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A marriage of inconvenience: comparing the implementation of the Kenyan and Zimbabwean power sharing agreements

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Course: **Masters Research Report – International Relations**

Title: **A Marriage of Inconvenience: Comparing the Implementation of the Kenyan and Zimbabwean Power Sharing Agreements**

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Research Report submitted in partial fulfilment of the requirements for the Master of Arts Degree in International Relations, School of Social Sciences, University of the Witwatersrand.

ABSTRACT

The past two decades have seen the rise of power sharing agreements as a means to end protracted civil wars. Following from the perceived success of these agreements, power sharing has become an important tool in the mediator's arsenal and has increasingly been advocated in periods of democratic deadlock and civil strife following highly-contested elections. The viability of this model has rarely been questioned. This study will undertake a deep analysis of the success or failure of the power sharing agreements undertaken in Kenya and Zimbabwe in 2008 following the outbreak of violence in both countries. It will explain the different results seen in these two cases through an examination of the agreements, the roles played by regional and international actors as well as through an analysis of the influence of local political culture and inter-elite relations. The relative success of the Kenyan agreement can be attributed to a culture of cooperation amongst the elite alongside consistent and concerted pressure exerted by the mediation team and international actors. In contrast, the Zimbabwean government of national unity has hobbled along and little progress has been made to implement the agreement. This can largely be attributed to a badly drafted document which allowed for an inequitable distribution of power, the obduracy of the ZANU-PF elite and the unwillingness of the agreement guarantors to place sufficient pressure on the parties for reform. In a context where inter-elite relations are characterised by opposition and intransigence, the framing of the document and the actions of enforcer parties become particularly important. Due to the political cultures in both countries, it is unlikely that the power sharing agreements will have produced significant gains for democracy or have reformed the prevailing culture of impunity. This report concludes that in spite of the problems with the power sharing model, there are currently few alternatives to help mend torn societies. In order to overcome the problems that have been highlighted within this report, it is necessary for mediators to undertake innovative and reflexive strategies to ensure the full implementation of future agreements.

Keywords: democracy, elections, power sharing agreements, electoral violence, Kenya, Zimbabwe

List of Abbreviations/Acronyms

AIPPA – Access to Information and Protection of Privacy Act

AU – African Union

CIO – Central Intelligence Organisation

CIPEV – Commission of Enquiry into Post-Election Violence

CKRC – Constitution of Kenya Review Commission

CSRO – Committee on Standing Rules and Orders

EAC – East African Community

ECK – Electoral Commission of Kenya

ESAP – Economic Structural Adjustment Programme

EU – European Union

FPTP – First-past-the-post electoral system

GNU/s – Government/s of national unity

GPA – Global Political Agreement

ICC – International Criminal Court

JOC – Joint Operations Command

JOMIC – Joint Monitoring and Implementation Committee

KANU – Kenya African National Union

KHRC- Kenya Human Rights Commission

MDC – Movement for Democratic Change

MoU – Memorandum of Understanding

NARC – National Alliance Rainbow Coalition

NGOs – Non-Governmental Organisations

ODM – Orange Democratic Movement

PEAP – Panel of Eminent African Personalities

PR – Proportional Representation

PRM – Periodic Review Mechanism

SADC – Southern African Development Community

UN – United Nations

US – United States

USAID – United States Agency for International Development

ZANU-PF – Zimbabwe African National Union – Patriotic Front

ZAPU – Zimbabwe African People's Union

ZCTU – Zimbabwe Congress of Trade Unions

ZEC – Zimbabwe Electoral Commission

ZMC – Zimbabwe Media Commission

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DECLARATION

1. I know that plagiarism is wrong. Plagiarism is to use another's work and pretend it is one's own.
2. Each significant contribution to, and quotation in this essay that I have taken from the work(s) of other people has been attributed, and has been cited and referenced.
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Signed:…….... Date: 13 March 2012

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Chapter 1 – **Introduction and Background of the Study**

Introduction

The past two decades have seen the unprecedented rise of power-sharing agreements as a means to overcome political and military deadlocks, particularly those that have arisen on the African continent. International bodies and mediators have been the foremost proponents of these measures and have often projected and implemented them without pause for reflection. The past five years have seen the emergence of a new trend that has arrived largely unnoticed and has been the focus of little international dialogue; this is the application of power-sharing formulations, which have hitherto been utilised as a means of post-conflict reconstruction and mitigation, to instances of democratic deadlock and heightened civil tensions resulting from electoral crises.

The two primary examples of this emerging paradigm are Kenya (2008) and Zimbabwe (2008). Following the elections of 2007 and 2008 respectively, each country saw a dramatic escalation of tensions which erupted into politicised violence. At the insistence of the international community, continental and regional bodies, the governments of both countries undertook a power-sharing agreement (Global Political Agreement (GPA) in Zimbabwe and the National Accord and Reconciliation Act in Kenya) which created power-sharing structures and which set the stage for the new Governments of National Unity (GNU). These two agreements are different to those that have come before in as much as they were undertaken in the wake of democratic deadlock and not after military stalemate in the context of a civil war. The views of civil society, scholars and practitioners regarding the success of these agreements have been divergent; many in the international community have hailed them as a great success while local scholars and members of civil society often have a less positive outlook on the agreements and their propensity to entrench democracy and democratic norms.

Globally, scholars are becoming increasingly critical of the current formulation of power-sharing agreements. Recent research suggests that the current optimism of the international community towards these accords may in fact be misplaced or misguided.[1] This research will address these concerns

[1] Cheeseman, N. & Tendi, B-M. 2010. "Power-Sharing in Comparative Perspective: the dynamics of 'unity government' in Kenya and Zimbabwe", in *The Journal of Modern African Studies*, 48; LeVan, A. C. 2011. "Power Sharing and Inclusive Politics in Africa's Uncertain Democracies", in *Governance: An International Journal of Policy,*

via a thorough examination of the local, regional and international processes that have affected the relative success or failure of the implementation of these agreements in the Kenyan and Zimbabwean cases.

Rationale

This research is valuable as it speaks to a number of important research and policy paradigms including peace-building, state-building, post-conflict reconstruction, democratic consolidation and reconciliation. The findings of this research will have important implications for practitioners and policy-makers as best and worst practices will be identified with a view to assisting mediators to formulate better and more sustainable agreements. A greater understanding of the processes involved in securing the relative success or failure of these agreements will lead to the conceptualisation of more suitable and sound policies for ensuring the success of future accords. The role of the accords in fostering and promoting democratic consolidation will be elaborated on within this research and thus the author hopes to be able to contribute to the burgeoning literature on democratisation and democratic consolidation within the context of power sharing in Africa. This research has both scholarly and practical implications; it will add to existing knowledge in the fields of power-sharing, democracy and post-conflict reconstruction as well as being of pragmatic value for practitioners and mediators.

Aims/Objectives

Following election-related violence in Kenya and Zimbabwe in 2007 and 2008 respectively, both countries accepted the institution of a power-sharing political agreement as a first step towards constitutional reform. In the three years since, the Kenyan situation has improved considerably with relative political stability and the achievement of a peaceful referendum supporting the constitutional changes whilst the Zimbabwean agreement and process has arrived at an impasse after making little progress. What are the internal, regional and global factors that have resulted in the divergent results achieved by these two states?

The aim of this research is to compare and contrast the implementation of the National Accord and Reconciliation Act in Kenya and the Global Political Agreement in Zimbabwe and to examine the dynamics behind the failure or success of these political contracts. I would like to use the findings of this

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Administration, and Institutions, 24, 1; Mehler, A. 2009. "Peace and Power Sharing in Africa: A Not So Obvious Relationship", in *African Affairs*, 108, 432.

report to formulate tentative suggestions for improving the process currently underway in Zimbabwe, to add to the academic literature regarding the dynamics of power-sharing agreements and to hint at suggestions for ways that the current formulation of power-sharing agreements could be improved.

Research Questions

This research will aim to shed light on a number of questions. The most important questions that it will seek to answer are those surrounding the reasons for the relative success or failure of these agreements in the two cases and an elucidation of the variables that led to the divergent outcomes. Through the discussion of these two cases, I hope to be able to comment on the viability of these agreements for promoting long-term development and democratisation. In turn, this research should be able to answer questions about how this paradigm could be revised in order to make the outcomes of these agreements more functional and sustainable.

Primary Research Question:

- ✓ ***What are the local, regional and international factors that have led to the divergent outcomes in these two cases?***

  To answer this question, I intend to explore:
  - *The initial formulation of these agreements which amount to a political compromise between competing factions*
  - *The role of regional and continental bodies tasked with overseeing implementation – SADC and the AU*
  - *The importance of international pressure from INGO's, IGO's and world leaders such as Kofi Annan as well as private firms such as the Centre for Humanitarian Dialogue and the role of international sanctions regimes*
  - *The influence of local political factors and cultures in affecting implementation*

Secondary Research Questions:

- ✓ *Are Governments of National Unity/power-sharing agreements viable vehicles for long-term development and democratisation?*
- ✓ *What are the negative and positive outcomes of these accords?*

- ✓ *How could these agreements be formulated in the future to increase their efficacy*?

Method

This research will take the form of a comparative case study of the Kenyan and Zimbabwean agreements. These two cases were chosen for their similarities and differences. They are similar in as much as they both suffered post-election violence and signed power-sharing agreements within a year of each other. Political power sharing agreements have also recently been undertaken in Madagascar (2009) and Zanzibar (2008) in the wake of the Madagascan coup d'état and election-related violence on the island of Zanzibar. Whilst these cases would be interesting and would no doubt hold significant insights for the study of power sharing agreements, they are not comparable to either the Kenyan or Zimbabwean cases due to the circumstances that brought about the signing of the agreements and the particular nature of the states. In the Madagascan case, the power sharing agreement was undertaken in the wake of a coup d'état rather than an electoral crisis and it thus has less in common with the Kenyan and Zimbabwean cases. The Zanzibar agreement was as a result of a crisis that had emerged in the post-election period but the intensity of the crisis was far lower than that in the Kenyan and Zimbabwean cases and the nature of the territory is different in as much as Zanzibar is not a sovereign state but maintains a political union with Tanzania in spite of having its own parliament and president. These circumstances differentiate other recent agreements from those undertaken in Kenya and Zimbabwe and make comparisons difficult.

The Kenyan and Zimbabwean cases are naturally comparable; both countries were former British colonies with political systems that were influenced by the British parliamentary system although both states had a 'democratic' presidential system with a unicameral parliament prior to the electoral crises. Kenya and Zimbabwe are at similar stages of development with both states having undergone structural adjustment during the 1980s and 1990s; although the Zimbabwean economy has been in decline since 2000 due to the economic policies of the ZANU-PF government (this decline has slowed since the signing of the power sharing agreement and creation of the unity government). The crises in both states emerged after widespread reports of electoral manipulation by the government and the refusal of incumbents to step down in the wake of electoral defeat. Although the nature of the violence in the two states differed, the circumstances that sparked the conflict were similar. The agreements undertaken in the two cases were strikingly similar, both led to the sharing of political power through the dispersal of

cabinet and ministerial posts and both resulted in the creation of the position of prime minister for the opposition leaders whilst the incumbent retained the post of president.

The cases diverge due to their differing degrees of 'success' in implementing the agreements which may be attributable to the different interests and roles of local and regional actors among other factors. The unity government created by the Kenyan National Accord and Reconciliation Act has been relatively harmonious and effective and no further political violence has broken out since the signing of the agreement and the creation of the coalition government; a consultative constitution drafting process was undertaken in 2009 and the draft constitution was passed by referendum in late 2010 in a process that was free of any political violence. The decision by the proponents of the 'no campaign' to accept the results of the referendum is a victory in and of itself. In spite of major successes, there has been no justice for perpetrators of violence nor attempts at national reconciliation – the underlying factors that enabled the violence of 2007-2008 still exist and it has been predicted that violence may break out again during the 2012 presidential elections.

The implementation record of the power sharing agreement in Zimbabwe has been less positive, the government created by the agreement is significantly unbalanced with the ZANU-PF retaining core ministries including the Department of Home Affairs and all security-related ministries. The government often seems to be composed of two separate and competing administrations and disagreements between the three major parties have resulted in recurring deadlocks and administrative stagnancy. Security sector reform has consistently been side-lined – this has proven to be one of the core sticking points for implementing the GPA and scheduling elections. Parties are also deadlocked on the deployment of soldiers during elections, the composition of the Zimbabwe Electoral Commission (ZEC), amendments to the draconian Public Order and Security Act, the role of the secret service in government and the issue of deploying international election monitors 6 months before and after the elections - all of these factors need to be resolved for any future elections to be credible and legitimate both locally and internationally. Vitally, the constitution-writing process has not been completed and has created significant tension between the principals while President Mugabe has vowed to hold elections before the constitution is finished and the voters roll is overhauled - in direct contravention of the GPA.

In an effort to understand these divergent outcomes, this research will seek to elaborate on the similarities and differences in the two cases with regards to the composition of the initial agreements,

the roles and political cultures of the relevant domestic actors, the roles accorded to regional, continental and international bodies as well as the effects of incentives and penalties.

This research will be grounded in the qualitative research tradition and will use an inductive research approach which has variance on the outcomes of both cases and attempts to add to existing theory by explaining the outcome variance. This research design is less open to selection bias than deductive methods where the cases are selected to fit the theory rather than theory being developed through the analysis of specific cases.

A comparative case study is the most appropriate format for this type of research as it provides an in-depth account of the variables that impact on the outcomes of both cases or as Burnham et al (2008) suggested "the goal of comparative research... is to be able to remove proper names, and to reason instead in terms of variables."[2] This provides the ability to make generalisable deductions concerning the variables that impact positively or negatively on the outcome of power-sharing accords.

The method that I will use will be the collection and analysis of primary and secondary sources such as government policy documents, the agreements themselves, scholarly articles, implementation reports and newspaper articles.

This research will use process-tracing methods to show correlation or causality between the variables and the outcome.

[2] Burnham, P. Gilland Lutz, K. Grant, W. & Layton-Henry, Z. 2008. *Research Methods in Politics* (2nd edition). New York: Palgrave Macmillan, p. 69

Chapter 2 – **Theoretical Considerations of Power Sharing and Elections**

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Introduction

Following the end of the Cold War, there has been a substantial increase in 'new wars', particularly on the African continent. These new wars are less likely to be fought between states than within states - this is the increasing prevalence of civil wars. In an attempt to mitigate intrastate conflicts and reduce the likelihood of a resurgence of violence, power sharing conditions have become an increasingly important factor in negotiations and peace agreements. Mukherjee (2006), using a dataset that captures information regarding 111 civil wars between 1944 and 1999, counts 61 cases in which the ensuing peace agreement enshrined elements of power sharing.[3] The prevalence of power sharing, particularly in Africa, has increased significantly in the post-1999 period, with power sharing agreements being undertaken in Mali, Cote d'Ivoire, Liberia, Sierra Leone, Chad, Sudan, the Central African Republic, the Congo, the DR Congo, Djibouti, Somalia, Burundi, Angola, the Comoros, Zanzibar, Madagascar, Kenya and Zimbabwe in the decade between 1999 and 2009.[4]

A considerable academic literature has emerged in tandem with the increasing popularity of this tool in the mediator's arsenal. In spite of this, the concept of power sharing and its boundaries is somewhat hazy and has been understood differently by various authors. The large body of literature that is concerned with power-sharing arrangements deals primarily with power-sharing arrangements that are undertaken in the wake of civil wars. As the application of power-sharing agreements to cases of democratic deadlock (such as those seen in Kenya and Zimbabwe) are a relatively recent phenomenon, the literature on this topic is not yet extensive. The following chapter will attempt to clarify the concept and define its boundaries for the purposes of the later discussion of the Kenyan and Zimbabwean cases; this shall be done by tracing the development of the power sharing paradigm, exploring its definition and limits and delineating its strengths and weaknesses before moving on to a discussion of the precipitating factors behind instances of electoral crisis.

Consociationalism or Power Sharing?

The origins of the concept have been attributed to Dutch political scientist, Arend Lijphart. In a series of papers, Lijphart spelled out the problems attendant on establishing democracy in plural societies, particularly those with a history of ethnic or identity-based animosity. He argued that in divided societies, political choices are often made along ethnic lines and parties representing ethnic minorities

[3] Mukherjee, B. 2006. "Why Political Power-Sharing Agreements Lead to Enduring Peaceful Resolution of Some Civil Wars but not Others?" *International Studies Quarterly*, 50, pp. 479-504

[4] Mehler, A. 2009. "Introduction: Power-Sharing in Africa," *Africa Spectrum,* 44, 3, pp. 2-10

have little chance of ever establishing a majority in parliament while shifting majorities are unlikely.[5] He argued that the result of this was not just an undemocratic system, but that the system would be likely to produce civil conflict. In response, he proposed a system of consociational democracy which involved four vital elements. These are: 1) the creation of a broad-based grand coalition government including parties that are not needed to form a majority, 2) the existence of a minority veto where threatened minorities can veto important decisions and reopen negotiations, 3) proportional representation in all major political and administrative positions and in the distribution of public goods and 4) group autonomy defined as the ability of groups in geographically limited entities to decide autonomously on issues not affecting the superior national interest.[6] The cases that Lijphart used to build his model were those developed in Belgium, Switzerland, Cyprus and Lebanon; each country's experience is rather far removed from the political and social situations of modern African societies. Consociationalism, as it has come to be called, is seen as the starting point of power sharing, and the two terms are often used interchangeably. Consociationalism, however, takes as a point of departure permanent constitutional engineering such as that seen in Northern Ireland, and as a result there have been few cases of true consociationalism in Africa. The case of the interim government in South Africa between 1994 and 1996 is often cited as an example of African consociationalism; indeed Lijphart's model was considered during the scenario planning for the transition.[7] Burundi (since 2005) stands as the closest African case to Lijphart's original formula, where each of the key elements of the model were permanently written into the constitution.[8]

While consociationalism involves permanent constitutional engineering and a small number of essential elements, power sharing is more conceptually vague and experiences of power sharing are extremely diverse. Although power sharing evolved from the consociational model, it is more likely to involve ad-hoc concessions intended to achieve buy-in from opposition and militant groups in order to achieve peace and a semblance of political stability following intense civil conflict. As defined by Lemarchand (2006):

[5] Lijphart, A. 1999. *Patterns of Democracy: Government Forms and Performances in Thirty-Six Countries*. New Haven: Yale University Press

[6] Mehler, A. 2008. "Not Always in the People's Interest: Power-Sharing Arrangements in African Peace Agreements," *Brooks World Poverty Institute*, BWPI Working Paper 40, p. 6

[7] Mehler, A. 2009. p. 4

[8] Lemarchand, R. 2006. "Consociationalism and Power Sharing in Africa: Rwanda, Burundi, and the Democratic Republic of Congo," *African Affairs*, 106, 422, p. 3

> "One is enshrined in a set of carefully calibrated constitutional norms; the other is more in the nature of an improvised *bricolage*, aimed at co-opting the bad guys. One underscores, among other characteristics, the importance of elite cooperation, proportionality, and minority veto; the other makes short shrift of all three."[9]

While consociationalism is the most formalised variant of power sharing, these two concepts should not be used synonymously. Power sharing arrangements, as defined by Lemarchand, are almost always a product of fire-engine diplomacy, a stop-gap measure to end or mitigate violent conflict and reach a 'least-worst' arrangement for all parties concerned. As such, there are extreme variations in the form which power sharing may take in each case, it is largely determined by the interests of mediators and the power struggles between the elite representatives of belligerent groups.

Power Sharing Theory

There are a number of existing theories that deal with power sharing; Barbara Walter is one of the foremost proponents of this paradigm. She argues that the more power-sharing is built into a peace agreement, the less reliant peace will be on international enforcement.[10] Many international scholars shared this belief in the virtues of power sharing but the concept and its implementation were rarely questioned. In fact, it seems that in the context of agreements undertaken in circumstances of democratic deadlock, international and regional commitment is a markedly more important factor to determine the pace and depth of implementation of power sharing agreements and the sustainability of these accords.

Not all models of power sharing were created equal and there is considerable conceptual variance between models. Hoddie and Hartzell (2005) distinguish between four levels of power-sharing, these are 1) central or political power-sharing, 2) territorial (such as federalism/decentralisation), 3) military and 4) economic power-sharing (such as that proposed in the 2005 Comprehensive Peace Agreement to end the civil war between North and South Sudan).[11] These authors conclude that while military and territorial power sharing impact positively on peace processes and their sustainability, political power sharing often does not lead to sustained peace.

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[9] Loc. Cit.
[10] Walter, B. 1997. "The Critical Barrier to Civil War", *International Organization*, 51, 3, pp. 335- 364
[11] Hoddie, M. & Hartzell, C. 2005. "Power Sharing in Peace Settlements: Initiating the transition from civil war", in P. Roeder & D. Rothchild (eds.), *Sustainable Peace: Power and Democracy after Civil War* New York: Cornell University Press. P. 103

Anna K. Jarstad (2009) suggests that in order to achieve conceptual clarity, it is necessary to distinguish between different modes of power sharing. These modes are dependent on the context, legal basis and forms of arrangement.[12] The context of the agreement refers to the difference between power sharing implemented in a situation of civil war compared with those achieved in stable democracies. Thus power sharing in New Zealand and Switzerland would not be comparable with that in Rwanda (1993) and the DRC (2002-2006). While in Switzerland and New Zealand, sharing power is associated with stability and democracy; in the latter cases it is associated with instability and civil war.[13] Although the Kenyan and Zimbabwean cases were not examples of civil war, there was sufficient violence perpetrated in both cases to justify placing them in the latter group. The second distinction aims to differentiate between the different bases for power sharing, whether they are informal, part of electoral law or agreement. It can be a result of informal agreements or as part of electoral law such as the proportional representation of all parties in the South African transitional government of 1994. In both the Kenyan and Zimbabwean cases, the power sharing formulation was as a result of agreements to end civil conflict. The final distinction is between power sharing as a temporary measure compared with one that is a permanent governance structure. In contexts of war and violence, power sharing agreements are usually a transitional mechanism as part of an agreement to undertake constitutional reform and hold new elections, such as in the cases under consideration for this research. It is important to distinguish between the different contexts of power sharing as it is misleading to compare permanent democratic power sharing such as that in Switzerland with temporary power sharing in contexts of political instability as seen in Kenya and Zimbabwe.

