over others, based on their own interests and understanding of a country's political realities; and they may impose their favourite models of consultation as opposed to

those derived from national political tradition. In addition, third parties inevitably make assumptions, which are not always accurate, about a given society and the ‘desired’ or ‘appropriate’ outcome of its political transition. It is important that national leaders are in the driving seat of post-agreement politics with third parties, when necessary, encouraging the creation of inclusive political processes and the expansion of political participation. Third parties need to strike a balance between allowing the domestic political process to develop through the initiative of national leaders and facilitating the opening up of this political process to as many social groups as possible.

4 | Conclusion

It is valid for mediators to be concerned about the contribution they can make to the efforts of societies in conflict to build sustainable peace. It is also a good time to be seeking answers to the question of what mediators can contribute to this process. This paper took, as its starting point, the position that mediators can contribute without necessarily crowding the negotiating table with the myriad of issues societies will need to tackle in the medium- to long-term. There are many reasons why most mediation processes are both not able to digest all of these issues and why they probably should not try. Instead, mediators should, as far as possible, seek to inform themselves and the parties of the difficulties that are likely to be encountered when implementing agreements. Greater awareness and understanding may lead to more effectively drafted agreements, more realistic expectations for the post-agreement period, and a greater willingness by the international community to continue “shepherding” the parties in their discussions and negotiations after agreements have been signed.