Problems and Dilemmas of Power Sharing

Power sharing agreements are almost invariably undertaken during periods of crisis, either in times of civil war or extensive civil strife. In this environment, negotiators and mediators face innumerable problems, particularly with regards to the inclusivity of the negotiations and subsequent agreement. It is difficult to establish the identity of the main players during contexts of civil war, and political entrepreneurs with small or non-existent support bases are often able to manipulate their way to the negotiating table.[14] When included in the resulting government, these enterprising would-be leaders often have little interest in representing something beyond themselves; this can lead to

[12] Jarstad, A K. 2009. "the Prevalence of Power-Sharing: Exploring the Patterns of Post-Election Peace," *Africa Spectrum*, 44, 3, pp. 46-47
[13] Ibid, p. 46
[14] Mehler, A. 2008, p. 9

unrepresentative and unaccountable governments. While it has been assumed that the more inclusive an agreement is, the more effective it will be, this is not always the case. In the case of Cote d'Ivoire, the less inclusive Ouagadougou agreement (2007) was more successful in terms of encouraging peace than the more inclusive Linas-Marcoussis agreement (2003).[15] Unfortunately the crisis of 2011 gave lie to the success of the second agreement as Laurent Gbagbo attempted to clutch onto the vestiges of power following his defeat in presidential elections. It is problematic to exclude the main actors in any conflict, and it is particularly difficult to accommodate all interests. Frequently part of the leadership of a militant group will sign an agreement while others in the movement feel that they have not been accommodated and will initiate a split in the organisation which sparks more violence and requires a new round of negotiations.[16] This has led to the failure of many peace agreements, such as those undertaken in the DRC prior to 2002 and those in Chad and the Central African Republic.

The influence of 'spoilers' is particularly relevant to the cases that will be looked it in this paper, as the interests and disposition of participants are important to determine the degree of success or failure of these agreements. Stedman (1997) points out that the greatest risk to peace-building in post-conflict situations can come from 'spoilers' – these are defined as leaders and parties that have the capacity and will to resort to violence to subvert peace processes through the use of force.[17] He argues that spoilers may in fact be the most important determinant of the success or failure of peace agreements[18], and while commending his intent to bring actors' interests back into discussions, Mehler (2008) critiques his approach for failing to fully delineate the spoiler label and for failing to account for the fact that spoilers in a recent peace process may have in fact been defenders of democratisation in earlier periods. He argues that the spoiler dimension may in fact hide more than it reveals.[19] While this critique has merit, the spoiler perspective should not be dismissed entirely as the interests of actors in peace processes and power sharing agreements are particularly important in determining the outcome of these agreements, as will be seen in the following discussion of the Kenyan and Zimbabwean cases. In addition to the interests of the parties involved, this research contends that international and regional commitment and enforcement as well as the degree to which these agreements cover all pressing issues would also determine the expected success or failure of these pacts.

[15] Mehler, A. 2009, p. 6
[16] Ibid
[17] Stedman, S. J. 1997. "Spoiler Problems in Peace Processes", in *International Security*, 22, 2, pp. 5- 53
[18] Ibid
[19] Mehler, A. 2008, p. 3

Mehler and Tull (2005) argue that the increasing usage of power-sharing agreements to end civil wars and insurgencies in Africa is problematic as it offers perverse incentives for marginalised or power-hungry groups to fight their way to the negotiating table.[20] As extremist groups are often prioritised at the expense of moderate groups, this encourages tendencies towards extremism or results in the exclusion of moderate groups whose inclusion in power sharing agreements would likely allow for a greater degree of stability and cooperation. These agreements thus offer political pay-offs for violence and extreme behaviour. While their model has been developed in conversation with models of power sharing that are undertaken in the aftermath of civil war, this research will argue that this model, once adapted, may also be relevant to agreements undertaken in the context of democratic deadlock. The possibility of undertaking a power sharing agreement once an incumbent has lost power after an election increases incentives for incumbents to refuse to relinquish power and resort to violence. This was the case in Zimbabwe in 2008 and in Cote d'Ivoire in 2011 where Laurent Gbagbo refused to cede power after his opponent, Alassane Ouattara, had won the elections. The AU decision to offer Gbagbo a place in a power sharing government on condition of his cessation of hostilities in fact offers incentives that promotes this undemocratic behaviour and increases the likelihood that incumbents will use force to fight their way back to power.

These agreements are primarily negotiated by political elites and politico-military entrepreneurs with little input from civil society or the population as a whole. The assumption of mediators and the existing literature is that the sharing of power at a central and at a national level results in a "territorially uniform and locally meaningful peace process" but this is often not the case.[21] These power sharing accords are unlikely to foster national peace if they are not implemented at a local level and account for local actors and their interests. In Kenya during the 2008 crisis, the violence was perpetrated at a local level by local political and community leaders, a failure to implement power sharing or cooperative political structures at this local level is unlikely to result in sustainable peace at a local, or even national level. These arrangements often fail to achieve what they were intended to, which is to provide greater security for the people.[22] The local level of a) conflict generation and b) escalation as well as c) conflict management and d) security production is often completely neglected in peace agreements.[23] This is a problem as in many cases, including Zimbabwe and Kenya, violence is perpetrated within communities

[20] Mehler, A. & Tull, D. 2005. "The Hidden Costs of Power Sharing: Reproducing insurgent violence in Africa", in *African Affairs*, 104, 416, pp. 375-398
[21] Mehler, A. 2009, p. 7
[22] Sriram, C & Zahar, M-J. 2009. "The Perils of Power Sharing: Africa and Beyond", in *Africa Spectrum*, 44, 3, p. 34
[23] Mehler, A. 2008, p. 31

and following the peace agreement, there continues to be a lack of security for civilians at a local level. The failure to effect transitional justice, power sharing or reconciliation at this level is likely to lead to a continuation of the local circumstances that led to the initial outbreak of conflict.

Sriram and Zahar (2009) have suggested three major factors that which may affect the creation and implementation of power sharing agreements; these have largely been influenced by existing literature on the subject although the authors have elaborated on previous research.[24] These three factors are the nature of the state; the nature of the armed groups and the degree of third party engagement. The literature that posits these three factors as vital indicators of the success of agreements will inform the current research. However, Sriram and Zahar fail to mark the wording and nature of the original agreement itself as a predictor of the success or failure of implementation. Mehler (2009) touches on this when he suggests that the extent or degree of power sharing is an important variable in the success of these accords.[25] He suggests that often these agreements - particularly in the wake of electoral crisis - do not sufficiently alter the nature of power relations in a given case; this is often a product of the agreement in as much as the presidency is retained by the party whose obstinacy precipitated the crisis. This research will look at the agreements themselves in an attempt to assess the degree to which the nature and wording of these accords impacts future implementation. The nature of the state and armed groups may be equated with the discussion in this research of the role of political culture and the motivations of the actors involved as a determinant of success. The degree of third party engagement will be a vital indicator for this study and this research will focus on the roles of regional, continental and international bodies and mediators and guarantors in determining the impact of these agreements and their speedy implementation. As most of the research and literature on power sharing has focused on its role in mitigating and ending violent conflict in the context of civil war, this research will seek to expand upon and compliment this literature with a discussion of the applicability of these pacts in times of democratic deadlock and heightened civil tensions following electoral crises.

Power sharing agreements are intended as short-term stop gap measures to mitigate violent conflict but often these are undertaken as elite pacts with little involvement of members of civil society, as in the case of Zimbabwe[26], and many question whether 'democracy is being sacrificed for peace'[27]. But what is

[24] Sriram, C & Zahar, M-J. 2009, Op. Cit, p. 18
[25] Mehler, A. 2009, p. 2
[26] Mehler, A. 2009. "Peace and Power Sharing in Africa: a not so obvious relationship", in *African Affairs*, 108, 432, p. 471

the relationship between power sharing agreements and democracy? For negotiators of power sharing agreements, these accords are intended to solve short-term security demands and are seldom intended to create strong and sustainable states; their goal is negative peace – the absence of war – rather than democracy and development over the longue durée. In spite of this, there is a tendency by many scholars to see power sharing and consociational agreements as the starting point for both lasting peace and democratic sustainability.[28] It may in fact be premature to decry the consequences of power sharing agreements for democracy and development as these are not the primary goals of these accords[29]; however given the relatively dire state of democracy on the African continent, the intended and unintended consequences of these agreements must be explored to try to mitigate negative outcomes for democratic consolidation.

Here, democracy is not merely understood as the presence of elections but rather as a system that is intended to keep the government accountable to the electorate – elections are a vital part of this but are not the sum of democracy. Although building democratic states is not the foremost intention of mediators of conflict, research has suggested that fragile and non-democratic states are more likely to resort to repressive or discriminatory practices in dealing with the grievances of their populations.[30] Thus if power sharing agreements lead to the emergence of weak/undemocratic states, it is likely that conflict will re-emerge – concerns with the long term consequences of power sharing agreements should be foremost in the minds of proponents who hope to see the permanent cessation of hostilities. As discussed above, power sharing agreements may lead to incentives for incumbents to pervert the democratic process, but in addition to this, these agreements may also reroute channels of accountability and remove the 'watchdog role' of the political opposition.[31] This research will attempt to gauge the long term consequences of these agreements in the Kenyan and Zimbabwean cases; although at this stage a comprehensive and conclusive appraisal is not possible, the negative consequences that these agreements may have on the future of democratisation in both states must be elaborated upon, even at this early stage.

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[27] Quote by Wafulu Okumu from the Institute for Security Studies (ISS) regarding the power sharing agreements in Kenya and Zimbabwe. Ibid

[28] Taylor, R. 2009. *Consociational Theory: McGarry & O'Leary and the Northern Ireland Conflict*. London: Routledge

[29] Sriram, C & Zahar, M-J. 2009, p. 28

[30] Murshed, S. 2008. "Inequality, Indivisibility and Insecurity" in S Saideman & M-J Zahar (eds.), *Intrastate Conflict, Governments and Security: dilemmas of deterrence and assurance*, London: Routledge

[31] Luhwago, R. 2010. "Power sharing or silencing the watchdog in Africa?" *The Guardian on Sunday*. Found at http://ippmedia.com/frontend/index.php?l=23530

Elections and Electoral Crises

The 'third wave' of democracy that swept through Africa in the 1990s brought changes to the African political space, between 1989 and 1997, 49 of 53 African states held competitive elections.[32] By the beginning of the next century, conflicts and the resurgence of political repression had decimated the hope of the 1990s; it became clear that in spite of the proliferation of elections, there had not been a fundamental restructuring of the political rules of the game in most African states. Governments and parties had used elections as a means of postponing political reforms that would lead to genuine political competition; little attention had been paid towards building institutions and rules to govern and promote organised competition.[33] The 2000s have seen increased societal agitation in many countries, including Kenya, for genuine constitutional and electoral reforms; in spite of this, there have been few countries to adopt such measures in a genuine manner without the supervision of the international community. This struggle for constitutional reform has led to political and institutional paralysis in many countries, particularly those plagued by ethnic fragmentation.[34] In spite of this, elections have been internalised by continental bodies and African constituencies, they are widely seen as the only legitimate means by which to effect change in governments.

Following from these changes, there has been a growing tendency towards post-election crises in African polities, particularly in countries riven by ethnic, communal and sectarian divisions.[35] In these cases, elections can widen existing fissures as parties mobilise constituencies by politicising identity and ethnicity and encouraging groups to use violence to influence electoral outcomes.[36] Khadiagala (2010) suggests that the violence seen in the wake of elections may either be as a result of the above circumstances or as a consequence of imperfect electoral rules and institutions which allow parties to manipulate elections through fraud, vote buying and rigging.[37] The confluence of both factors, may result in a perfect storm of violence in the wake of a perceived stolen election, as in the cases of Kenya and Zimbabwe in 2007 and 2008.

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[32] Khadiagala, G. 2010. "Reflections on the Causes, Courses and Consequences of Election Violence in Africa," in K. Matlosa, G. Khadiagala and V. Shake (eds.) *When Elephants Fight: Preventing and Resolving Election-Related Conflicts in Africa*, (Johannesburg: EISA), p. 14
[33] Ibid, p. 15
[34] Ibid
[35] Ibid, p. 17
[36] Leonard, D. K. 2010. "Elections and Conflict Resolution in Africa," in K. Matlosa, G. Khadiagala and V. Shake (eds.) *When Elephants Fight: Preventing and Resolving Election-Related Conflicts in Africa,* (Johannesburg: EISA), p. 37
[37] Khadiagala, G. 2010, p. 17

As has been stated above – elections are a necessary but not sufficient condition for democracy, although they are not without their own problems and dilemmas. In some cases, electoral systems may in fact contribute to violence due to their inability to inspire the confidence and trust of parties and the electorate.[38] Not all electoral systems were created equal; some may in fact leads to a greater likelihood of the emergence of conflict. The first-past-the-post (FPTP), winner-takes-all or majoritarian system is said to be the most dangerous electoral system as it reduces political competition to a zero-sum game where losers are vanquished.[39] This increases the risks of the game in societies where the loss of political power will likely result in a loss of economic power and personal safety. The FPTP system allows a party with a simple or overall majority to be declared the winner and to create the new government without the inclusion of opposition parties. In spite of its drawbacks this system is seen to be efficient at creating direct channels of accountability, based as it is on single member constituencies. The proportional representation system, as used in South Africa, is relatively new to the African continent. This system leads to the representation in government of all parties that gained a percentage of the vote over a certain threshold. This leads to a more inclusive government and reduces the risks of coming in second at the polls; it is also more likely to lead to government by consensus. In spite of this, it has been criticised for reducing accountability, particularly when government representatives are chosen using the part-list system.[40] There is a third system which draws from the best aspects of both systems; this is the mixed member proportional system. Unfortunately this system has not been widely implemented in Africa, apart from the small nation of Lesotho.

In spite of the above discussion, the particular context of a given case is more likely to determine the likelihood of conflict; electoral systems will just work to amplify problems where they exist. Primary determinants of electoral conflict lie in the political terrain, whether or not political and civil society groups are able to organise freely without fear or prejudice; if all actors have access to the news media and if the media is able to operate openly; and finally if the playing field is level and all parties are able to embark on voter education and mobilisation.[41] In cases where the political terrain is uneven, there is significant polarisation or opposition parties are subject to intimidation and repression, civil conflict is more likely to occur. The existence of institutions to manage political competition and mediate uncertain outcomes is also crucial. In situations where there is a highly contested election, inadequate

[38] Molomo, M. 2010. "Electoral Systems and Conflict in Africa," in K. Matlosa, G. Khadiagala and V. Shake (eds.) *When Elephants Fight: Preventing and Resolving Election-Related Conflicts in Africa,* (Johannesburg: EISA), p. 51
[39] Ibid, p. 54
[40] Ibid, p. 55
[41] Ibid, p. 52

trust in electoral institutions, frustration with an uneven playing field, a winner-takes-all electoral system and an uncertain electoral outcome, it is likely that societal frustration will erupt in violence as in Kenya in 2007 and early 2008.

Omotola (2010) elaborates on the available mechanisms for resolving election related conflicts in Africa. He suggests that there are three options, 1) constitutional frameworks for electoral justice, 2) electoral reforms and 3) power sharing constellations.[42] As many African countries foresaw that there would be contestation over elections, a large number adopted constitutional frameworks for dealing with these issues. The countries of the SADC region have constitutional provisions for the adjudication of electoral disputes in the pre-election, election and post-election periods. However, this method of dealing with these crises demands a high level of trust in institutions and the willingness of actors to play the game according to established rules.[43] In addition, the judiciary must be professional, independent and efficient, and willing to defy the prevailing political forces in the search of justice. Unfortunately, due to the prevalence of a culture of patronage, a lack of political will and the inefficiency of the judiciary, constitutional frameworks have not been able to deal adequately with post-election conflict resolution apart from a few notable cases such as South Africa and Ghana.[44] In the wake of violently or hotly contested elections, the civil societies of African states have often called for electoral reform and politicians have conceded in the face of declining legitimacy. The case of Nigeria in 2007 under President Yar'Adua is instructive; following questionable elections, he instituted an electoral reform panel to review and redress electoral law. Following consultation with a diverse set of stakeholders and a number of public hearings, the panel released its report to national and international acclaim in 2008. Subsequently, the reform process was aborted; it became clear that the primary goal of instituting the panel was to reduce tensions in the wake of the elections, appease the opposition and civil society and secure legitimacy for the presidency.[45] Electoral reforms are undertaken only when the constellation of forces within the state is conducive to it, reforms are at the mercy of political actors whose motives and interests are often less than altruistic. The final mechanism discussed by Omotola is that of power sharing agreements. These agreements have only recently been revived as a strategy to manage post-election crises in Africa. The efficacy of these accords as a means of mitigating and resolving these crises shall be discussed in subsequent chapters of this research.

[42] Omotola, J. S. 2010. "Mechanisms of Post-Election Conflict Resolution in Africa's 'New' Democracies," *African Securities Review*, 19, 2, pp. 2-13
[43] Ibid, p. 4
[44] Ibid, p. 5
[45] Ibid, pp. 6-7

Conclusion

This chapter has traced the evolution of the power sharing paradigm, from consociationalism to the advent of a one-size-fits-all tool in the mediator's arsenal. It is clear from this discussion that there are significant problems associated with the application and implementation of these agreements, although currently few alternative methods of resolving civil conflicts exist. The chapter concluded with a discussion of elections in Africa and the circumstances under which they may precipitate conflict. There are currently three important mechanisms by which to resolve post-election crises, namely: constitutional frameworks, electoral reforms and power sharing agreements. The first two suffer from problems of political will and expediency, which has led to the increasing importance of the third, the role of power sharing agreements in resolving post-election crises shall be the focus of the rest of this research. The following chapter will trace the circumstances that led to the emergence of violence in the wake of elections in Kenya and Zimbabwe and brought about the signing of power sharing agreements to create transitional governments of national unity (GNUs).

Chapter 3 –**Historical Overview**

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Introduction

There are a number of striking similarities between the Kenyan and Zimbabwean cases, beyond their having signed power sharing agreements within months of each other. The two countries' political histories are surprisingly similar; both are former British colonies with substantial settler populations and in the 1980s, both Kenya and Zimbabwe were ruled by men with ambitions of becoming 'president for life' in contexts of one-party political systems.[46] Following intense international and domestic pressure, both countries introduced surface-level democratic reforms in the 1990s. Levels of growth and prosperity in both countries were impressive with high literacy levels and a strong civil society, each country was seen as a hegemon and example for other states in their respective regions. From the 1990s, civil society began to protest and plead for constitutional reform and the reduction of the powers of the 'imperial presidencies.'[47] Five years apart, the two states held referendums for constitutional amendments which were in the interest of the incumbent and in both cases; the referendums were defeated with disastrous consequences.[48] Following the outbreak of violence in Kenya in the aftermath of the elections on 27 December 2007 and in Zimbabwe on 29 March 2008, regional and international mediators intervened and led to the signing of power sharing agreements between the main political contenders. This chapter shall seek to draw out the processes and circumstances that led to the crises in each country as a means to understand the political context prevailing in each case at the time of the agreement.

Kenya

Introduction

> "[Kenya's electoral violence had] tapped into an atavistic vein of tribal tension that always lay beneath the surface in Kenya but until now had not produced widespread mayhem."- Jeffrey Gettleman, *New York Times,* 31 December 2007[49]

The 2007 and 2008 crisis in Kenya was greeted by the international community with a high degree of surprise; Kenya had been seen as a regional beacon of stability and growth and a vital 'emerging

[46] Kersting, R. 2011. "Constitutional Review and Referendums in Kenya," *Africa Insight*, 40, 4, p. 69
[47] Ibid
[48] Zimbabwe in 2000 and Kenya in 2005
[49] As quoted in Kagwanja, P. & Southall, R. 2010. "Introduction: Kenya, a Democracy in Retreat?" in P. Kagwanja & R. Southall (eds.), *Kenya's Uncertain Democracy: The Electoral Crisis of 2008*, (London: Routledge), p. 5

democracy' – particularly after the peaceful transitional election of 2002 and the failed constitutional referendum of 2005. Many in the international community felt that Kenya, at least in African terms, was not a country to "worry about."[50] Perceptions of the violence such as the quote above abounded, Afro-pessimists decried the Kenyan crisis as yet another case of violence as a result of tribalism and the inherent atavistic tendencies of African polities. Public discourse, the media and development literature often stereotype complex political and historical situations as merely a product of primordial disputes over ethnicity. In reality, the violence was a product of the complex interaction of a number of long-term trends and short-term triggers within Kenyan politics which had left it a ticking time-bomb awaiting explosion. Long term trends can be identified as the politicisation of ethnicity by successive elites, the deliberate undermining and weakness of institutions combined with a political system lacking the necessary checks and balances on executive power and a decline in the state's monopoly of force. These trends played into short term triggers such as elite fragmentation – which was precipitated by the failed constitutional reforms of 2005. This section will aim to delineate these trends to encourage a more nuanced understanding of the factors which led to the 2008 crisis and assist in analysing the success of the implementation of the 2008 power sharing agreement.

Ethnicity and Politics

Kenyan society is extremely ethnically diverse; it is comprised of more than forty ethnic groups. The perceived dominant group is arguably the Kikuyu of Central Province, who along with closely affiliated Bantu groups, the Gikuyu, Embu, Meru and Akamba (GEMA) make up approximately 25% of the population. The Luo of the Lake Victoria Region and a collection of other Bantu groups from Western Province known as the Luhya comprise 13 and 14% respectively.[51] The Kalenjin - a confederation of ethnic groups rather than a single distinctive group - is resident largely in the Rift Valley and urban centres such as Nairobi and is constituted by the Nandi, Kipsigis, Tugen, Marakwet, Pokot and a number of smaller groupings which collectively make up 12% of society. The Kamba of Eastern Province are approximately 11%, the Kisii of Nyanza another 6%, the Mijikenda of Coast Province comprise 5% and the remaining groups make up the final 14% of the total population.[52]

[50] Barkan, J. D. 2011. "Kenya: Assessing Risks to Stability," *Center for Strategic and International Studies,* Report for June 2011, p. 1
[51] Ajulu, R. 2002. "Politicised Ethnicity, Competitive Politics and Conflict in Kenya: A historical perspective", *African Studies*, 61, 2, p. 253
[52] Ibid

Politics in Kenya has long been ethnically stratified, but not as a result of atavistic tendencies. Instead, ethnicity has been 'politicised' by successive elites in search of a platform from which to launch themselves into the presidency.[53] Jomo Kenyatta, and later David Arap Moi, used patrimonialism and patron-client relationships with those belonging to their ethnic group to shore up their support. Kenyatta centralised power within the presidency and began to benefit people of Kikuyu origin disproportionately. Moi was a Kalenjin and following his ascendance in 1978, he placed Kalenjins in all important government and economic positions. This trend which continued largely unabated until 2002 helped to develop the perception amongst members of society that the benefits of incumbency would be carried down to people of the same ethnic group; this increased the stakes of elections and led to increased stratification of people along politico-ethnic lines. Through subsequent decades, the patronage system was largely maintained by extensive corruption where "ill-gotten gains were distributed to ethno-regional power brokers to lubricate the ethnic coalition building."[54]

In the 1990s, the confluence of the renewed international push towards democracy and the emergence of a broad reformist coalition began to push Moi to institute democratic reforms; the re-emergence of 'democracy' in fact led to substantial insecurity on the part of Moi and the ruling coalition. Prior to the 1992 elections, they mobilised ethnic militias to intimidate and harass political leaders and voters. These militias would also play a part in the 1997 and 2007 elections, becoming an integral part of the informalisation of violence that led to the outbreak of hostilities in 2007.

In spite of the ethnically stratified nature of politics in Kenya, politicians had long sought alliances and coalitions that crossed the tribal divide. In spite of the apparent positive implications of this coalition-building, Khadiagala (2010) notes that these coalitions tend to lead to instability rather than ethnic cooperation and political predictability, these are loose opportunistic alliances which are dissolved as soon as they have served their purpose.[55] The purposes of these agreements are often more individual and idiosyncratic than altruistic, they often reflect the particular interests of individual leaders jockeying for power and a seat at the table. As a result of this culture, political parties are barely distinguishable in terms of their ideology, programmes, platforms and organisation.[56] Leaders of these parties, including President Mwai Kibaki and Prime Minister Raila Odinga, have moved opportunistically from party to

[53] Ibid
[54] Khadiagala, G. M. 2010. "Political Movements and Coalition Politics in Kenya: Entrenching Ethnicity," *South African Journal of International Affairs,* 17, 1, p. 70
[55] Ibid, p. 79
[56] Mueller, S. D. 2011. "Dying to Win: Elections, Political Violence, and Institutional Decay in Kenya," *Journal of Contemporary African Studies*, 29, 1, p. 104

party and coalition to coalition based on the political circumstances of the day. This has served to undermine the evolution of parties along more coherent, predictable and institutional lines.[57] Rather than combining around common principles and ideals or similar programmes for action, Kenyan parties are "opportunistic machines for ethnic alliance and coalition building."[58]

Undermining Institutions

The institutions of government in Kenya leading up to the 2007 elections were extremely weak and perceived to be partial to the incumbent rather than being independent arbiters serving in the interest of society. This weakness of institutions is a long term trend that began under Jomo Kenyatta and was consistently continued by successive constitutional amendments under Moi, and later Mwai Kibaki.[59] These leaders worked to increase the power of the presidency relative to the other organs of state including the judiciary, parliament and civil service. Checks and balances were abandoned and understanding the political context, the arms of government tended to defer to the president. This allowed for the repression and torture of opposition during the Moi years and the pervasive corruption of the 1980s and 1990s.[60] In spite of widespread human rights violations and electoral violence in 1992 and 1997, no perpetrators were ever punished - this led to the judicial system being perceived to be biased and the emergence of a corrosive culture of impunity which caused widespread frustration. This culture of impunity was pervasive and it initiated a deep sense of resentment in many members of society.

Prior to the 2007 election, the Electoral Commission of Kenya (ECK) was also compromised; President Kibaki unilaterally replaced 19 of 22 electoral commissioners and appointed his former lawyer as the Vice-Chair in a move that violated an Inter-Party Parliamentary Group agreement and undermined opposition and voter confidence in the electoral process.[61] In addition, there was no agreed-upon institution to deal with electoral disputes and allegations of rigging, a dangerous flaw in a context of highly contested elections. Only two days prior to the elections, Kibaki appointed 5 new High Court judges – including judges responsible for the electoral appeals processes – to a bench that was already

[57] Khadiagala, G. M. 2010, p. 66
[58] Ibid
[59] Mueller, S. D. 2011, p. 104
[60] Ibid
[61] Branch, D. & Cheeseman, N. 2008. "Democratization, Sequencing and State Failure in Africa: Lessons from Kenya," *African Affairs*, 108, 430, p. 17

believed to be favourable to him.[62] Institutions that were already particularly weak lost all semblances of autonomy, independence, integrity and legitimacy.

Decline in the State's Monopoly of the Use of Force

Following the reintroduction of multi-party politics in the 1990s, President Moi resorted to the mobilisation of ethnic militias to undermine opposition party mobilisation. This was a result of the insecurity of the ruling elite when faced with the prospect of an open political process in which state institutions would be subjected to public scrutiny and accountability.[63] Moi and his supporters then called upon an ethnic grouping calling themselves the 'Kalenjin warriors' to kill and displace opposition voters who were drawn from other ethnic groups, mostly Kikuyu, Luhya and Luo.[64] This happened before, during and after the 1992 and 1997 elections. As opposition groups and vulnerable ethnic constituencies became subject to violence perpetrated by these state-sponsored militias, they resorted to creating their own self-defence and militia groups. Some of the opposition-sponsored gangs were the *Jeshi la Embakasi*, *Baghdad Boys* and *Amachuma*.[65] The result of this was the proliferation of self-styled militias, vigilante groups and organised criminal gangs in urban and rural areas which have usurped the state's monopoly of force and contributed to the increasing informalisation of violence.[66] The most notorious of these gangs were the *Mungiki* (Nairobi/Rift Valley/Central), the SLDF (Mount Elgon), *Kaya Bombo Youth* (Mombasa/Kwale), *Sungu Sungu, Chinkororo* and *Amachuma* (Kisii/Nyamira/Gucha/ Transmara) and *Taleban, Jeshi la Mzee* and *Jeshi la Embakasi* (Nairobi).[67] Many of these militias were to play a role in the 2007 election crisis.

While these gangs allowed Moi and his cohorts to retain access to the state, they took on a life of their own in the intervening decade leading up to the 2007 elections. These groups moved into urban areas and slums of Nairobi as well as the rural areas of Central Province; they acted as protection rackets and shakedown gangs in areas neglected by the state where police and officials would turn a blind eye in return for kickbacks.[68] In many cases these gangs became a shadow state, usurping the role and functions of the government. By 2007, these gangs were prolific and the state had largely lost its

[62] Ibid
[63] Ajulu, R. 2002, p. 263
[64] Mueller, S. D. 2011, p. 103
[65] Op. Cit. p. 151
[66] Branch, D & Cheeseman, N. 2008. p. 14
[67] Oloo, A. 2010. "Marginalisation and the Rise of Militia Groups in Kenya: The Mungiki and the Sabaot Land Defence Force", in W Okumu & A Ikelegbe (eds.) *Militias, Rebels and Islamist Militias: Human Insecurity and State Crises in Africa*, (Pretoria: Institute for Security Studies), p. 151
[68] Mueller, S. D. 2011, p. 103

monopoly of the use of force; these groups represented the potential for violence merely waiting to be tapped. The culture of impunity and the legacy of the use of violence for political currency played into this and led to the widespread violence perpetrated by ethnic militias and gangs during January and February 2008.

Elite Fragmentation

The 1997 elections were lost to Moi due to the divided nature of the opposition and his mobilisation of extra-judicial means of coercion, but the 2002 elections could not have been more different. The National Alliance Rainbow Coalition (NARC) was formed prior to the 2002 elections; it was broad-based multi-ethnic coalition that included Mwai Kibaki's National Alliance of Kenya party and Raila Odinga's Liberal Democratic Party (LDP). It came to power in 2003 with a 63% mandate amidst promises of ending corruption and impunity, jump-starting the economy, improving the spread of public services and making constitutional reforms to redistribute power from the leviathan executive.[69] Kenyans expected that the new government would end the culture of impunity and kleptocracy that had prevailed during the Kenyatta and Moi years, they also expected public appointments to be fair and to 'reflect the face of Kenya' and that malefactors would be prosecuted.[70]

During the 2002-2007 terms, the Kibaki administration oversaw the emergence of a stunning economic recovery premised on macroeconomic discipline, reduced deficit spending, an improvement in tax collection and thus increased state revenue, an improved business environment and the privatisation of failing state-owned enterprises.[71] Economic growth reached a staggering 7% in 2006 and poverty levels dropped by 10% to just 46% in 2006. Unfortunately the regime's record of political governance was not as impressive, they failed to prosecute and convict high-level corruption from both before and after 2003 – the Goldenberg and Anglo Leasing scandals in particular. In both scandals, high-level government functionaries were implicated but prosecutions and convictions were not carried through and the persons responsible for the investigations were subjected to death threats and harassment.[72] The NARC government had also promised to eradicate privatised violence and restore public order and undertook a particularly violent counter-insurgency campaign which was widely criticised by civil society and human rights groups.[73] The violence used by the state security apparatus to eradicate these militias gave

[69] Chege, M. 2008. "Kenya: back from the brink?" in *Journal of Democracy*, 18, 4, p. 128
[70] Ibid
[71] Ibid.
[72] Ibid. p. 129
[73] Kagwanja, P. 2009. "Courting Genocide: Populism, ethno-nationalism and the informalisation of violence in Kenya's 2008 post-election crisis", in *Journal of Contemporary African Studies*, Vol. 27, No. 3, p. 371

way to violent retaliatory killings, particularly by the *Mungiki*. Although this campaign greatly undermined the strength of the *Mungiki* and other militias, it also encouraged the emergence of a divided and increasingly violent movement that was forced underground and would pose a great threat in 2007-2008.[74] Kagwanja (2009) suggests that the failure of the police to control extra-judicial forces and their 'trigger-happy' reputation led to a strong perception that the Kibaki government was a 'state-amok' and that this had profound effects on the resurgence of populism and ethnic nationalism ahead of the elections.[75] This process, alongside the stormy collapse of the NARC coalition, set the stage for the eruption of ethnic tensions in the wake of the elections.

In 2005, the NARC alliance imploded as a result of pressure from Kibaki's closest Kikuyu aides, the deliberate sabotage of the constitutional review process and Kibaki's failure to implement the terms of his memorandum of understanding with Odinga and the NARC constituent parties.[76] The 2005 constitutional referendum saw the first vestiges of ethnic divisionism with anti-kikuyu rhetoric being directed at various constituencies.[77]

The 2005 constitutional referendum marked a watershed moment in the process of elite fragmentation. A new constitutional review process had been initiated in 2000 under Moi; the Constitution of Kenya Review Commission (CKRC) was concluded shortly before the 2002 elections and recommended the creation of a mixed presidential and parliamentary system to reduce the powers of the president,[78] as well as the devolution of authority to district governments.[79] With the new NARC administration following the 2002 elections, the CKRC findings were to be debated at the National Constitutional Conference (the Bomas process), but this was paralysed by widening rifts within the NARC alliance following Kibaki's failure to implement the provisions of the founding Memorandum of Understanding (MoU).[80] The constitutional review process, campaigned for with determination prior to the elections, was no longer a process to remove Moi, and it soon became apparent that a revised constitution would have different implications for each of the various actors. Discussions over the limiting of presidential powers were particularly acrimonious as the Kibaki clique resisted attempts at reforming the executive presidency. The 'Bomas draft' was finalised by late 2004, it was very close to the recommendations of

[74] Ibid
[75] Ibid. p. 372
[76] Branch & Cheeseman. 2008. p. 17
[77] Chege, M. 2008. p. 132
[78] Kersting, R. 2011. p. 71
[79] Khadiagala, G. M. 2010, p. 76
[80] Ibid

the CKRC, and it included a parliamentary system, an elected president and prime minister as well as a stringently protected autonomous judiciary.[81] Due to his dissatisfaction with the diminished powers of the presidency, Kibaki engineered fundamental revisions to the draft constitution, removing the provision for a prime minister and the devolution of power away from the capital as well as restoring presidential authority.[82] This deepened antagonistic sentiments between the two main factions within NARC who found themselves in opposing camps when campaigning for the constitutional referendum scheduled for 21 November 2005. Following weeks of violent campaigning, Odinga and the 'no' campaign defeated Kibaki's 'yes' campaign with 58% of the vote. In spite of the contentious nature of the competition, the referendum process was praised by international observers for the independence of the electoral commission and for the undisputed nature of the results; indeed Kibaki appeared to accept the defeat graciously. Following his defeat, Kibaki dissolved his cabinet and removed all seven ministers who had mobilised against the draft constitution; his new, enlarged cabinet was seen as far less representative.[83] The referendum was enough to tear apart the fragile NARC coalition. Opposition groups then coalesced around a determination to remove Kibaki from power and formed the Orange Democratic Movement (ODM) with Raila Odinga at the helm. The ODM burst onto the scene with a populist agenda and 2005-2007 marked the high noon of populist and ethnic politics in Kenya.[84]

The failed referendum process and Odinga's growing popularity began a groundswell of panic within Kibaki's administration, victory in the 2007 elections was less than assured and this raised the stakes of the competition. The electoral system in Kenya was a first-past-the-post (FPTP) system, which as discussed in the previous chapter, leads to a winner-takes-all political configuration. This increases the costs of losing an election, as the loser is vanquished and denied participation in the resulting government. 2007 was an election that Kibaki was not prepared to concede.

Ethnicity became the axis about which the 2007 elections turned, both parties - but particularly the ODM – paid lip-service to nationalism while whipping up ethno-nationalist rhetoric to fever pitch.[85] The ODM was a broad anti-Kikuyu alliance, while Kibaki and his inner circle were primarily Kikuyu. The ODM leaders had been freed of ministerial responsibilities by the Kibaki government, they were nursing grievances from their exclusion from government and many expressed bitterness at what they saw as an

[81] Kersting, R. 2011. p. 71
[82] Khadiagala, G. M. 2010, p. 76
[83] Kersting, R. 2011. p. 73
[84] Kagwanja. 2009. p. 372
[85] Ibid, p. 373

increasing pro-Kikuyu bias in high-level government appointments.[86] Rapidly, the blame for all of Kenya's social and economic ills was laid at the feet of the Kikuyu and of Kibaki in particular.[87] This anti-Kikuyu rhetoric built on a perception that the Kikuyu had received preferential treatment in the past and this strategy would prove to be an effective means by which to consolidate ethnic support in non-Kikuyu regions. What emerged was a party campaign based on the idea of "forty-one tribes against one" and "Kenya against the Kikuyu."[88] ODM politicians stoked the flames of ethnic tension through an effective campaign of disinformation which highlighted (unproven) assessments of the benefits accruing to Kikuyu areas, the domination of Kikuyu in banking, government, trade, out-migration, education and commercial farming.[89] This played into land grievances, particularly amongst the Kalenjin and Maasai in Rift Valley, an area that had already seen substantial political violence in contestations over land. This was not, however, the sum of the campaign. Importantly, the ODM revitalised the *majimbo* debate. This inspired fear amongst members of the Kikuyu community residing in non-Kikuyu areas, their social memory of *majimbo* was marred by violence and ethnic cleansing.[90] This *majimbo* regionalist agenda - understood variously to mean a form of federalism, a reconsideration of land rights and a license to commit ethnic cleansing - became the most divisive issue of the campaign.[91] Odinga failed to delineate his understanding of *majimbo* as the confusion would allow the ODM to garner as many Kalenjin and minority supporters as possible. This disarray likely heightened fears amongst the Kikuyu and their affiliated groups. In return, Kibaki's newly-formed Party of National Unity (PNU) began to disseminate propaganda that translated this fear of *majimbo* to the grass-roots level, comparing Odinga to Idi Amin, Stalin and Hitler.[92] By the end of 2007, elite fragmentation, the perceived partisanship of state institutions and the informalisation of violence had eroded all trust from the political system.

Things Fall Apart

The pre-election phase witnessed an increase in intimidation, threats to political candidates, the rise of hate speech, distribution of hate-inspired leaflets, violence between rival groups, mob-lynching of members of rival ethnic groups and the tearing up of Kikuyu voters cards in parts of the Rift Valley.[93] These tactics and the ethnic rhetoric pushed by election candidates served to undermine all remaining

[86] Chege, M. 2008. p. 132
[87] Kagwanja. 2009. p. 374
[88] Chege, M. 2008. p. 132-3
[89] Ibid.
[90] Indeed, research found that in the run up to the election Kikuyus were significantly more likely to report fears of election-related violence than any other group. Branch & Cheeseman. 2008. p. 18
[91] Ibid.
[92] Ibid. p. 19
[93] Kagwanja. 2009. p. 378

inter-communal trust, Kenya was a time-bomb waiting for a trigger. By December, the violence had already killed hundreds and displaced over 2 000 families in Mount Elgon, Molo and Kuresoi. Prior to the election, Kibaki manipulated electoral institutions to improve his chances against Odinga's ODM. The simultaneous parliamentary and presidential elections held on 27 December 2007 were the most contentious in Kenyan history. Early results indicated that Odinga's ODM had won a clear majority in parliament, winning 99 seats as opposed to the PNU's 43.[94] This sent waves of panic through the PNU during the counting of the presidential votes, leading to state intelligence officers infiltrating the ECK and undertaking a campaign to inflate the results in PNU strongholds in favour of Kibaki.[95] This rigging was successful, and shifted the balance from the ODM to the PNU, resulting in Kibaki's win by a mere 231 000 votes.

Violence began to escalate on 29 December following the delay in announcing the presidential election results and when Odinga's lead began to fall away amid allegations of fraud. The ODM refused to recognise the PNU victory as soon as the results were announced by the Electoral Commission of Kenya chair, and refused to recognise Kibaki as president when he was hastily sworn in an hour later.[96] Even the chairman of ECK, Samuel Kivuitu, admitted that he did not know who the victor was, but that he had succumbed to pressure which resulted in his announcing Kibaki's victory.[97] The ODM immediately dismissed judicial procedures as a means to solve the crisis as it argued that the judiciary was under the control of the incumbent, Kibaki. The ODM called for a million-man civic action to be undertaken by supporters and advocated civic disobedience. In the aftermath of the rigged elections, the violence became increasingly diffuse, but it is possible to separate it into three separate forms, spontaneous violence, organised (including retaliatory violence) and state-perpetrated violence

Spontaneous Violence in Urban Areas

There was a sudden eruption of violence on 30 December when Kibaki was declared the winner of the elections; this violence was comprised of largely unplanned damage to property and random killings of suspected ethnic rivals.[98] On Odinga's home turf, in Nyanza Province, thousands poured into towns and cities to protest, angry mobs began to loot and torch property, particularly that of Kisii, Kikuyu and Kamba. Violence also erupted in Nairobi's ethnically diverse slums such as Dandora, Kibera, Kariobangi,

[94] Khadiagala, G. M. 2010, p. 77
[95] Ibid, pp. 77-78
[96] International Crisis Group. 2008. *Kenya in Crisis*. Africa Report No. 137, p. 8
[97] Khadiagala, G. M. 2010, p. 78
[98] Kagwanja. 2009. p. 378

Kawangware and Mathare.[99] The violence was primarily directed against people of Kikuyu ethnicity as well as their perceived allies.

Organised Violence in the Rift Valley and Western Province

This spontaneous violence gave way to ethnic reprisals and counter-attacks with Kikuyu militias taking up arms and undertaking organised pre-emptive attacks against communities that were broadly seen as supporting the opposition.[100] This organised violence began in the conflict-prone Rift Valley, with the epicentre in the town of Eldoret. As discussed above, land issues and other motivations for ethnic distrust and fear have been a source of violence between the majority Kalenjin and minority Kikuyu populations. These tensions were increased with the sharpening of ethnic divisions during the 2007 election campaigns and the community was divided between ODM and PNU supporters. Local politicians stoked the existing tensions, for example a Kalenjin councillor reportedly professed at a rally in the town of Soi that, if elected, the ODM would "remove the roots" of local Kikuyu communities "so there would be only one tribe there."[101] As a result of this rhetoric, local Kalenjin believed that once the ODM came to power, they would remove the local Kikuyu and redistribute their land to the Kalenjin; when these ambitions were frustrated by the stolen election, they resolved to do by force what they wanted to achieve through elections.[102] Human Rights Watch and the Waki Commission (the Kenyan government commission tasked with investigating the causes of the violence) both discovered the complicity of local political leaders in the incitement of violence, with some even demanding payment for carrying out the violent acts.[103] Although Human Rights Watch found no direct links between the national ODM leadership and the violence, many blame local factors and the violent ethnic rhetoric of William Ruto, an ODM member of parliament.[104] There were also reports of opportunistic violence, of attacks by Kalenjin taking advantage of the collapse of law and order to attack Luo and Kisii settlers for personal gain, regardless of political affiliation.[105]

Following the reports of instances of violence against Kikuyu women and children in Kiambaa and the entry of Kikuyu internally displaced persons in Central Province, Kikuyu gangs and militias began to

[99] Ibid.
[100] Human Rights Watch. 2008. *Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance,* Vol. 20, No. 1 (A), p. 35
[101] Ibid. p. 36
[102] Ibid
[103] Ibid. p. 38
[104] Ibid.
[105] Kagwanja. 2009. p. 379

undertake retaliatory attacks against Luo, Luyha and Kalenjin communities. This crisis allowed the *Mungiki* to regroup and operate openly as a defender of Kikuyu communities in Nairobi and the Rift Valley.[106] The Waki commission later found that the Mungiki had been used by some civil servants, ministers and members of parliament to fight back against the Luo and Kalenjin but was unable to prove that the PNU as a whole had used these militias in a systematic way.[107]

Police Repression and Failure to Protect

The role of the police in controlling the violence has been questionable with a substantial amount of evidence pointing to police involvement and the use of terror tactics against slum dwellers.[108] Many victims have reported that the police stood by as their families were killed and their homes were torched and looted.[109] The police in Kisumu were blamed for the exceptionally high number of fatalities experienced there and there were a number of reports of indiscriminate police killings of people not linked to the protests. In spite of the low levels of violence in Western Province, the police crackdown was exceptionally brutal. Dozens were killed, many in cold-blooded executions; this was blamed on one notorious criminal investigation officer who was said to be running a parallel police unit.[110] The Waki (Commission of Enquiry into the Post-Election Violence) report revealed widespread police violations including those of a sexually violent nature.[111]

Conclusion

The violence in the wake of the elections of 27 December 2007 was as a result of a number of important and interlinked factors. An important factor was the mobilization and politicization of ethnicity for personal and electoral gain at a national and local level. This politicised ethnicity fed into decades of ethnic division that had been perpetuated by successive elites and consolidated through ethnically differentiated access to resources. The mobilisation of ethnicity was largely a result of the unprogrammatic nature of Kenyan political parties and the zero-sum nature of the electoral system and of politics following the loss of the referendum and the increasingly fragmented elite. Another important factor was the distrust of state institutions to be able to mediate the post-election crisis due to the preponderance of the presidency and the undermining of independent institutions; this led to the

[106] Ibid. p. 380
[107] Ibid. p. 381
[108] International Crisis Group. 2008. *Kenya in Crisis*. Africa Report No. 137, p. 9
[109] *Loc. Cit.*
[110] Ibid. p. 10
[111] *Kenya: Commission of Enquiry into the Post-Election Violence (CIPEV) Final Report* found at http://reliefweb.int/node/319092

failure of the ODM and PNU to effect a compromise before the outbreak of hostilities. The culture of impunity that had prevailed in Kenya for more than forty years would also have impacted on the decision to take up arms rather than to try to petition for justice over the elections; there was a common perception that state institutions would be partial. Long term trends and short term triggers produced a perfect storm which threatened to destroy East Africa's most stable country. Only 40 days of mediation headed by former UN Secretary General and African Eminent Person, Kofi Annan, was able to break the stalemate, bring an end to the violence and result in the signing of the Kenyan National Accord and Reconciliation Act on 28 February 2008 – a process which paved the way for the grand coalition government that would rule the country until the elections of 2012.

Zimbabwe

Introduction

> "The MDC leadership totally underestimated Mugabe. They believed the struggle for democracy would be hard, but they never understood that he was prepared to destroy everything – them, the economy, the institutions, the infrastructure, the whole country and everything in it – to survive" – Wilfred Mhanda (aka Dzinashe Machingura), former ZANU freedom fighter[112]

While there are a number of important parallels between the Kenyan and Zimbabwean post-independence experiences, there are also vital points of divergence. While the Kenyan crisis had deep historical roots, the actual crisis period was short, in essence only a few months of political and economic turmoil in an otherwise essentially stable country. In contrast, the Zimbabwean crisis was not one but many subsequent crises where the state and society were subject to an almost continuous state of crisis and disintegration for the better part of a decade. This was as a result of a number of long-term trends and unresolved issues left in the wake of the retreating colonial state, but also due to the misguided political, economic and fiscal policies of an elite bent on indefinite political survival. This chapter will elaborate on these trends and policies in an effort to explain the roots of the 2008 post-election crisis and the resultant power-sharing agreement.

[112] As quoted in Bratton, M. & Masunungure, E. 2011. "The Anatomy of Political Predation: Leaders, Elites and Coalitions in Zimbabwe, 1980-2010," *Developmental Leadership Programme*, Research paper 9, p. viii

Unlike Kenya, the Zimbabwean nation is not constituted by a multiplicity of ethnic groups; instead it is made up of only two, the Shona majority (82% of the population) and an Ndebele minority (14% of the total population).[113] Conflict within the state has not been characterised by a politics of ethnicity but rather by the politics of survival of a small coterie of the politically powerful.

Political Consolidation

Modern Zimbabwean politics has its roots in the liberation struggle of the 1970s and 1980s. From 1965 when Ian Smith's government made the Unilateral Declaration of Independence from British colonial rule, the nationalist movements in Zimbabwe launched their guerrilla struggle for independence. At the forefront of this campaign was the Zimbabwe African National Union (ZANU), the predecessor of the party that would rule Zimbabwe unilaterally until 2008. In 1979, Smith's white-minority government relinquished power in the Lancaster House agreement. While the change in government from Ian Smith's regime to Robert Gabriel Mugabe's ZANU administration led to a change in government and leadership personnel, the repressive state structures and practices were maintained alongside Smith's repressive legislation.[114] There was limited transformation under the Lancaster House independence constitution; it restricted socio-economic redistribution and major constitutional changes before 1990.[115] While displaying conciliatory and developmental characteristics, the new government did not break with the existing tradition of authoritarian nationalism, it failed to de-militarise state institutions and methods of political mobilisation and retained the security-oriented institutions of the old regime.[116]

During the independence decade, the Zimbabwean economy grew and access to social services for all citizens improved markedly. Zimbabwe became home to the most educated workforce on the continent. Within 5 years of independence, nearly all children of primary school age were enrolled and more than 80% of eligible students were moving on to secondary school.[117] Simultaneously Mugabe and ZANU had set about consolidating power. The *Gukurahundi* massacres in Matabeleland were undertaken by ZANU militias and the 5th brigade in the early 1980s to remove the opposition posed by the Zimbabwe African People's Union (ZAPU) who drew most of their support from this region. After decimating ZAPUs

[113] Ploch, L. 2008. "Zimbabwe," *Congressional Research Service,* CRS Report for Congress, p. 6
[114] EISA. 2008. "The Zimbabwe Harmonised Elections of 29 March 2008: Presidential, Parliamentary and Local Government Elections," *EISA Election Observer Mission Report*, p. 2
[115] Ibid
[116] Ibid
[117] Bratton, M. & Masunungure, E. 2011. "The Anatomy of Political Predation: Leaders, Elites and Coalitions in Zimbabwe, 1980-2010," *Development leadership Programme*, Research Paper 09, p. 13

support base, ZANU forced the party into a coalition, which effectively swallowed and silenced the opposition – it was at this point that ZANU adopted the suffix 'PF' for Patriotic Front. Elections in the 1980s were regular, though flawed, and electoral participation was high due to high levels of legitimacy in spite of extensive political intimidation and the violence in Matabeleland.[118] The Zimbabwean political system at this time may be characterised as an electoral authoritarian regime.

During this decade, Mugabe introduced a number of constitutional amendments which centralised power in the presidency. In 1986 the constitution was changed to give the president powers to legislate unilaterally, creating an executive presidency by merging the posts of President and Prime Minister.[119] The Constitutional Amendment Act of 1987 also changed the electoral system from one based on proportional representation to a first-past-the-post (FPTP) system. This system is well known for entrenching one-party dominance and leads to an increase in the zero-sum nature of electoral competition.

The 1990s would not be as kind to ZANU-PF. When the Lancaster House Agreement expired in April 1990, it removed a number of constraints regarding land reform and the constitution of the government. In response to the re-emergence of a small opposition party prior to the 1990 elections, ZANU-PF resorted to underhanded tactics to win at the polls. They monopolised the airwaves, disrupted opposition rallies, directed state resources to the election campaign and resorted to violence; state security agents assassinated the national organising secretary of the emergent opposition just days before the polls.[120] Mugabe later used the power of the presidency to pardon members of youth groups and security forces who were convicted of electoral violence,[121] this period can be seen as a precursor to the practices used extensively in the first decade of the 21st century. It also marked the beginning of voter apathy in Zimbabwe, where citizens expected that a ZANU-PF win was a foregone conclusion and many began to refrain from voting.

ZANU-PF also began to actively politicise the state. The Politburo and Central Committee of the party (modelled on the Stalinist communist party structures) usurped the policy-making roles of Cabinet and parliament, ensuring that the party dominated almost every political institution in the country.[122] The

[118] EISA. 2008, p. 3
[119] Olaleye, W. 2005. "Negotiating the Impasse: Challenges and Prospects for Democratisation in Zimbabwe," *Electoral Institute of Southern Africa*, EISA Research Report No. 9, p. 7
[120] Bratton, M. & Masunungure, E. 2011, p. 16
[121] Ibid
[122] Ibid

politicisation of state institutions increased with the economic decline brought on by global economic hardships and the strictures of the Economic Structural Adjustment Programme (ESAP) instituted by the International Monetary Fund. The liberalisation of the economy and the plan to finance the ESAP through growth in exports failed, which led to increasing fiscal and current account deficits.[123] This programme required the reduction of salary payments to civil servants and retrenchment of many; this led to many competent technocrats opting for early retirement schemes.[124] ZANU-PF then chose to fill vacant posts with individuals who displayed strong loyalty to the party rather than those with the necessary technical skills; the bureaucracy became politicised and filled with functionaries who could be depended upon to do the party's bidding. While the ESAP had led to de-industrialisation, growing unemployment and the erosion of living standards, conspicuous consumption by the ruling elite and the removal of subsidies on food, education and healthcare were worsening the national crisis.[125]

This led to increasing fraud, corruption and nepotism within state structures. The state remains the most valuable prize in African politics as private sector opportunities are limited and public office remains the most reliable means by which to accumulate wealth.[126] This also explains the politics of survival which emerged in Zimbabwe, as party functionaries used access to the state to acquire wealth and a loss at the polls would translate into a loss of livelihood, party and government functionaries could not countenance a loss of political power. In defence of the status quo, ZANU-PF began to institutionalise its patriotic nationalism, claiming to be the only legitimate power-holders and demonising political opponents as treasonous enemies of the people and of the project of national liberation.[127]

As government became increasingly characterised by fraud, nepotism and a culture of impunity in an atmosphere where economic hardship was on the rise for the majority of citizens, the late 1990s saw the rise of labour militancy and increasing dissatisfaction with ZANU-PF governance. In 1997, the war veterans of the liberation struggle – a key ZANU-PF constituency – began a revolt.[128] They demanded economic support from the state and protested at their exclusion from state patronage, particularly

[123] Ibid, p. 19
[124] Ibid, p. 16
[125] Mlambo, A & Raftopoulos, B. 2010. "The Regional dimensions of Zimbabwe's multi-layered crisis: an Analysis," paper presented at the *Election processes, Liberation movements and Democratic change in Africa Conference,* Maputo 8-11 April 2010, p. 2
[126] Ibid, p. 17
[127] Ibid
[128] EISA. 2008, p. 4

when it emerged that the War Victims Compensation fund had been emptied by corrupt state officials.[129] The president could not afford to lose this key constituency that could be mobilised to enlist support for the party and enforce discipline, he conceded to their demands for exorbitant compensation and this unbudgeted expenditure led to a crash in the Zimbabwean dollar and began a pattern of politics which would define the following decade.[130] In an attempt to regain his reputation as an eminent statesman and placate the increasingly restless security forces and securocrats, Mugabe sent troops to the Democratic Republic of Congo in 1998 to prop up the regime of Laurent Kabila.[131] Mugabe then fell upon the mineral wealth in the DRC as a means to uplift his ailing economy. While this process was successful in generating enormous wealth for certain members of the security cabal, it was disastrous for the Zimbabwean fiscus. In the coming decade, economic rationality and the nation's well-being would be sacrificed time and again at the altar of political survival.

The Politics of Survival

The late 1990s were characterised by increasing popular dissatisfaction and social unrest, it was a time of worsening economic crisis compounded by imprudent financial policies. In 1997 there emerged a body called the National Constitutional Assembly (NCA) which represented a major step forward in the direction of civic action. Its intention was to raise awareness of the inadequacy of the Lancaster House constitution and the need to create a new national charter.[132] Following from this resurgence of civic action, the Zimbabwe Congress of Trade Unions (ZCTU) announced the formation of a new political party, the Movement for Democratic Change (MDC) in 1999. The MDC was a broad coalition made up of civil society, trade union representatives and former ZANU-PF cadres. In 2000 Morgan Tsvangirai, chair of the NCA and ZCTU Secretary General, was elected president of the nascent opposition movement.

ZANU-PF faced an emerging opposition party, but the cracks were beginning to show within the party as well. It was clear from the 1996 presidential election that ZANU-PF support was waning, in spite of garnering more than 90% of the vote, rival candidates had withdrawn from the race due to irregularities and barely a third of all registered voters turned out at the polls.[133] Within the party, a succession battle had begun to open rifts in its formerly cohesive fabric.

[129] Bratton, M. & Masunungure, E. 2011, p. 22
[130] Ibid
[131] Matyszak, D. 2010. *Law, Politics and Zimbabwe's 'Unity' Government*, (Harare: Konrad Adenauer Stiftung), p. xv
[132] Bratton, M. & Masunungure, E. 2011, p. 21
[133] Ibid, p. 22

The constitutional referendum of 2000 marked a watershed in Zimbabwe's political history and culture and led to ZANU-PF finally abandoning all remaining pretence of tolerance towards opposition parties. The NCA proposed a draft constitution which reduced presidential powers and introduced much-needed reforms. The government-appointed Constitutional Commission then presented its draft which retained the executive presidency and the repressive legislation of the Lancaster House Constitution and allowed for increased powers to censor the press and restrict individual rights. The government put this draft to a referendum in February 2000, and following its defeat by the emergent MDC who spear-headed the 'No' campaign, the Mugabe regime unleashed its violent campaign of fear, dispossession and intimidation. The implications of this loss were profound for ZANU-PF, who was to face a general election in June 2000. White farmers and their employees were seen to be a key constituency for the MDC and ZANU-PF believed that they had played a key role in their first ever loss at the polls.[134] The invasions of white-owned farms began within days of the outcome of the referendum.

The Politics of land

Issues over land had long been a powder-keg in Zimbabwe. The Lancaster House Agreement had restrained the incoming elite from redistributing land until the expiry of the agreement in 1990. At independence, 42% of the land was owned by some 6 000 commercial farmers, the vast majority of whom were white.[135] Following the 1990 constitutional amendment allowing government to purchase land at set prices without leave for appeal, and the 1992 Land Settlement Act, the government's hand was strengthened with regards to land restitution, and property rights were no longer formally guaranteed. From 1990, land was an important issue in successive elections but few benefitted from restitution measures other than senior politicians, military officials and ministers.[136] Just days after the constitutional referendum in February 2000, the government announced its Fast Track Land Reform Process. This process led to the removal of thousands of white farmers and black farm workers from their land, this process was used to systematically purge commercial farms, particularly in areas where the MDC received substantial support from farmers and workers.[137] The redistribution of land was used to satisfy key ZANU-PF constituencies and individuals and to shore up support for the party ahead of the June elections. Indeed land seizures have since been a key part of election preparations; they are dramatically stepped up ahead of polls. ZANU-PF has repeatedly used the land question to remind the

[134] Matyszak, D. 2010, p. xvi
[135] Sims, B. M. 2011. "The Politics of Land In Zimbabwe," *IDASA,* paper presented at the *Land and Human Security in Africa Conference*, Limpopo, 30 May 2011, p. 2
[136] Ibid
[137] Ibid, p. 6

populace of its liberation history, using the land issue to tap into people's emotions and remind them of the key role of the ruling party. This land reform process resulted in widespread human rights abuses, the displacement of approximately 400 000 farm labourers and their families, and the formation of militia bases on the farms from which the state would launch an intimidation and repression campaign ahead of the election.[138] This led to the international pariah status of the Zimbabwean government and the decision in 2001 of the USA and EU to place targeted travel and economic sanctions on members of Mugabe's inner circle, sanctions that would still be in place in January 2012. The land reform process was a crucial victory in Mugabe's campaign for political survival, but had disastrous effects on the agriculture export-dependent economy; foreign investment fled, manufacturing largely collapsed, unemployment skyrocketed and the economy came to a virtual standstill.

The Militarisation of the State and the Rise of the JOC

In the face of increasing external and internal pressures, Mugabe openly began to align himself with conservatives, hardliners and extremists in the form of the war veterans, party securocrats and traditional leaders. ZANU-PF's nationalist ideology was reinvented in a more authoritarian, selective and racialised discourse of citizenship and belonging.[139] ZANU-PF began to frame the MDC as the result of a white colonialist plot trying to subvert 'his revolution'. In a speech to the party central committee in 2000 Mugabe stated:

> "The MDC should never be judged or characterised by its black trade union face; by its youthful student face; by its black suburban professionals; never by its rough and violent high-density [urban] elements. It is much deeper, whiter and wider than these human super-fices; for it is immovably and implacably moored in the colonial yesteryear and embraces wittingly or unwittingly the repulsive ideology of return to white settler rule... It is a counter-revolutionary Trojan horse contrived and nurtured by the very inimical forces that enslaved and oppressed our people yesterday."[140]

These pressures ensured the increased violence of the following decade and resulted in the increased militarisation and militancy of state institutions and the ruling elite.

The country's particular liberation history would have profound repercussions for the nature and composition of the post-independence state. At independence, the ZANU regime chose to retain the legislation and practices of the repressive white regime. From the 1990s and the wide scale withdrawal of the technocrats from public office, the easiest means by which to attain public office was to have

[138] Matyszak, D. 2010, p. xvi
[139] Sims, B. M. 2011, p. 6
[140] Meredith, 2002 quoted in Grove, A. 2011. "The International Politics of Survival: The Case of Mugabe's Staying Power," *Politikon*, 38, 2, p. 289

'liberation credentials', that is to have participated in the liberation struggle of the 1980s.[141] The Commissioner General of Police, Commander of the Airforce, the Commander of the National Army, Commander of the Armed Forces, Commissioner of the Prison Services and the head of the increasingly important Central Intelligence Organisation (CIO) all had impeccable liberation credentials, and were a part of Mugabe's inner circle. From the time in which Mugabe's hold on power became less assured, the electoral authoritarian regime hardened, the ruling cabal became more restive, "the polity became militarised and the military was politicised."[142] Though military commanders had always occupied seats on the central decision-making bodies, they had remained behind the scenes until 2000. Following the uncertainty of the political survival of the elite, military officers began to be deployed to strategic political posts formerly occupied by civilians.[143] In 2001, a senior ZANU-PF judge advocate from the Zimbabwe National Army was appointed to the High Court, in 2004 he was moved to the head of the Delimitation Commission to demarcate voting constituencies ahead of the 2005 election and when the Zimbabwe Electoral Commission (ZEC) was created in 2005, he was appointed as its inaugural chair.[144] Serving or retired military officials were also appointed to the National Oil Company of Zimbabwe, the National Railways of Zimbabwe and the Grain Marketing Board.

By the early 2000s, it was apparent that the civilian Cabinet was no longer in complete control, it had been side-lined in favour of the Joint Operations Command (JOC). The JOC had originated in the colonial era as a counter-insurgency coordination organ chaired by the army commander.[145] It is composed of heads of the army, police force, air force, intelligence services and prisons and it reports directly to the president; it sees its mandate as discussing and dealing with any issue that impacts on national security (which is very broadly defined) and often unilaterally announces 'Operation X' or 'Operation Y' to be carried out by the security arms of the state.[146] This mode of governance emerged with the fast track land reform process but soon became standard operating procedure. The JOC and the ruling party's officials are deeply fused; they rely on the CIO and military intelligence to police the population while relying on the police force to stifle dissent. In addition to this, the war veterans and youth militias known

[141] Mapuva, J. 2010. "Militarisation of Public Institutions, Flawed Electoral Processes and Curtailed Citizen Participation: the Case of Zimbabwe," *The Journal of Legislative Studies*, 16, 4, p. 465
[142] Bratton, M. & Masunungure, E. 2011, p. 26
[143] Ibid
[144] Ibid
[145] Ibid
[146] Ibid

as the 'Green Bombers' have been used as an extra-judicial source of repression and intimidation.[147] Repression and intimidation would be stepped up in the years between 2000 and 2008.

Elections as Periods of Increased Violence

Zimbabwean elections in the new millennium were characterised by increasing levels of state-sponsored violence. The parliamentary elections of 2000 and presidential election in 2002 were marred by the full deployment of government and extra-judicial forces to intimidate and decimate the opposition; many analysts believe that the MDC may have won these elections if it had not been for the use of force, the 'restructuring' of civil society and the manipulation of vote counting.[148] ZANU-PF retained its incumbency, but had lost its two-thirds majority in parliament. In 2004, the leadership succession struggle within the ruling party was heating up; it came to a head with a split in the party between those who supported Joyce Mujuru and those who were backing Emmerson Mnangagwa. Mugabe was able to defuse these tensions, but the split would remain in the party structures, and would have lasting consequences for the 2008 power sharing agreement and ensuing GNU.

By 2005, Mugabe had firmly re-established control by suppressing and controlling the media, closing the democratic space, unleashing widespread violence against opposition parties and stacking the judiciary with sympathetic judges.[149] Mugabe regained his two-thirds majority in parliament and undertook another violent campaign to undermine the opposition's core constituencies. The JOC undertook 'Operation Murambatsvina' in May 2005 which uprooted and decimated the livelihoods of an estimated 700 000 people living in informal settlements in urban areas. Following the reintroduction of the Senate and the ensuing debate within MDC structures, the opposition fractured and split into two factions, MDC-T under Morgan Tsvangirai and MDC-M/N under Arthur Mutambara and Welshman Ncube. The split in the party would undermine its electoral support and diminish its negotiating power vis-à-vis the ruling party during the 2008 mediation.

Things Fall Apart

By 2007, the economy had collapsed. Runaway inflation, a feature of the Zimbabwean economy reached a high of 231 million percent due to the Reserve Bank Policy of printing additional money to offset rising prices. Unemployment was at over 90% and there was an acute cholera epidemic due to the failure of

[147] Mapuva, J. 2010, pp. 466-467
[148] EISA. 2008, p. 6
[149] Matyszak, D. 2010, p. xvi

the water reticulation systems.[150] All basic services had crumbled, electricity blackouts were a daily occurrence, up to half the population was dependent on aid and basic commodities and medicines were either unavailable or unaffordable. Even as the country collapsed, Mugabe's elite continued to prosper; their preferential access to trading and import licenses, land, urban housing, petrol products, basic commodities and even foreign exchange allowed them to turn over small fortunes when they sold these products on the black market at hugely inflated prices.[151] A mass migration to South Africa occurred when as many as a quarter of all Zimbabweans crossed the borders in search of a means by which to save their starving families. Governance broke down as poorly paid public workers absconded from their positions to take up places in fuel lines or undertook illicit work for better pay. Zimbabwe was a virtual collapsed state.

As the economy and society collapsed, the elite tightened its grip on power. A loss of state power would mean a loss of economic power and possible destitution. The stakes of political survival had been raised even higher. In 2006 and 2007, the democratic space was restricted even further. When in 2007, a rally of the 'Save Zimbabwe Campaign' composed of civil society organisations and the MDC was halted and activists were arrested and brutally beaten, the pictures were broadcast around the world and the Southern African Development Community (SADC) was finally persuaded to intervene.[152] Mediation and negotiations to end the violence was undertaken by SADC under the guiding hand of South African President Thabo Mbeki. By the end of 2007, the parties had signed a draft constitution, agreed to legislative reforms and discussed a range of important issues; regional leaders were optimistic that the initiative would bear fruit.[153]The MDC's main objective was to have the new constitution guaranteeing basic freedoms in place prior to the holding of another election and the ruling party had accepted in principle that the election date would be determined by the time necessary to finalise and implement the new constitution.[154]

It is apparent that Mugabe had agreed to negotiate with the MDC in the hope that participation in the mediation efforts would lead the international community to remove or reduce the sanctions which were crippling his regime. While the mediation continued, in December 2007 the USA and Australia expanded their targeted sanctions, giving lie to the aspirations of the incumbent. With no remaining

[150] Bratton, M. & Masunungure, E. 2011, p. 28
[151] Ibid
[152] Matyszak, D. 2010, p. xvii
[153] ICG. 2008. "Zimbabwe: Prospects from a Flawed Election," *International Crisis Group*, Africa Report No. 138, p. 2
[154] Ibid, p. 5

incentive to carry through the reforms, Mugabe announced that harmonised (presidential, parliamentary and local government) elections would be held on 29 March 2008, long before the constitution would be finalised. The failure of the agreement had been a result of Mugabe's intransigence and negotiation in bad faith, but also due to Mbeki's reticence and failure to press Mugabe for further concessions.[155] The MDC had also been at fault, divisions between the two factions had led to the lack of a united front from which to push for reform, they failed to rally their supporters and exert extra pressures on the regime.

The 2008 election was a high-stakes game. The ruling party was experiencing serious internal convulsion, evidenced by the announcement that ZANU-PF member Simba Makoni intended to contest the presidency with significant support from moderate party heavy-weights.[156] Mugabe needed a two-thirds parliamentary majority to ensure that he could pick his successor and ensure his long-term political future. The run-up to the elections was characterised by a reduction of state-sponsored repression, but the continued manipulation of food aid to buy votes.[157] The media remained under state control while constituency demarcation, voter registration and education, inspection of the voters roll and the party primaries were all deeply flawed.[158] The judiciary was heavily weighted in favour of the ruling party while the ZEC was controlled almost entirely by party functionaries. Prior to the elections President Mugabe had stated that "the MDC shall never be allowed to rule this country... Only God, who appointed me, will remove me..."[159] In spite of this, the political space had been opened significantly due to the presence of international and regional observers and voters were excited to cast their ballots.

The voting day passed peacefully and few expected the events that were to follow. The MDC had managed to secure a provision that all voting results would be posted on the doors of the voting stations, leading to increased transparency in terms of vote counting procedures. As the parliamentary results were announced, it became clear that the MDC had won a majority in parliament, 99 seats to ZANU's 97. The balance of power was held by Arthur Mutambara's breakaway MDC which won 10 seats in the lower house. The announcing of the presidential result was far less straightforward; the announcement was suspiciously delayed with the ZEC announcing that the MDC had garnered 48% to Mugabe's 43%; neither had achieved the absolute majority necessary and a constitutionally-mandated

[155] Ibid, p. 7
[156] Ibid, p. i
[157] EISA. 2008, pp. 27-28
[158] ICG. 2008, p. 1
[159] EISA. 2008, p. 28

run-off election was scheduled for June 2008. In response to its loss at the polls and the possibility of the MDC winning the second round of elections, the ruling party undertook vicious crackdown codenamed 'Operation Mahvotera Papi' (How Did You Vote?). More than 100 MDC officials were killed, thousands were injured in politically-motivated beatings, an untold number were 'disappeared', most likely by state security operatives, and up to 200 000 people were displaced.[160] In response, Tsvangirai withdrew from the race; the resulting election saw Mugabe win the one-man contest with 85% of the vote in an election which even African leaders could no longer endorse. Bratton and Masunungure (2011) assert that reliable reports suggest that Zimbabwe's top military cabal seized political control of the state in the wake of the March elections.[161] Reports suggest that Mugabe had informed his security chiefs that he would step down and concede the victory to the MDC, but that the commander of the Zimbabwe Defence Force, the police chief, air force head and head of the prisons had vetoed his proposal and insisted on the run-off.

In June 2008, Tsvangirai suggested that "the country has witnessed a *de facto* coup d'etat and is now effectively ruled by a military junta."[162] Bratton and Masunungure (2011) characterise the resultant regime as a civilian-military coalition, a product of the liberation struggle but also of the overwhelming desire to retain power at all costs. Anecdotal evidence from a number of sources suggests that the securocrats are firmly in control of the Zimbabwean state, and are still willing to do all that is necessary to maintain a grip on the levers of power. Following the flawed election and widespread violence, regional and continental leaders insisted on the creation of a power sharing agreement between the three major political factions; the resulting government would be wracked by divisions and plagued by deadlock, this will be dealt with later in the paper.

Conclusion

The Zimbabwean crisis leading to the power sharing agreement of September 2008 was a crisis with deep historical roots. The history of the struggle for liberation and the unresolved 'land question' would play important parts in Zimbabwe's post-independence history. The militarisation of the state had begun in the 1980s and been stepped up in periods of crisis and real electoral competition, leading to the civilian-military hybrid regime that characterised the government from 2000 – 2008. Imprudent fiscal policies and global financial imperatives undermined the Zimbabwean economy and encouraged the crisis of legitimacy that led to the formation of the country's first real electoral threat to ZANU-PF

[160] Bratton, M. & Masunungure, E. 2011, p. 30
[161] Ibid
[162] Ibid, p. 31

dominance. An elite bent on retaining power at all costs destroyed the economy and bankrupted society, it remains to be seen if the Global Political Agreement will be able to repair this blighted system and restore the country to a semblance of normalcy.

Conclusion

While there are substantial similarities between the two cases, there are also crucial differences. The Kenyan crisis was precipitated by a number of long-term trends which were ignited by short-term triggers. Although the violence was largely a result of the politicisation of ethnicity following a period of elite fragmentation, there had been an extensive history of cross-party collaboration. This would have important implications for the resulting agreement. In Zimbabwe, the perennial political crises were precipitated by fierce antagonism amongst the ruling ZANU-PF towards the opposition which was viewed as a threat to their political and thus economic survival. This threat encouraged the militarisation of politics and the emergence of a siege mentality amongst the liberation elite. Following from its decreasing support at the polls, the regime increased its reliance on coercion to retain its incumbency and created a discourse of liberation nationalism to legitimise the status quo. While in Kenya, the violence had been perpetrated by a number of people across class, ethnic and political divides; in Zimbabwe the violence was the result of a state-sponsored crackdown on the opposition and their perceived support base. In both cases, a long history of violence, corruption and patronage politics had created elites that would be resistant to efforts to hold perpetrators accountable or bring justice to victims. This would not bode well for long term reconciliation or transitional justice.

Chapter 4 –Negotiating the Impasse: the Creation and Implementation of the Agreements

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Introduction

Prior to a discussion of the implementation of the agreements, it is necessary to reflect both on the process that engendered the agreements and the provisions and structure of the documents. The mediation process is invariably characterised by disagreement and deadlock, and the way in which the negotiator manages the competing interests of the principals is of vital importance for the future of the accord. The likelihood of the creation of a functional government and the full implementation of the accord can often be gauged early on from an analysis of the agreement and its provisions. As suggested by Mehler (2009), the extent or degree of power sharing is an important variable in the success of these accords.[163] He suggests that these agreements - particularly in the wake of electoral crisis - often do not sufficiently alter the nature of power relations. Thus, it is vitally important to look at these agreements to determine the degree to which they recalibrate the structures and divisions of power to create an environment which allows for the implementation of the reforms. This chapter will seek to achieve three things. It will begin with a discussion of the process through which the agreement was reached. It will then discuss the documents themselves and the ways in which they would hinder implementation and challenge the functioning of the unity governments. Finally, this chapter will seek to delineate the progress made in both cases to implement the provisions of the power sharing agreements. The following two chapters will then attempt to outline the factors that contributed to the relative success or failure of the documents.

Kenya

Introduction

The process which led to the signing of the Kenyan power sharing agreement otherwise known as the 'Agreement on the Principles of Partnership of the Coalition Government' was fraught with setbacks and disagreements between the principals. Finally, after 41 days of mediation, the agreement was signed on 28 February 2008 by PNU leader Mwai Kibaki and ODM principal Raila Odinga in the presence of mediator and former UN Secretary-General Kofi Annan, African Union head and Tanzanian President Jakaya Kikwete and former Tanzanian President Benjamin Mkapa. The piece of legislation which would bring the power sharing government into existence was signed the same day and entitled The National Accord and Reconciliation Act. Rather than constituting a single document, the power-sharing negotiations resulted in the creation of ten separate documents, each detailing a different aspect of the

[163] Mehler, A. 2009, p. 2

crisis. Altogether they have been designated as the outcomes of the Kenya National Dialogue and Reconciliation, and they address issues such as the constitutional review process, immediate security concerns and humanitarian aid, the power sharing formulation as well as pertinent issues which contributed to the crisis such as unemployment, national unity and land reform. This chapter will briefly describe the negotiations process and the ways in which the outcomes were determined by both national and international actors. Following this, it will discuss the way in which the document was structured and how this has impacted on the implementation process. Finally this chapter will aim to trace the implementation of the commitments in the agreement, particularly those relating to power sharing and electoral and constitutional reform.

Negotiations

The violence that broke out in Kenya in late 2007 took many in the international community by surprise. In spite of this, there was a rapid response from both African and international personalities, who immediately intervened to try to restore stability and resolve the disagreements between the ODM and PNU. The procession of interested persons began with the arrival of Nobel Peace Laureate Archbishop Desmond Tutu on 2 January 2008, just days after the first outbreaks of violence. He was soon followed by US Assistant Secretary of State Jendayi Frazer, former heads of state Tanzania's Benjamin Mkapa, Mozambique's Joachim Chissano, Botswana's Katumile Masire and Zambia's Kenneth Kaunda as well as AU Chairman and Ghanaian President John Kufour. The multiplicity of actors served only to complicate efforts to find a diplomatic solution.[164] Following the failure of John Kufour's efforts, the AU chief personally wrote a letter to former United Nations Secretary-General, Kofi Annan, requesting that he take on the position of AU Special Advisor and Chief Mediator of the Panel of Eminent African Personalities (PEAP) in the mediation process.[165] Annan possessed a number of exemplary qualities alongside years of mediation experience, which made him the best possible choice of mediator. He is an internationally renowned personality with strong moral authority and the ability to mobilise a wide range of human and financial resources to enable the mediation process.[166] Annan's strengths as a mediator were also supplemented by his embeddedness in broad global structures of authority and leverage.[167] The other members of the mediation team and the Panel of Eminent African Personalities,

[164] Lindenmayer, E & Kaye, J L. 2009. "A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya," *International Peace Institute*, p. 5
[165] Ibid, p. 6
[166] Ibid, p. 7
[167] Khadiagala, G M. 2009. "Regionalism and Conflict Resolution: Lessons from the Kenyan Crisis," *Journal of Contemporary African Studies*, 27, 3, p. 439

former President Benjamin Mkapa and former first lady Graca Machel, were also inspired choices. Mkapa represented the power of geographical proximity and was familiar with the principals and pertinent issues, whilst Machel's strong international reputation and experience in dealing with intransigent parties helped to disarm the principals at crucial points in the mediation.[168] Between them, the members of the mediation team presented a powerful force of legitimacy and moral rectitude which commanded the respect and cooperation of Kibaki and Odinga. Additionally, Annan invited members of private firms such as the Centre for Humanitarian Dialogue to bolster the team's mediation capacity and provide technical support during the process. This will be looked at in more detail in Chapter 5.

The strength of the negotiating team was bolstered by a high degree of pressure placed on the parties by international actors. While the mediation was initiated by the AU, the Panel had realised that in order for it to be successful, it needed the support of vital members of the international community, including African nations, the US, European Union and the United Nations.[169] While the AU's swift response to the crisis was a crucial factor in preventing further escalation of the crisis, the pressure placed on the principals by the international community was crucial in reining in contumacy and forcing a compromise between the two parties. The consensus within the community of states around the crisis created a formidable pressure group which generated momentum for the process, provided a pool of resources and exerted pressure for the parties to find a solution to end the violence.[170]

This pressure was evident initially through the efforts of US Assistant Secretary of State, Jendayi Frazer, who was one of the first international personalities to travel to the crisis-wracked country. The USA was a pivotal actor in pushing the principals to the negotiating table. During the mediation period, the US Congress held a hearing on Kenya; Nairobi received both Jendayi Frazer and Secretary of State, Condoleezza Rice and the principals received a number of direct messages from President Bush, urging them to continue the search for solutions within the ambit of the AU mediation process.[171] The US government also issued a number of ambiguous and somewhat threatening statements suggesting that it may take action to resolve the crisis. On such example was the call by Jendayi Frazer in late February for an "external solution" without giving details of what such a solution might entail.[172] Statements by Condoleezza Rice reinforced the stance that failure would not be countenanced and that the future

[168] Ibid
[169] Lindenmayer, E & Kaye, J L. 2009, p. 23
[170] Juma, M K. 2009. "African Mediation of the Kenyan Post-2007 Election Crisis," *Journal of Contemporary African Studies*, 27, 3, p. 421
[171] Ibid, p. 423
[172] Lindenmayer, E & Kaye, J L. 2009, p. 11

relationships of both parties with the US government would depend on "their cooperation to achieve this political solution."[173] The US pressured the parties by implicitly suggesting that less appealing alternatives to the mediation were still on the table, including unilateral action and the imposition of sanctions through the UN Security Council through its statement that the country was "exploring a wide range of options."[174]

Other international actors such as the World Bank and European Union (EU) placed great pressure on the government of Kenya by threatening to suspend assistance in the absence of a negotiated settlement to the crisis. The EU took a particularly strong stance by stating that "until a legitimate solution is agreed, the EU and its member states cannot conduct business as usual with Kenya."[175] The EU, World Bank and the African Development Bank each released statements of concern over the economic and political repercussions of the violence and encouraged the political leaders to seek a viable long term solution through the AU-Annan mediation effort.

The most sustained pressure and backing for the AU initiative came from the United Nations (UN). This began with a UN Security Council briefing on the situation on 30 January 2008, following which the council issued a statement calling for the country's leaders to act decisively to end the violence and restore stability.[176] The following day, UN Secretary-General Ban Ki Moon addressed the UN General Assembly to underscore the need to resolve the crisis and pledge UN support for the mediation process. On 1 February, Ban flew to Nairobi to meet with Annan, Kibaki and Odinga and show his support for the initiative while emphasising that the international community was eagerly awaiting a resolution to the crisis. The UN Security Council issued statements commending the AU-led mediation and the multi-nation body provided technical assistance in the form of staff members who assisted with analysis, policy advice and provided general staff support to the mediation team.[177] This pressure by international actors encouraged Kenya's political leaders to stay the course, and it helped to level the playing field by creating incentives for cooperation rather than conflict.

There are a number of reasons for the sustained pressure by the international community. As noted above, the violence in Kenya took the international community by surprise as the country had always been seen as a beacon of stability and democracy in a region often wracked by turmoil. It seemed to

[173] Ibid, p. 20
[174] Ibid
[175] Juma, M K. 2009, p. 421
[176] Ibid, p. 422
[177] Ibid

become an issue of 'drawing a line in the sand,' the consensus was that if Kenya could suffer such a crisis, what were the implications for the rest of the region and indeed the continent? Support for the mediation was seen as a battle for the protection of democracy in Kenya, seen by many as a model for the continent.[178] Kenya is also particularly important from a geostrategic perspective. It is a key partner of the USA and front line state in the 'war against terror' as well as being an important regional base for US interests in the region. Kenya hosts the largest US diplomatic mission in sub-Saharan Africa, this mission houses 18 federal agencies and offices. Kenya also hosts the third largest UN headquarters with over 1 000 international staff and a humanitarian logistics hub for the region, with all international assistance programmes for the Greater Horn of Africa being organised out of Nairobi. The collapse of Kenyan infrastructure would have had dire consequences for major humanitarian theatres such as those in the Eastern DRC, Somalia and South Sudan.[179] The crisis in the country had also held negative consequences for landlocked countries which rely on the country for trade and aid supplies, such as the Eastern DRC, Rwanda, Burundi, Uganda and South Sudan. The continued crisis threatened to exacerbate problems within the region. Finally there was a sense that unwieldy intervention from Western states may push Kenya further towards China, whose influence in the region and within Kenya was growing significantly. Each of these factors contributed to the support of the international community for the AU-led mediation efforts and explains the sustained pressure placed upon the parties to support and encourage a negotiated settlement. In spite of the initial gulf separating the stances of Kibaki and Odinga, a confluence of factors came together to produce success in the form of the signing of the Kenyan Accord.[180]

The Kenyan National Accord of 28 February 2008

Following 41 days of mediation, Mwai Kibaki and Raila Odinga signed a document on 28 February entitled the 'Agreement on the Principles of Partnership of the Coalition Government', which would lay the basis for the Grand Coalition government. In contrast to the Zimbabwean power-sharing agreement which was a single document covering all the issues to be addressed by the unity government, the Kenyan Accord[181] was made up of ten documents which were signed over a period of four months. Each

[178] Ibid, p. 423
[179] Ibid
[180] Juma (2009) suggests that these were 1.) A clear framework for mediation within the ambit of the AU early in the crisis 2.) The role of Kenyan stakeholders in mounting and sustaining pressure on both parties and the mediating team 3.) The character and expertise of the mediation team 4.) The pressure exerted by the international community to encourage a settlement.
[181] This will be the phrase used to designate the 10 statements and agreements signed between 1 February and 23 May 2008 which include the Agreed Statement on Measures to Address Humanitarian Crisis (01-Feb-2008), Agreed

document deals with a specific issue addressed by the four agenda's developed by the mediation team. Agenda One involved the immediate cessation of hostilities and the restoration of fundamental human rights; Agenda Two involved addressing the humanitarian crisis and promoting national reconciliation; Agenda Three was concerned with negotiations to overcome the immediate political crisis; and Agenda Four dealt with the development of long-term strategies for durable peace.[182] Agenda's One and Two were resolved by 4 February, while the contentious issue of power sharing at the heart of Agenda Three proved to be particularly difficult to negotiate. This issue became protracted and the negotiations were marked by brinkmanship, prevarication and delays – mostly on the side of government/the PNU who were reluctant to share power equitably. The negotiations over Agenda Three consumed more than three weeks of the negotiations process, and the outcome was seen as the culmination of the mediation process. When the mediation teams were deadlocked, Annan side-lined the hardliners by negotiating directly with the principals in isolation from their parties. The agreement was finally hammered out in the presence of the AU chair and Tanzanian President Jakaya Kikwete, the former Tanzanian President Benjamin Mkapa and mediator, Kofi Annan. Each of these actors provided the legitimacy and the leverage that would ensure the cooperation of the principals. On 28 February, the principals signed both the Agreement on the Principles of Partnership of the Coalition Government and the National Accord and Reconciliation Act which would be passed into law by Parliament and give effect to the Partnership Agreement.

General

While the negotiation process has been seen as a resounding success, the agreement that it produced has not been without its faults. The agreement did not provide for an institutional mechanism to mediate conflict between the two parties or stipulate the organisation or party that would be tasked with ensuring the implementation of the agreement. This has meant that when discussions in government stalemated, such as those during the division of cabinet posts in April 2008, Kofi Annan was recalled by the principals to mediate a solution to the impasse. Later, the AU mandated the PEAP to continue to oversee the process in Kenya, although this was not written into the documents or agreed

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Statement on Security Measures (04-Feb-2008), Agreed Statement on How to Resolve Political Crisis (14-Feb-2008), The National Accord and Reconciliation Act 2008 (28-Feb-2008), Agreement on the Principles of Partnership of the Coalition Government (28-Feb-2008), Long-Term Issues and Solutions: Constitutional Review (04-Mar-2008), Commission of Post-election Violence (04-Mar-2008), Truth, Justice and Reconciliation Commission (04-Mar-2008), Independent Review Committee (04-Mar-2008) and the Statement of Principles on Long-term issues and solutions (23-May-2008).

[182] Kenya National Dialogue and Reconciliation, 2008, these documents can be found at http://www.dialoguekenya.org/agreements.aspx

to by the principals. The lack of a monitoring and enforcement mechanism defined in the document alongside the ambiguity of the agreement as discussed below, has meant that the implementation of the agreement has largely been contingent on the political will of the parties involved. The agreement also failed to stipulate how long the coalition government would last, and what would happen if it collapsed prior to new elections scheduled for 2012. This created substantial uncertainty over these issues.

In spite of the failure to stipulate the creation of a monitoring mechanism within the document, Annan undertook to have civil society act as a monitoring party and his clever manipulation of which parties would be attendant at monitoring and implementation meetings has led to increased pressure on the principals to enforce the agreement. This will be looked at in more depth in chapter 5.

The Structure of Government

The agreement allowed for the creation of the posts of Prime Minister and two Deputy Prime Ministers. The Deputy Prime Ministers would be appointed by the two parties, one by the ODM and one by the PNU. The cabinet would consist of the President, the Vice President, the Prime Minister, the two Deputy Prime Ministers and the other ministers and the removal of the members of cabinet would be subject to consultation between the principals and concurrence in writing. The Prime Minister and Deputy Prime Ministers were insulated from reneging by the provision that they could only be removed by the National Assembly's passing of a vote of no confidence via simple majority. The principle of power sharing was further entrenched by the provision that "the composition of the coalition government will at all times take into account the principle of portfolio balance and will reflect their relative parliamentary strength."[183] Finally, it stipulated that the coalition government would only be dissolved if the tenth parliament is dissolved or if the parties agree in writing, or lastly if one of the coalition partners withdraw from the coalition.[184]

The National Accord and Reconciliation Act which was to embed the new power-sharing arrangement within the constitution failed to delineate the role of the newly-created position of Prime Minister which set the stage for political wrangling following the constituting of the Grand Coalition government.[185] The Act stated that the Prime Minister "shall have authority to coordinate and supervise the execution of

[183] National Accord and Reconciliation Act, 2008. Found at: http://www.dialoguekenya.org/docs/Signed_National_Accord_Act_Feb28.pdf
[184] Ibid
[185] Horowitz, J. 2008. "Power-Sharing in Kenya: Power-Sharing Agreements, Negotiations and Peace Processes," *Centre for the Study of Civil war*, p. 9

the functions and affairs of the Government of Kenya, including those of the Ministries," and "shall perform such other duties as may be assigned to him by the President or under any written law."[186] This lack of clarity created opportunities for conflict and brinkmanship between the President, Prime Minister, the Vice President and the two Deputy Prime Ministers as each vied for power and tried to outmanoeuvre the other. This has also created tension with regards to the remuneration of the Prime Minister, as the PNU suggests that it should be equal to the Vice President, while the ODM suggests that it should be equal to the President, in keeping with the spirit of the Accord.[187] The lack of clarity over the role of the Prime Minister has also created conflict with the Head of Civil Service and Secretary to the Cabinet over a perceived duplication of duties and a lack of a distinct hierarchy within government.[188] These tensions and the power struggles between the parties led to the perception that there is a 'two-in-one-government' where the PNU is more powerful than the ODM.[189]

In addition to the problem highlighted above, the agreement fails to clarify important concepts on which the coalition government is built. The meanings of 'portfolio balance' and 'composition of the coalition government' are not clarified or defined at all in the agreement, or even in the Interpretations and General Provisions Act in Chapter 2 of the former Constitution. The failure to define these concepts has led to differing interpretations between the two parties according to self-interest. Some have argued that portfolio balance means that the positions in cabinet and the civil service should be shared equally, rather than according to the electoral strength of the parties as determined by the 2007 parliamentary elections. While these issues ceased to be a major stumbling block for the coalition government after approximately 18 months, they served to undermine public confidence in the power sharing arrangement and undermine public perceptions regarding government effectiveness.[190]

Legislation

The main goal of the National Accord was to create the necessary conditions under which a unity government could undertake far-reaching reforms and address the root causes of the conflict.[191] Under the accord, the parties agreed to implement a number of reforms, including a constitutional review,

[186] National Accord and Reconciliation Act, 2008.
[187] Kanyinga, K. 2009. "Hobbling Along to Pay-Offs: The Kenya Grand Coalition government," Paper Presented for a Workshop on *Political Inclusion in Africa*, Washington DC, 24-25 April 2009, p. 11
[188] South Consulting. 2009. "Agenda Item 3: Resolving The Political Crisis (Power Sharing)," Report on Status of Implementation, *Kenya National Dialogue and Reconciliation Monitoring Project*, January 2009, found at: http://www.dialoguekenya.org/docs/Agenda%20Item%20Three%20chapter.pdf
[189] Kanyinga, K. 2009, p. 11
[190] Ibid, p. 12
[191] Ibid, p. 9

police, judicial, parliamentary, executive and civil service reforms; a land review; they pledged to fight unemployment, poverty, inequality and regional imbalances; the parties committed to promote transparency and accountability while fighting impunity and finally, they committed to encouraging national cohesion and promoting reconciliation.[192] Each of these issues was identified as a primary determinant of the 2007-2008 crisis and a possible area for conflict and contention in the future.

The coalition partners agreed to create commissions to make inquiries into the post-election violence and to make recommendations on the reform of the electoral institutions. They also committed themselves to the creation of a Truth, Justice and Reconciliation Commission (TJRC) to encourage reconciliation and national healing. The extent to which these provisions have been implemented will be examined later in this chapter.

Disarmament

While the accord proposed reforms to the police and civil service, it failed to address the militarisation of Kenyan society that has been an issue since the early 1990s. Peace agreements usually contain provisions for the demobilisation, disarmament and reintegration (DDR) of armed groups, as a means to reduce the likelihood of future conflict.[193] The National Accord contained no mention of DDR, and this has been seen as one of its greatest flaws. The subsequent government's failure to address the proliferation of armed gangs and militias has been a critical fault and these organisations continue to pose a threat to the stability of future elections and political processes. Brown (2011) suggests that a number of communities, particularly in the conflict-prone Rift Valley region have begun to re-arm themselves in anticipation of future attacks, which has led to an escalation of arms and an increasing security dilemma for affected communities.[194]

A New Constitution

A number of the documents in the Kenya National Dialogue and Reconciliation agreements refer to the intention to undertake constitutional reforms. The Statement of Principles on Long-Term Issues and Solutions signed on 23 May 2008 includes a clause that reaffirmed the principals' "commitment to complete the comprehensive constitutional review process within twelve months in accordance with

[192] Kenya National Dialogue and Reconciliation. 2008. *Statement of Principles on Long-Term Issues and Solutions*. Found at http://www.dialoguekenya.org/docs/S_of_P_with_Matrix.pdf
[193] Brown, S. 2011. "The National Accord, Impunity and the Fragile Peace in Kenya," paper presented at the 6th ECPR General Conference, University of Iceland, 25-27 August 2011, p. 12
[194] Ibid

the roadmap agreed to on 4 March 2008."[195] The 4 March agreement was in fact a two-page document outlining the intended constitutional review process. This agreement is entitled "Longer Term Issues and Solutions: Constitutional Review," and it outlines the commitment of the parties to undertake a participatory constitutional revision within 12 months of its initiation in parliament. This document further stated that the proposed constitution would be passed by parliament prior to a referendum in which the Kenyan people would consider the new fundamental law.[196] The implementation of these provisions and the new constitution will be considered later in this chapter.

Power Sharing?

As noted above, in spite of the existence of an explicit agreement on the institution of a power sharing agreement, the wording of the document was vague and it left much to be interpreted by the parties to the agreement. The negotiations after the signing of the Accord deadlocked over the allocation of ministries. Both sides sought to control key ministries such as Finance, Internal Security and Public Service amongst others.[197] The stalemate threatened to derail the government, and after weeks of negotiations, Kofi Annan was called back in to help broker a deal.[198] Although it was not a part of the initial power sharing agreement, Annan introduced an interesting concept to bridge the rift between the feuding parties. In each of the ministries, the top positions would be split equally between the two parties, and balance would also be created *within* each ministry.[199] This meant that if the top position within a particular ministry was filled by the PNU, the second position would be filled by the ODM and vice-versa.[200] This is an important addition as it allows each party to keep an eye on the other, increasing cooperation and trust while making it difficult for either of the parties to turn a particular ministry into their personal fiefdom. The deal led to the creation of an expanded cabinet of 40 posts alongside 50 assistant ministers, the largest and most expensive in Kenyan history. In spite of the tendency of the leaders to suggest that this was a matter of principle, analysts have suggested that this was in fact undertaken as a means to increase the avenues for patronage for both parties.[201]

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[195] Kenya National Dialogue and Reconciliation. 2008. *Statement of Principles on Long-Term Issues and Solutions*.
[196] Kenya National Dialogue and Reconciliation. 2008. *Longer Term Issues and Solutions: Constitutional Review.* Found at: http://www.dialoguekenya.org/docs/KenyaNationalDialogue_ConstituinalReview.pdf
[197] Horowitz, J. 2008, p. 10
[198] Ibid, p. 11
[199] Ibid
[200] Ibid
[201] Kanyinga, K. 2009, p. 10

While initial disagreements in the coalition government revolved around the distribution of positions and the roles of newly created government positions,[202] as the coalition matured the nature of disputes changed. The coalition has not seen open disagreements between the principals for some time, and rather than the open lobbying between preferred candidates that is seen between mid-range political elites, Kibaki and Odinga appear to quietly 'horse-trade' and share public positions between their preferred candidates.[203] The public show of unity between the President and Prime Minister belies political undercurrents of competition and mistrust, particularly as the 2012 election draws nearer.[204] While the agreement failed to delineate the role of the Prime Ministerial positions and the early months of the agreement witnessed substantial political manoeuvring and bickering, a political culture of collusion – which will be looked at in chapter 6 – has led to the relative success of the power-sharing agreement.

Implementation

The implementation of the Kenyan Accord has been seen to have been largely successful as it served to stop the violence seen in 2007 and 2008 and it has witnessed the promulgation of a new constitution ratified by a peaceful referendum in August 2010.

Successes

Reduction of Conflict

The immediate reduction of conflict which formed part of Agenda One of the mediation was successful. The end of the mediation process saw an end to overt hostilities and a reduction of the conflict that had characterised the post-election period. It had also overseen the restoration of human rights and freedoms and a return to relative stability. However, as noted above, the government has not undertaken a concerted campaign to demilitarise society and demobilise armed groups. There has been a failure by police and officials to arrest and prosecute members of these gangs, including those who perpetrated the violence that led to the signing of the accord. The likely reason for this failure is that many politicians continue to provide support and patronage to these groups and it is not in their interest to see them demobilised.[205] Although these groups have not been overly active in the four years since

[202] South Consulting. 2009.
[203] South Consulting. 2012. "Progress in Implementation of the Constitution and Preparedness for 2012," *Kenya National Dialogue and Reconciliation Monitoring Project*, January 2012, p. 37 found at: http://www.dialoguekenya.org/mreport.aspx
[204] Ibid
[205] Kanyinga, K. 2009, p. 14

the signing of the Kenyan Accord, they remain dormant and can be reactivated with ease if political circumstances favour their re-emergence.[206]

Review Commissions

The power sharing agreement required the establishment of a number of commissions. The first was the Commission of Enquiry into the Post-Election Violence (CIPEV), better known as the Waki Commission after its chair, Justice Waki. This was one of the most important institutions agreed to by the PNU and ODM principals and it would have far-reaching consequences for Kenya's political landscape. This commission produced a report which became an invaluable account of the violence that was perpetrated during the two months following the December 2007 elections. It was released in October 2008 and it documented a wide range of atrocities perpetrated by ODM supporters, PNU supporters and police members.[207] This report not only provided an account of the violence, but it supplied powerful evidence of the guilt of a number of high-ranking politicians and civil servants. One of the commission's recommendations was that a Special Tribunal be established in Kenya to prosecute up to several hundred suspected perpetrators. A number of similar commissions from the pre-2007 period had seen their reports and recommendations swept under the carpet. To avoid this eventuality, the CIPEV commissioners introduced a 'Trojan horse' provision to increase the likelihood of implementation.[208] The commission gave the government 105 days to create a tribunal to hold the perpetrators of violence to account. In the absence of this the head of the commission, Justice Waki, sent Kofi Annan a sealed envelope containing a list of names of people whom the commission had identified as bearing the greatest responsibility for the violence. When the Kenyan government repeatedly failed to institute a criminal tribunal, Annan passed the list of names to the International Criminal Court's lead prosecutor, Luis Moreno-Ocampo on request that he institute an investigation.

At the insistence of the ODM, the Kenyan Accord mandated that the principals institute a review committee to investigate all aspects of the 2007 election which had led to the worst post-election violence in the country's history. In March 2008, the ODM and PNU negotiators signed the agreement on the creation of the Independent Review Committee. This body was mandated to investigate the systemic problems which had led to the violence and make recommendations to improve the electoral process. The report was issued in September 2008 and made a number of technical recommendations.

[206] Ibid
[207] Brown, S. 2011, p. 4
[208] This was an expression used by Mugambi Kiai during an interview with Stephen Brown and Chandra Lekha Sriram on January 15 2010. Quoted in Brown, S. 2011, p. 5

In spite of the desire of many Kenyan politicians and civil society members to receive a definitive account of who had won the election, the committee refrained from the 'naming and shaming' of politicians with regards to electoral irregularities and did not identify the legitimate winner of the election.[209] Although this may seem to be a negative outcome, such a finding may instead have reignited conflict. Instead, the Independent Review Committee report led to the disbandment of the dysfunctional Electoral Commission of Kenya and the appointment of an interim electoral commission as well as resulting in the institution of wide-reaching electoral reforms.[210]

A New Constitution

The creation and institution of a new constitution following the referendum held in August 2010 is seen as not only the main achievement of the Kenya National Dialogue and Reconciliation (KNDR) process, but it also signifies the potential for the emergence of a new culture in public political life. The promulgation of the constitution is not the end of this process however; Schedule 5 of the new fundamental law lists 49 pieces of legislation which are needed to bring the constitution into effect.[211] By the end of the first year, parliament had passed 26 of these laws, and had passed several more between October and December 2011.

The creation of two committees to oversee the implementation of the constitution is particularly commendable. These bodies are the Constitution Implementation Commission (CIC) and Constitution Implementation Oversight Committee (CIOC) which effectively institutionalise the call for robust oversight over the implementation of the document.[212] Since their creation, these bodies have been at the front line of monitoring progress, coordinating processes, reporting, building public participation processes and applying pressure on government bodies.[213] This is a positive step which has helped to keep the creation and promulgation of new legislation on target.

In spite of these successes, there have been delays with the creation of new legislation. Only 2 bills of 8 which were to be vetted by 26 February 2012 had been submitted to the Constitutional Implementation Commission (CIC) by January 2012. These were the Land Bill and Land Registration Bill.[214] South

[209] Ibid, p. 7
[210] Ibid
[211] South Consulting. 2012, p. 16
[212] Atta-Asamoah, A & Githaiga, N. 2011. "Implementing Kenya's Constitution Like Shooting at a Moving Target," *Institute for Security Studies*, found at: http://www.iss.co.za/iss_today.php?ID=1363, accessed on 26 February 2012
[213] South Consulting. 2012, p. 16
[214] Ibid, p. 18

Consulting (2012) suggests that this is an important issue as a pattern of rushing and delay at the 11th hour undermines public participation and oversight in the legislative process. The consulting group suggests that these delays are attributable to vested interests holding back the finalisation of the legislation.[215] Current political attention is now focussed on the 2012 elections, and this has led to a battle for political and individual interests that is undermining the coherence and unity of the leadership in implementing the new provisions.[216] There have also been a number of attempts by politicians to amend the constitution, which civil society members see as an attempt by the political leadership to undermine the creation of a new constitutional dispensation.[217]

The new Kenyan constitution has been hailed as a great success, particularly as it has proposed a devolved system of government and lessened the powers of the strong executive presidency as enshrined in the previous constitution.[218] It also introduced a revised bill of rights which enshrines a number of socio-economic rights where they had not previously been recognised. The new law also introduced reforms to the judicial arm of government by providing for an independent Judiciary Services Commission (JSC) and a new vetting process for judges which would serve to undermine attempts to exert undue influence upon them.[219] This has served to increase public confidence in the judiciary.[220]

Electoral Reforms

Following the dismantling of the ECK and the creation of the new constitution, the government instituted the Independent Electoral and Boundaries Commission (IEBC). This is a crucial development considering that it was the failures of the ECK and the perceived partiality of the institution that led to the emergence of the post-election violence in 2007. This new commission is responsible for setting electoral boundaries, civic education, voter registration and the settling of electoral disputes. It is seen as more independent than its predecessor and this has greatly increased the trust of the electorate in the institution. Unfortunately, in spite of the recommendations in the Independent Review Commission (IREC) report, Kenya has retained its first-past-the-post electoral system, a system which encourages a winner-takes-all mentality. While this is not a definite indicator of the likelihood of future violence, many analysts have suggested that this electoral system is the most likely to encourage zero-sum politics. Additionally, electoral malpractices have still gone unpunished. The Kitutu Masaba by-election

[215] Ibid
[216] Atta-Asamoah, A & Githaiga, N. 2011.
[217] South Consulting. 2012, p. 18
[218] Kersting, N. 2011. "Constitutional Review and Referendums in Kenya," *Africa Insight*, 40, 4, pp. 76-77
[219] Ibid
[220] South Consulting. 2012, p. 28

was the first to be held by the new IEBC. In spite of the reforms to the electoral body and system, the election saw reports of violence, bribery, vote buying and assault. The IEBC has refrained from taking any action on these offences.[221] Further, election-related violence has been seen in Rongo, Migori County. These signs are problematic, there needs to be heightened political will from the leadership to send out a strong message that electoral offences will not be tolerated, particularly prior to and during the 2012 election.

Failures

Conflict Resolution Mechanisms

The failure of the agreement to create conflict resolution mechanisms for the members of the coalition was a significant oversight. While the government matured over time, it has not been particularly cohesive during much of its four-year tenure.[222] In an impressive show of initiative, the coalition government undertook to overcome this problem by establishing the Permanent Committee on the Management of the Affairs of the Coalition which was composed of six members of each of the parties and was jointly chaired by the President and Prime Minister.[223] Unfortunately this committee was plagued by problems as a result of the selection of participants. Although the committee held a number of meetings following its institution in January 2009, these soon faded out and the committee became dormant. Internal divisions along power sharing lines threaten to derail the coalition ahead of the 2012 elections, and it is crucial that this committee is reconstituted.[224]

Addressing Impunity

The KNDR mandated the creation of a Truth, Justice and Reconciliation Commission (TJRC). Within a week of signing the national agreement, the PNU and ODM reached an agreement which spelled out the parameters, principles and composition of this body.[225] After a series of delays, the commission did not begin hearings until April 2011. These delays were attributed to government foot-dragging, the withholding of financial support and the appointment of a controversial ambassador as commission chairperson; indeed Bethuel Kiplagat has been implicated in abuses that are within the mandate of the commission's enquiries.[226] Additionally, the body was undermined by its extremely broad mandate, which was to investigate human *and* economic rights abuses from independence in 1963 until the

[221] Ibid, p. 48
[222] Ibid, p. 68
[223] Kanyinga, K. 2009, p. 13
[224] South Consulting. 2012, p. 68
[225] Brown, S. 2011, p. 5
[226] Ibid, pp. 5-6

signing of the Kenyan Accord in February 2008. Additionally, human rights campaigners have criticised the insufficient independence of the institution and the government's central role in determining whether to grant amnesty or prosecute. Compounding these issues, the provisions for witness protection are not adequate and are unlikely to induce full disclosure.[227] There is a fear by some analysts that the report may not adequately fulfil its mandate; it is rushing through to make up for lost time and this has led to a failure to allow for in-depth discussion and analysis.[228] For example, political assassinations were allocated only 2 days of public hearings, in spite of the fact that violations span more than 60 years.[229] There is a sense that these failings of the commission were not incidental, but rather contrived by political actors to undermine the commission and continue to uphold the impunity that has been a fundamental factor in Kenyan political society since independence.

During the four years since the signing of the Kenyan power sharing agreement, few perpetrators of the violence have been held accountable. The government has made no concerted effort to bring justice to the victims of the violence. Where there have been court cases, these have largely resulted in acquittals due to shoddy police work.[230] In some cases, evidence has been tampered with and contaminated in calculated moves to prevent conviction.[231] This means that there is still a widespread sense within Kenya that the perpetrators will not be held accountable and that impunity will prevail.

The failure to address impunity for the post-election violence has been a sore point for the reform process. According to South Consulting (2012), it remains the main indicator that Kenya's political culture has not changed fundamentally.[232] Indeed Stephen Brown (2011) has described the coalition government as the "government of national impunity" as members of both parties – who have been equally responsible for human rights abuses and violence – share a common interest in preventing accountability for the post-election violence.[233] This is why the intervention of the International Criminal Court (ICC) has been welcomed by large sections of Kenyan society. Following the confirmation of charges in early 2012 against four prominent Kenyans including Uhuru Kenyatta and William Ruto, there

[227] Ibid, p. 6
[228] South Consulting. 2012, p. 62
[229] Ibid
[230] Ndirangu, S. 2011. "Kenya: The African Union is Setting Itself Up for Failure," *The East African*, 31 January 2011, found at http://allafrica.com/stories/201101311116.html, accessed on 5 March 2012
[231] Ibid
[232] Ibid
[233] Brown, S. 2011. "Lessons Learned and Forgotten: The International Community and Electoral Conflict Management in Kenya," in D. Gillies (ed.), *Elections in Dangerous Places: Democracy and the Paradoxes of Peacebuilding*, (Montreal: McGill-Queens University Press), p. 135 ; Brown, S & Sriram, C. 2012. "The Big Fish Won't Fry Themselves: Criminal Accountability for Post-Election Violence in Kenya," *African Affairs*, 0, 0, pp. 1-17

is significant concern over the implications of this process for the 2012 elections.[234] Unfortunately, the ICC is unable to try middle and low level perpetrators of crimes, and domestic accountability (particularly at a local level) remains elusive.

Land Reforms

Agenda Four identified land reform as critical to securing sustainable peace and stability in Kenya. The Ministry of Land has been preparing draft legislation, but a number of non-governmental stakeholders pulled out of the process in September 2011 after protesting that the ministry is not consulting adequately and is lacking in commitment to the reform process.[235] The Ministry has established the Lands Transformation Unit, but stakeholders have again insisted that it is weak and does not have sufficient autonomy. Many Kenyans and members of civil society feel that government has been particularly slow on land reforms. The National Land Commission, created by Article 67 of the new constitution should have been in place by 26 August 2011, and the office of the Commissioner of Lands disbanded and amalgamated. Delays with the implementation of the commission have been attributed to internal resistance by politicians with vested interests in the land sector, including alleged corruption cartels.[236] It is likely that politicians are intentionally frustrating the land reform efforts to prevent the loss of their own illegally-owned land and possible prosecution. This is a critical deficit as the land question was a key ignition point in 2007 and the failure to effect reform in this sector will perpetuate the threat of violence.

Internally Displaced Persons

A significant focus of Agenda Two of the Accord was addressing the humanitarian crisis. Four years after the signing of the agreement, a significant number of the approximately 300 000 internally displaced persons (IDPs) remain displaced. Nearly all of the camps have been closed and the bulk of IDPs have been returned to their homes, but thousands who were not able to return to their homes are still awaiting land allocation by the government.[237] In December 2011, Prime Minister Raila Odinga lamented that "the continued existence of IDPs remains a gaping wound on our conscience. Many post-election violence victims still live in squalid camps dotted across the country."[238] Government has recognised the need to resettle all displaced persons by the next elections in late 2012. There have been some moves

[234] South Consulting. 2012, pp. 50-52
[235] South Consulting. 2012, p. 30
[236] Ibid, p. 32
[237] Ibid, p. 58
[238] Ochami, D & Opiyo, P. "Red Flag Goes Up on 2012 Elections," *Standard Media,* 6 December 2011, found at http://www.standardmedia.co.ke/InsidePage.php?id=%202000047881&cid=4&story=Red%20flag%20goes%20up%20on%202012%20elections, accessed on 7/12/2011

towards repatriation and reparations but these have been constrained by a lack of available, reasonably priced land and the displeasure of locals. A Draft National Policy on IDPs which was completed in 2010 has been awaiting cabinet approval for more than a year. The Parliamentary Select Committee on Resettlement of IDPs has drafted a Bill on IDPs with the assistance of civil society organisations; this bill is a positive step towards solving this issue, and it will be presented to cabinet for approval in 2012.[239]

Conclusion

The Kenya National Accord was the product of what has been deemed a very successful mediation effort undertaken by the AU with significant international support. In spite of this, the agreement that was reached by the principals was not as strong as it could have been. This was as a result of political compromise during difficult negotiations, but it has undermined the effective functioning of the coalition government. Issues which were not adequately addressed or explained led to bickering between the two parties in the early years of the agreement. While these tensions settled down with the maturation of government, tension still simmers under the surface, and there is consensus between many analysts that high levels of cooperation denote the re-emergence of patronage structures and systems which have collaborated to stymie reform efforts. The reforms undertaken by the government of national unity have largely been successful, with high points being the promulgation of a new constitution in 2010 and extensive electoral reforms. In spite of these positive trends, the constitutional implementation process is still captive to political party interests and suggestions of reform to the document have been met with concern. The new electoral commission has wide-ranging powers and has successfully garnered wide support from the electorate, although anxiety remains over its handling of by-election irregularities in some areas. Crucially, impunity and corruption remain huge challenges facing the government which has not undertaken significant attempts to hold perpetrators of violence accountable, largely as a result of their own culpability. Internally displaced persons remain unsettled in many parts of the country and this may be a powder keg for violence in the 2012 elections. In spite of these issues, the Kenyan coalition government has undertaken significant reforms and should be commended for its implementation of the 2008 power sharing agreement. The reasons for its relative success will be outlined in the following two chapters.

[239] South Consulting. 2012, p. 62

Zimbabwe

Introduction

The creation of the Global Political Agreement (GPA) was fraught with problems and stalemates, and was only signed by the parties on 15 September 2008 following months of intense negotiations. The mediation process was dominated by a SADC-mandated facilitator in the person of South African President Thabo Mbeki. Mbeki's role in the creation of the document and its subsequent implementation would have profound effects on the viability of the accords and the success of the unity government. This chapter will briefly trace the negotiations of the power sharing agreement and try to make sense of the resultant document. Following this, the implementation of the agreement since its inception in September 2008 will be covered.

Negotiations

Following the sham presidential run-off elections in June, not even the previously conciliatory SADC or AU accepted that the elections had represented the will of the Zimbabwean electorate, and they began to call for a negotiated agreement involving some level of power sharing to break the political impasse. SADC, in its Johannesburg Summit of 16-17 August 2008, made it clear that there was no acceptable alternative to an inclusive inter-party agreement.[240] Mugabe's ZANU-PF was facing a growing legitimacy crisis – both within Zimbabwe and across the continent due to the manipulated elections and the economic crisis which many had attributed to a failure of governance; he saw the discussions with the MDC as a means by which to retain power, increase his legitimacy and to secure the repealing of sanctions that had been placed upon him and his inner circle. The mediation period of mid-2008 can be seen as a continuation of mediation efforts that had begun in 2007 and had stalled in early 2008. The reason for the failure of the earlier phase of negotiations can be seen as the intransigence of the ruling party with regards to the agreed-upon process of constitutional reform and their failure to significantly relax political restrictions.[241] The success of the post-electoral negotiations would hinge on the details of the power sharing agreement; in essence the way in which power was shared amongst the three main

[240] EISA. 2008. "The Zimbabwe Harmonised Elections of 29 March 2008: Presidential, Parliamentary and Local Government Elections," *EISA Election Observer Mission Report No. 28,* p. 79
[241] Ibid, p. 9

contenders, the MDC-T (headed by Morgan Tsvangirai), MDC-M (under Arthur Mutambara) and ZANU-PF. In spite of the decision to participate in negotiations, early on Mugabe was unwilling to relinquish core cabinet positions and the executive presidency.[242] The mediation team then proposed a dual system of executive power with the retention of the presidency (which chairs the cabinet) and the creation of the post of prime minister who would chair a newly created council of ministers. The role of Thabo Mbeki in the negotiations was central while his long history of friendship with Mugabe and soft stance on Zimbabwe made him a partial mediator. The lop-sided nature of the agreement is likely due to Mbeki's unwillingness to pressure Mugabe into a position of equality. This will be discussed further in Chapter 5 under the rubric of 'regional influences.'

A memorandum of understanding was signed between the contenders in Harare on 21 July 2008 while the formal agreement was signed in September. The agreement was only reached under intense regional and international pressure; each leader signed the agreement reluctantly.[243] For the MDC, the election had shown that there was significant support for the party amongst the electorate but that the obstinacy of the ruling party would not allow for a handover of power; the GPA represented a different strategy by which to gain a foothold in government – and perhaps the only way to do so. For Mugabe, the GPA was a way to regain legitimacy and buy time in order to work out a new survival strategy.[244] The GPA represented a "marriage of inconvenience"[245] and in a rush to resolve the violence it papered over key issues and concerns, leaving these to be resolved at a later date. The main aim of the agreement was to end the violence that had characterised the early months of 2008 and create a transitional government that would be able to institute credible reforms; the end-goal being free and fair elections for a new government that *would* be representative of the will of the Zimbabwean electorate.

The Global Political Agreement of 15 September 2008

The agreement has a lengthy preamble which commits the parties to the agreement to cooperate for the benefit of the country and the populace. The preamble is followed by 25 articles dealing with various facets of Zimbabwean political and economic life. It covers many aspects and activities that had been a cause or trigger of violence in the past, including land, political participation, the rule of law, freedom of

[242] Ibid, p. 79
[243] Bratton, M. & Masunungure, E. 2011. "The Anatomy of Political Predation: Leaders, Elites and Coalitions in Zimbabwe, 1980-2010," *Developmental Leadership Programme*, Research paper 9, p. 32
[244] Ibid, p. 33
[245] Morgan Tsvangirai in an address to a conference organized by IDASA on 28 May 2010, quoted in International Crisis Group. 2008. *Zimbabwe: The Road to Reform or Another Dead End?* Africa Report No. 173, 27 April 2011, p. 3

assembly and association and the National Youth Training Programme.[246] This section will seek to evaluate the document to form a base from which to understand the implications that it has had on resolving the post-election crisis and facilitating a transition towards democracy and stability in Zimbabwe. The following paragraphs will largely be drawn from an analysis of the agreement undertaken by prominent Harare-based lawyer and researcher Derek Matyszak; he is a senior researcher with the Research and Advocacy Unit, a civil-society non-governmental organisation working extensively on the Zimbabwean crisis and the GPA.

General

To begin, the agreement itself is badly designed; the layout is inconsistent while the language used is imprecise and ambiguous.[247] The bulk of the 15 page document is made up of pious statements which have few practical considerations and which amount to little more than political posturing; the accord is also silent on assigning blame for the political crisis. An example of this is article 11.1(b) where the parties agree that it is 'the duty of all political parties and individuals to... adhere to the principles of the rule of law'; and that in article 18 (in spite of the fact that ZANU-PF was the main perpetrator of pre- and post-election violence) "both parties agree to eschew violence as a means of resolving political differences."[248] That violence continued to be committed against MDC supporters during the negotiations process indicates that ZANU-PF is prepared to make such statements while continuing the status quo and undertaking no significant behavioural changes.

The agreement does not establish an adjudicating body to evaluate adherence to the principles of the agreement and which is able to give binding orders to ensure compliance and assign some form of sanction to prevent reneging. Instead the agreement provides that the accord 'shall be guaranteed and underwritten' by Mbeki, SADC and the AU (article 22.6).[249] The implications of this are unclear and the agreement stipulates few mechanisms by which this shall be done. The document allows for the creation of an 'Implementation Committee' with the power only 'to assess the implementation of this Agreement from time to time and consider steps which might need to be taken to ensure the speedy and full implementation of this Agreement in its entirety' (article 22.3(b)).[250] This committee would become known as the Joint Monitoring and Implementation Committee (JOMIC), consisting of

[246] Masunungure, E. V. 2009. "Zimbabwe's Power Sharing Agreement," paper presented at *The Consequences of Political Inclusion in Africa Conference*, Washington, 24-25 April 2009, p. 5
[247] Matyszak, D. 2010. *Law, Politics and Zimbabwe's 'Unity' Government*, (Harare: Konrad Adenauer Stiftung), p. 68
[248] Ibid, p. 69
[249] Ibid, p. 70
[250] Ibid

representatives of each of the parties which would debate breaches of the implementation of the GPA but with no powers to coerce aberrant parties.

A second implementation mechanism is set out in Article 23, and is named the Periodic Review Mechanism.[251] This body is comprised of two representatives from each signatory party to the GPA and is tasked with providing an annual review focusing on 'progress on the implementation and achievement of the priorities and objectives set out in the Agreement' as well as 'to make recommendations... that may be necessary to take and make to realise full implementation of this Agreement.'[252] This mechanism was also not given any coercive powers to rein in defaulting parties.

The Structure of Government

Unless otherwise specified in the GPA, all existing constitutional provisions remain in effect until a new constitution passes a referendum and becomes the highest law of Zimbabwe. This is problematic as the GPA is not comprehensive enough to fundamentally alter power relations within the Zimbabwean government, indeed many important provisions have been overlooked which leave substantial power in the hands of the president and cabinet.

Article 20 sets out the structure of the new power sharing government; there is the creation of the post of prime minister as well as two vice presidents and two deputy prime ministers. There were to be 31 ministerial portfolios, divided 16:15 in favour of the two MDC parties. In addition to a Cabinet, chaired by the President (Mugabe), the agreement provided for the creation of a Council of Ministers chaired by the Prime Minister (Tsvangirai); this council's function is to ensure that its chair (Tsvangirai) 'properly discharges his responsibility to oversee the implementation of the work of government.'[253] Thus the Council of Ministers seems to have oversight capabilities over the Prime Minister, rather than the converse.

While the first article which deals with the structure of government (20.1.1) declares that: 'The Executive Authority of the Inclusive Government shall vest in, and be shared among the President, the Prime Minister and the Cabinet,' the subsequent articles vest little authority in the office of the Prime Minister. Accordingly, the Prime Minister 'shall oversee the formulation of government policies by the Cabinet' and 'shall ensure that the policies so formulated are implemented by the entirety of

[251] International Crisis Group. 2008, p. 2
[252] Ibid
[253] Matyszak, D. 2010, p. 70

government.'[254] These provisions lack the necessary precision when dealing with the division of power, while he is vested with no authority to execute them. The oversight of the formulation of policy is vague, and fails to specify whether or not the Prime Minister has the capacity to veto or amend policies fashioned by Cabinet. Conversely, the president's powers are still left largely intact in that the provisions of the GPA do not nullify section 31D of the Constitution which gives the president the power to hire and fire ministers. It does, however, provide that the number of ministers that the president may appoint is set at 31 and that 16 of these must not only be drawn from the MDC, but must be MDC nominees.[255] This allows for the MDC to select their own ministers, but the portfolios are assigned by Mugabe 'after consultation with the Vice-Presidents, the Prime Minister and the Deputy Prime Ministers.' The phrase 'after consultation' appears frequently in the document in relation to Mugabe's powers, rather than the more precise legal phrase of 'in consultation with.' 'After consultation' is more likely to be construed as the President seeking the advice of the Prime Minister but he is not bound to act on the advice of those consulted and it thus leaves Mugabe with a free hand in the allocation of ministries. Similarly, the power to fire errant ministers remains vested in the presidency, and is phrased as 'Ministers and Deputy Ministers may be relieved of their duties only *after consultation* among the leaders of all the political parties in the Inclusive Government.' This clearly indicates the way in which ZANU-PF was able to manipulate the negotiations in his favour.

Cabinet

The Cabinet, as the core of government and a body capable of introducing legislation, should be central in power sharing calculations. Instead, it is constituted in such a way by the agreement that in spite of the MDC's 16 ministers to ZANU-PF's 15, the MDC is unlikely to have a majority in cabinet. When read alongside the constitution, the GPA provides that the Cabinet consists of 17 members of the MDC – the Prime Minister and 16 ministers – and 19 members of ZANU-PF – the president, the two vice-presidents, the non-voting attorney general and 15 ministers.[256] Regardless of this, the composition of Cabinet is likely to make legislating and governance particularly difficult as Cabinet decisions are to be made by consensus. There is no provision in the GPA as to what will occur if consensus should not be reached (which is likely given the partisan split within the body) and this will likely lead to a problem of legislative log-jams and slow decision-making.[257]

[254] Ibid, p. 71
[255] Ibid
[256] Ibid, p. 73
[257] Ibid

Legislation

This legislative log-jam is further entrenched by the authority of parliament and the president to pass and amend laws. While emergency laws give the president legislative powers only to be utilised in cases of extreme urgency, Mugabe has long used these to rule by decree.[258] Even by these laws, the legislation is only valid if presented to parliament for approval within 8 days and the MDC majority in parliament makes it unlikely that such laws will be rubber-stamped as before. Thus the president cannot legislate without parliament and parliament is unable to legislate without the president (as all new legislation requires presidential assent); so in the case of a lack of consensus between ZANU-PF and the MDC on a particular piece of legislation, there is likely to be deadlock.

Military

The GPA didn't specify which ministries would be allocated to each of the parties, a serious flaw in the agreement which was no doubt as a result of the obduracy of both sides. Instead the GPA provided that the President would allocate ministries in a set proportion according to the results of the 2008 harmonised elections. The MDC and ZANU-PF reached a deadlock shortly after the signing of the agreement over the allocation of ministries in spite of the ability of the president to allocate them unilaterally. The MDC ceded control over the military to ZANU-PF early in the negotiations process, which leaves the former ruling party with a continued grip on the reigns of coercive power. The GPA also fails to modify the constitutional provisions for the appointments of senior service-people within the police force, including the Commissioner General. This allows for the police force to remain beholden to ZANU-PF interests and fails to change the nature of coercive power within the regime.

A New Constitution

Article 6 of the multi-party agreement provides for the process to establish a new 'people-driven' constitution. The first step towards this is the establishment of a 'Select Committee' within two months of installing the new government; this is ambiguous as it is unclear as to what exactly constitutes a 'new government.'[259] Once the constitution is complete, it will need to be passed by a two-thirds majority of parliament which would necessitate ZANU-PF's agreement. This is unlikely to be forthcoming if the new constitution intends to limit the powers of the president and executive.[260]

[258] Ibid, p. 74
[259] Ibid
[260] Ibid

Power Sharing?

Very little power has actually been shared between the MDC and ZANU-PF by the Global Political Agreement. The only ministries allocated to the MDC that would significantly change the balance of power in a particular area are that of the Finance Ministry and the Ministry of Local Government – and in spite of this, Mugabe will retain his ability to reassign ministries and the administration of various legislative provisions across the ministries. However, the main way in which the MDC will have access to the levers of power will be through its parliamentary majority in the House of Assembly. No legislation can be passed without their vote and MDC control (by virtue of their majority) over the Parliamentary Committee on Standing Rules and Orders allows for the MDC to ensure the introduction of a fairer Zimbabwe Media Commission and Zimbabwe Electoral Commission. In spite of this, the agreement remains lop-sided with an asymmetrical division of powers in favour of the president and ZANU-PF.

Constitutional Amendment 19

The GPA was just an agreement, but it was Constitutional Amendment 19 which was provided for in the GPA that would turn the agreement into national law. Talks on this amendment began on 25 November 2008, and it was expected that following the problems with the GPA and the unfinished business it contained, the discussions over Amendment 19 would be protracted. Instead, the negotiators reported that a draft had been finalised two days later. This was likely due to the need to reach a quick agreement following the cholera outbreak across Harare and other parts of the country due to the collapse of water reticulation systems and the health care system.[261] Instead of adopting the well-drafted and comprehensive MDC draft, or even the ZANU-PF draft, the parties reached agreement that the Amendment would be made up of only the executable part of the September agreement, article 20 which referred to the structure of government. This was to override any parts of the constitution that were contrary to its contents. As was discussed above, the GPA provisions were relatively limited and descriptions of the duties of each post were vague, which left much of the substance of the Zimbabwean constitution unchanged. The President retained the ability to appoint the Commissioner General of Police, the Commander of the Army, and the Governor of the Reserve Bank as well as Permanent Secretaries, ambassadors, Provincial Governors, ministers, the Cabinet and persons who comprise the commissions under the constitution.[262]

[261] Ibid, p. 88
[262] Ibid, p. 89

Implementation

It wasn't long after the signing of the agreement in mid-September before ZANU-PF began to renege on the letter and spirit of the document. This began with Mugabe's unilateral appointment of a number of sympathisers in key positions and extended to the continued abduction, detention and torture of opposition activists by state security agents.[263] As was noted above, the GPA created a distorted power balance. Mugabe retained control of the critical portfolios by assigning ZANU-PF stalwarts to the ministries of defence and justice as well as the intelligence services.[264] The MDC gained control of the influential Ministry of Finance as well as socio-economic ministries of health and education. Rather than conforming to the spirit of the agreement, Mugabe has often shown his disdain for both the GPA and for his forced 'marriage' to Tsvangirai. The GPA was violated at birth when Mugabe seized 22 ministries rather than the 15 that he was allocated. Instead of trying to encourage compliance or turn to the guarantors of the process, the MDC allowed the creation of a further 15 ministries, bringing the total to 61, this created the largest and most expensive cabinet in Zimbabwean history.[265] This suggests that both sides were willing to sacrifice the careful management of scarce public resources in order to distribute political spoils.[266] Following this, Mugabe used his remaining presidential powers to re-allocate major portfolio powers from Communications Minister Nelson Chamisa to Transport Minister Nicholas Goche, a ZANU-PF appointee.[267] This allowed him to retain control over information and communications technology.

Beyond Cabinet and the Council of Ministers, Tsvangirai and Mugabe were not forced to cooperate extensively by the GPA which has led to the 'unity government' often appearing more like two distinct governing entities, regularly sitting on opposite sides of particular issues.[268] Mugabe has repeatedly neglected to consult with the Prime Minister over official appointments, has refused him the chairmanship of Cabinet in Mugabe's absence (as required by Constitutional Amendment 19), he has consistently side-lined the Council of Ministers and even condoned the refusal of army and police chiefs to salute Tsvangirai.[269] In spite of this, the MDC has framed the agreement as a flawed, but workable

[263] International Crisis Group. 2008, p. 2
[264] Bratton, M. 2010. "Zimbabwe: Power-Sharing Deal Under Stress," *United States Institute of Peace*, Peace Brief 66, p. 2
[265] Chigora, P. & Guzura, T. 2011. "The Politics of the Government of National Unity (GNU) and Power Sharing in Zimbabwe: Challenges and Prospects for Democracy," *Africa Journal of History and Culture*, 3, 2, p. 24
[266] Bratton, M. & Masunungure, E. 2011. "The Anatomy of Political Predation: Leaders, Elites and Coalitions in Zimbabwe, 1980-2010," *Developmental Leadership Programme*, Research paper 9, p. 34
[267] Chigora, P. & Guzura, T. 2011, p. 24
[268] International Crisis Group. 2008, p. 3
[269] Bratton, M. 2010, p. 3

arrangement, one which allows for incremental progress towards restoring the rule of law and a semblance of democracy to the crisis-wracked country.[270]

Successes

Economy

Many analysts have pointed to the stabilisation of the economy as the greatest success of the GPA. The introduction of the multi-currency system consisting of the acceptance in all transactions of the US dollar, South African rand or Botswana's pula was a driving factor in reducing the rampant inflation and returning basic commodities to shelves. Although this policy was adopted prior to the establishment of the government of national unity (GNU), it was instrumental in stimulating the return to relative economic stability. Some foreign investment and aid returned to the country after the advent of the GNU, expecting greater political stability. However the international financial institutions (IFIs) such as the IMF and World Bank refused to reinstate aid and balance of payments support until the GPA had been fully implemented. This has inhibited real growth and continued to undercut investor confidence.

Another important economic aspect which is not mandated by the GPA and which the agreement failed to amend is the indigenisation policy adopted in 2007. This policy was passed into law by a ZANU-PF-controlled parliament in October 2007 – during the first rounds of mediation by Thabo Mbeki between the three major parties. It forms part of the Indigenization and Economic Empowerment Act (2007). This act only became enforceable after the drafting of regulations governing the process; a process over which the MDC had no control as it was directed by the ZANU-PF minister administering the Act.[271] The final policy adopted mandated that every company with an asset value of or over US$500 000 must within 5 years cede a controlling interest of not less than 51% to indigenous Zimbabweans.[272] This had a severely negative impact on the investment climate in Zimbabwe and reversed many of the gains made towards encouraging foreign investment. This policy has also been received with substantial cynicism; the provisions of the regulations appear more likely to facilitate cronyism and patronage than to encourage the empowerment of the population at large.[273] This policy is likely to contribute significantly in the future to the economic survival of the ZANU elite, and the failure of the GPA to reform this economically problematic policy is likely to lead to lower rates of investment and a longer road to economic and thus socio-economic recovery.

[270] Matyszak, D. 2010, p. 152
[271] Ibid, p. 157
[272] Ibid
[273] Ibid, p. 158

The stability brought on by the signing of the multi-party agreement also had positive effects on the failing health and education systems in the country. The decrease in overt violence, increased stability and management of these sectors by MDC ministers brought about by the GPA facilitated the release of larger amounts of directed aid into these sectors, particularly through the Multi-Donor Trust Fund. This fund was set up by the IMF as a conduit for aid which bypasses all handling by ZANU-PF government officials.[274] In spite of this, there are still channels for ZANU's continued accumulation of wealth such as the recently discovered diamond and platinum reserves as well as a deal signed with the Chinese government in March 2011 for a loan to the value of US$585 million, including $100 million to finance government directly.[275]

Media

In May 2010, the newly created and constituted Zimbabwe Media Commission (ZMC) – the origin of which was prior to the inception of the GPA – granted licenses to publish to four media houses and to Zimbabwe's first independent daily newspaper since 2003. A further four licenses followed in July 2010. This has served to open up the print media in Zimbabwe, and represents an opening of democratic space. However continued progress in this direction is not guaranteed. Journalists and civic organisations have argued that the media should be allowed to be self-regulating.[276] Instead, the Zimbabwean media is subject to the ZMC, which is a body established under the Access to Information and Protection of Privacy Act (AIPPA - 2002), a draconian law passed by a ZANU-PF-dominated parliament prior to the creation of the GNU. This act has a chilling effect on media freedom and the freedom of expression and was used extensively to intimidate and repress the media in the 2000s. In spite of the slight amendments to the ZMC under Constitutional Amendment 19, the body still has wide-ranging powers accorded to it by AIPPA. This Act has not been repealed in spite of an extensive civil society campaign and the GPA also failed to remove or amend the act in a comprehensive manner. The MDC-T has realised that AIPPA needs to be replaced, but faces stiff challenges from ZANU-PF which shows little inclination towards easing the state's control over the media.[277] Currently the positive developments instituted by the ZMC can be attributed its composition. Under Constitutional

[274] Ibid, pp. 159-160

[275] Melik, J. "Zimbabwe Profits from Mining Rights," *BBC Business News*, 17 April 2011, found at http://www.bbc.co.uk/news/business-13077575

[276] This is a practice followed in most countries which have an active and lively press; it is a means by which to ensure the independence of the media from undue regulation by the state. It usually involves the creation of a set of monitoring institutions which are independent of government and constituted by members of the media and various interest groups to keep the media accountable and ensure fair and accurate reporting.

[277] MDC-T has proposed that AIPPA be replaced by the Media Practitioners Act, but this bill is still in its drafting stages and is unlikely to be considered by parliament before the next elections; Matyszak, D. 2010, p. 165

Amendment 19, the commissioners on the ZMC are appointed by the president from a list supplied by the parliamentary Committee on Standing Rules and Orders (CSRO), a body which is dominated by the MDC due to its parliamentary majority. This has allowed the commission to be staffed with people who are fairly evenly balanced between the two major parties.

In spite of these minor successes in lifting restrictions on the printed media, they will have little effect in the rural areas. Information in these areas is primarily available through electronic media – chiefly through radio – which remains under the control of the Broadcasting Services of Zimbabwe (BSZ). This body is overseen by the Minister of Media, Information and Publicity, Webster Shamu, a key ZANU-PF loyalist.[278] In 2009, Shamu appointed a new board to the BSZ which was staffed by ZANU-PF hardliners in contravention of the requirements of the GPA.[279] In 2011, the board awarded licenses to two 'independent' radio stations, though it has come to light that these organisations are linked to ZANU-PF. The Media Institute of Southern Africa in Zimbabwe has since petitioned both the BSZ and SADC to have the BSZ board reconstituted in line with the principles of the GPA.[280] The electronic media have not been opened up under the GPA, and the state broadcaster continues to broadcast information in a politically biased manner.

Electoral Reform

In the 2008 elections, the Zimbabwean Electoral Commission (ZEC) could be described as anything but independent; it was little more than a mechanism by which ZANU-PF strategy was implemented. Amendments to the composition and mandate of the electoral management bodies was central to the GPA, as a new election could not be undertaken without an overhaul of the entire system. Under the GPA and Constitutional Amendment 19, the ZEC now comprises a chairperson, appointed by the president after consultation with the Judicial Services Commission and the CSRO, as well as eight other persons selected from a list supplied by the same select committee. Due to its parliamentary majority and thus majority in the CSRO, the MDC factions were able to see to it that a number of reform-minded members were appointed to the commission.

The ZEC is also responsible for the maintenance and custody of the electoral roll, a responsibility that had previously been unlawfully entrusted to the Registrar-General of Voters. The new, more moderate

[278] Ibid
[279] Ibid, p. 166
[280] Chifera, I. & Gande, C. "Media Group Demands New Board for Zimbabwe Broadcasting Authority," *Voice of America*, 28/11/2011, found at http://www.voanews.com/zimbabwe/news/Media-Group-Demands-New-Board-for-Zimbabwe-Broadcasting-Authority-134619993.html

ZEC now has the power to ensure that an accurate voters roll is in place ahead of the next elections.[281] In spite of this, there are two problems that may impede the future functioning of the ZEC. The first is that the Minister of Justice is technically in control of the ZEC in as much as all electoral regulations made by the body must be approved by him and thus, through the minister, ZANU-PF retains veto power over electoral regulations.[282] The second problem is that the Minister of Foreign Affairs (another ZANU-PF appointee) has the power to veto the accreditation of foreign election observers, and thus influence the outcome of election observer missions by only accrediting sympathetic observers.[283] However, these concerns should not override the fact that the ZEC is now a more independent body which will make it more difficult for Mugabe's party to directly influence the outcome of the next election through the outright manipulation of the electoral institutions.

Although not expressly dealt with in the text of the GPA, electoral reform has played a large part in discussions between the parties, and there is consensus amongst members of the former opposition and civil society bodies that electoral reform is a crucial part of securing a transition to a more democratic dispensation. Electoral reforms have been on the agenda of the MDC since 2007, and the necessity of it is apparent when reviewing the events of 2008. Although a number of piecemeal reforms were undertaken in 2007 which led to the relative peace of the Election Day in March 2008, these reforms have not been enough. ZANU-PF has consistently side-lined attempts to reform electoral processes.

The Zimbabwean voters roll is still plagued by problems and inconsistencies. The obstinacy of ZANU-PF is apparent when the 2008 and 2010 voters rolls are compared; in 2010, 366 550 new voters appeared who had previously not been on the roll.[284] This is extremely unlikely considering that the high mortality rate has led to an overall decrease in population growth and out-migration has been a widespread factor since the early 2000s. The roll includes the names of thousands of ghost voters, many of whom are not linked to a verifiable address as required by the constitution. There is an extraordinary 132 540 people on the roll who are over the age of 90, and more than 40 000 people over the age of 100; this is concerning as life-expectancy in Zimbabwe is currently 44.8 years.[285] This roll has clearly been tampered with in the post-agreement phase in an attempt to inflate the number of registered voters to allow for

[281] Matyszak, D. 2010, p. 169
[282] Section 192(6)of the Electoral Act
[283] Section 6 (4)(a) of the Electoral Act
[284] Johnson, R. W. 2011. "Preventing Electoral Fraud in Zimbabwe," A Report on the Voters' Role in Zimbabwe, *South African Institute of Race Relations*, p. 3
[285] Ibid, pp. 3 - 5

the manipulation of electoral processes by ZANU-PF. The party has consistently denounced calls for the scrapping of the roll and sabotaged the creation of a new, credible electoral register.[286] In spite of Mugabe's calls for elections to be held first in 2011 and later in early 2012, there has still been no concerted effort to reform the voters roll.

Following two full years of backsliding and stalling, in July 2011, Justice Minister and ZANU-PF stalwart, Patrick Chinamasa gazetted the electoral reform bill. This law restricts police involvement in the electoral process and addresses political violence.[287] It also grants wide ranging powers to the ZEC to run elections, and mandates that all results must be announced within 5 days of the voting process. Although this law is a step in the right direction and may help to increase the credibility of the coming electoral process, they are unlikely to be sufficient. The post-independence and post-2008 history of Zimbabwe has consistently shown that ZANU-PF has little regard for legislation and the rule of law and this Act on its own, is unlikely to prevent manipulation of the process and results by the ruling ZANU elite.

Human Rights Commission

Although the creation of the Zimbabwe Human Rights Commission (ZHRC) has been greeted as a significant departure from the impunity of the previous decade, the hope that accompanied its creation has not been justified by its composition. As with the ZEC, the president appoints the commissioners in consultation with the Judicial Services Commission and CSRO from a list supplied by the MDC-dominated CSRO. Persons appointed to the commission must be chosen for 'their knowledge of and experience in the promotion of social justice or the protection of human rights and freedoms.'[288] While appointments to the ZEC and ZMC had been fraught with political manoeuvring, the MDC and ZANU-PF paid little attention to who was appointed to head this commission; an indication of its lack of power and regard.[289] An act of parliament is necessary to enable this body to carry out its mandate, but no such act has been passed or is planned; no money was budgeted for the ZHRC in 2010 and it has neither the offices nor the infrastructure to carry out its duties.[290] The commission is currently not properly constituted and is thus open to significant legal challenges; while only one out of the eight

[286] This is largely true although some ZANU-PF MPS have agreed with the need for a new, biometric register. Johnson, R. W. 2011, 22

[287] Zulu, B. "Zimbabwe Unity Government Negotiators Gazette Electoral Reform Legislation," *Voice of America News*, 06/07/2011, found at http://www.voanews.com/zimbabwe/news/Zimbabwe-Negotiators-Unveil-Electoral-Reform-Legislation-125090384.html, accessed on 23 January 2012

[288] Matyszak, D. 2010, p. 169

[289] Ibid

[290] Ibid

commissioners has experience in human rights matters. The human rights records of some of the commissioners is more than dubious, while two have been implicated in political scandals involving their overt support for ZANU-PF as well as corruption and food aid scandals.[291] This is concerning as these conditions don't inspire confidence in the ability of the ZHRC to protect civil liberties in Zimbabwe.

Failings

Human Security

Many analysts have credited the GPA with a substantial reduction in the violence that characterised the time between the initial elections on 29 March 2008 and the presidential run-off in June. A longer-term analysis makes it clear that this is only partially true. After a brief period of restraint on the part of ZANU-PF and the security apparatus, the use of state machinery to repress and intimidate the opposition and the populace has continued, albeit in a more discreet manner. The police, working with the Attorney-General's office, have arrested numerous MDC activists, MPs, and officials on dubious charges and have failed to act against ZANU-PF offenders in spite of ample evidence of criminality.[292] In August 2011, Attorney General Johannes Tomana openly admitted that he was biased towards members of ZANU, and that he would not prosecute individuals with political connections.[293] This is in direct contravention of the spirit but also the letter of the GPA which intended to ensure freedom from persecution and equal treatment under the law for all citizens regardless of political affiliation.[294] It also shows that the GPA and Constitutional Amendment 19 have been ineffective to prevent the recurrence of violence as they did not ensure that the posts of Attorney-General and Commissioner-General of Police were allocated to non-partisan individuals.

In early 2012, the Zimbabwe Human Rights NGO Forum held an anti-torture training workshop for parliamentarians in Harare. The event was attended by MDC MPs but was snubbed by ZANU-PF parliamentarians. The group had found that ZANU-PF activists were the group most likely to employ torture against political rivals, but that they were still closely followed by the police and the army.[295] The head of ZimRights, Abel Chikomo, reported that Harare province has the highest number of people

[291] Ibid, pp. 170-171
[292] Ibid, p. 173
[293] Radio VOP. "Police, AG Shield Violence Perpetrators- ZLHR", 14/08/2011, found at http://www.radiovop.com/index.php/national-news/6885-police-ag-shield-violence-perpetrators-zlhr.html
[294] GPA, Article X (Free Political Activity), Article XII (Freedom of Assembly and Association), Article XVIII (Security of Persons and Prevention of Violence
[295] Radio VOP. "Zanu PF, Police Worst Torturers: ZimRights," 26/01/2012, found at http://www.radiovop.com/index.php/national-news/8086-zanu-pf-police-worst-torturers-zimrights.html

tortured by ZANU-PF activists and police since 2001, standing at 49% followed by Manicaland at 15%, Mashonaland East province 12%, Mashonaland Central 7%, Midlands 5%, Masvingo 3%, Bulawayo 2% and Matabeleland North at 1%. According to Chikomo, "There are more torture incidences reported in Harare, Manicaland and Mashonaland provinces because in 2008 after ZANU-PF lost more parliament seats in those areas which used to be their strongholds, they started torturing people in revenge."[296]

In August 2011, the body of MDC director of elections in the Midlands province, Maxwell Ncube, was found in a shallow grave; the local MDC activists and his close friends and family suspected that he was killed by ZANU-PF militants following his efforts to galvanise the rural population against ZANU-PF rule.[297] The detention, torture and intimidation of opposition and civil society members seems to have escalated significantly since late 2011, analysts believe that this is as a result of ZANU-PF having called for new elections in early 2012 and the party now returning to 'campaign mode.'[298] Indeed, late in 2011, Mugabe had announced that ZANU-PF would begin campaigning for elections after the party's annual conference which was held in December.[299] In November 2011, the Zimbabwe Defence Force received a shipment of arms from China, courtesy of Beijing. This is in spite of an arms embargo against Zimbabwe since the early 2000s by almost all western countries. This shipment included 20 000 AK47 rifles and 21 000 pairs of handcuffs, a non-traditional military accessory.[300] The deal was reportedly arranged by Defence Minister Emmerson Mnangagwa, the leader of the hard-line faction jockeying for power in the ZANU-PF succession race.[301] This suggests that ZANU-PF is planning to undertake a new campaign of repression, intimidation and arrests ahead of the next elections which Mugabe has suggested will be held in 2012.

[296] Ibid
[297] Gande, C. "Activist of Zimbabwe's Movement for Democratic Change Found Murdered," *Voice of America,* 10/08/2011, found at http://www.voanews.com/zimbabwe/news/Activist-of-Zimbabwes-MDC-Found-Murdered-127475658.html
[298] Radio VOP. "Eight Activists Arrested as Onslaught Escalates in Masvingo," 26/11/2011, found at http://www.radiovop.com/index.php/national-news/7604-eight-activists-arrested-as-onslaught-escalates-in-masvingo.html
[299] Zulu, B. "Zimbabwe Civic Groups Urge Region to Press for Pre-Election Reforms," *Voice of America,* 30/11/2011, found at http://www.voanews.com/zimbabwe/news/Zimbabwe-NGOs-Urge-Region-To-Press-for-Pre-Electoral-Reforms-134770178.html
[300] The Daily Maverick. "China Rearms Zimbabwe's Army," *The Daily Maverick*, 15/11/2011, found at http://dailymaverick.co.za/article/2011-11-15-china-rearms-zimbabwes-army
[301] Ibid

Abuse of Power and Respect for the GPA

During the nearly three years since the beginning of the implementation of the multi-party agreement, Mugabe has repeatedly flaunted his disregard of the accord. In May 2010, he unilaterally appointed four new judges, as well as selecting ZANU-PF stalwart Justice Chiweshe as Judge President and elevating Justice Makarau to the Supreme Court.[302] This can be seen as an attempt to maintain the partisan nature of the Judicial Services to ensure preferential judgements for the hard-line party in the expected next round of disputed elections. In October 2010 Mugabe unilaterally reappointed old ZANU-PF provincial governors without consulting Tsvangirai as required by the GPA; this prompted a walk-out from cabinet of the Prime Minister.[303] ZANU-PF has repeatedly taunted both MDC factions during the tenure of the unity government in an attempt to provoke them into withdrawing from the accord, thus ensuring its failure without ZANU-PF incurring the blame.[304] Mugabe has an important incentive to try to push the MDCs out of the unity government. This is due to the fact that Constitutional Amendment 19 – which limits the powers of the presidency – only operates for as long as the inclusive government exists, if the unity government was disbanded, Zimbabwe would return to the pre-GPA constitutional dispensation.[305] On 1 November 2011, Zimbabwean police sealed the head offices of Tsvangirai's MDC and fired teargas into the building without warning; this was also part of a growing trend of police and militants attacking and disrupting MDC-T rallies in Harare and Western Matabeleland.[306]

Throughout the period following the signing of the GPA, Robert Mugabe and the upper echelons of ZANU-PF have acted in bad faith. They have acted and made statements that are contrary to both the spirit and the letter of the Global Political Agreement. In 2009, ZANU-PF politburo member, Jonathan Moyo, encapsulated the sentiments of ZANU-PF when he stated that all the reforms attempted by the MDC were doomed to fail as they take place at the pleasure of ZANU-PF – and ZANU-PF takes no pleasure in reforms.[307] It appears that ZANU-PF initially agreed to the 'truce' of the unity government as a means by which to reclaim the international and regional legitimacy lost after the one-man run off of June 2008 and as a way by which to buy time to create new strategies of 'governance.' It is clear that

[302] Matyszak, D. 2010, pp. 173-174
[303] Bratton, M. & Masunungure, E. 2011, p. 36
[304] Ibid, p. 33
[305] Mavhinga, D. 2011. "The Inclusive Government: Milestones and Millstones," in *Zimbabwe at the Crossroads*, published by the Open Society Initiative for Southern Africa, p. 8
[306] Reuters. "Zimbabwe Police Seal MDC Offices, Fire Teargas," *Reuters Africa,* 1/11/2011, found at http://af.reuters.com/article/topNews/idAFJOE7A00EV20111101?feedType=RSS&feedName=topNews
[307] Mavhinga, D. 2011, p. 8

ZANU has only made temporary concessions under the GPA and holds little sincere commitment to democratic reforms.

Constitutional Reform Process

The Global Political Agreement stipulated that a new constitution should be formulated and introduced in parliament following a successful referendum within 18 months of the inception of the new government.[308] As the new government was constituted in February 2009, the deadline for the introduction of the new constitution would have been in August 2010. The inter-party agreement noted the secretly negotiated draft constitution agreed to by the parties in Kariba on 30 September 2007 during the first round of negotiations, but demanded that the new constitution be the result of wide public engagement and consultation; it was to be a people-driven process. A 25-member Select Committee of Parliament on the new Constitution (COPAC) was instituted in April 2009; it was co-chaired by representatives of the three major parties.[309] However, the programme was plagued by problems from its inception. In spite of its receiving extensive donor funding, the body soon ran out of funds as members spent lavishly and used the funds to enrich themselves, reward activists and extend their patronage networks.[310] Civil society framed its dissatisfaction with the process early on, arguing that it was dominated by political parties and partisan interests with inadequate consultation with civil society bodies and NGOs. The process also began with disagreements between the MDC-T and ZANU-PF over the starting point for the constitution; ZANU-PF wanted the secretly-negotiated 2007 Kariba draft[311] to be the starting point and for public consultations to be made only on this document, while the MDC-T was facing pressure from the National Constitutional Assembly (NCA) and the Zimbabwe Congress of Trade Unions (ZCTU) who argued that the Kariba draft was elite-driven and unrepresentative.[312] Thus the MDC-T argued that the Kariba draft should only be considered as one of several resources on constitutional reform to be considered. These different stances on the starting point of the constitutional reform process were to complicate and delay the process as each party jockeyed for position.

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[308] Article 6.1(c) of the Interparty Political Agreement (Global Political Agreement)
[309] International Crisis Group. 2011. *Zimbabwe: The Road to Reform or Another Dead End?* Africa Report No. 173, pp. 11-12
[310] Ibid, p. 12
[311] The Kariba draft was a result of secret negotiations between the MDC factions and ZANU-PF during the first round of SADC-mediated negotiations in 2007, the document was based largely on the Lancaster House Constitution and the draft constitution that had been rejected in the 2000 referendum. This can be seen as a major concession to Mugabe as this constitution would retain the executive presidency.
[312] International Crisis Group. 2011, p. 13

The outreach programme specified by the GPA was plagued by delays but finally began in June 2010, the date initially scheduled in the GPA for holding the constitutional referendum. For this, COPAC planned to hold 5 805 consultative meetings over a four month period, although this was later extended.[313] In spite of the good intentions behind the consultative process, it was not as successful as it was intended to be. In a country with an extensive history of state-sponsored violence and partisan political repression, few Zimbabweans felt empowered enough to attend these constitutional consultation meetings and air their views about the government and the future powers of the president. This is particularly the case in light of the campaign of violence and intimidation undertaken in many areas by ZANU-PF supporters which was tacitly condoned by police.[314] These intimidation tactics were largely prevalent in the rural areas; most reports suggest that ZANU-PF, the party youth, war veterans and sections of the state security apparatus were undertaking a campaign to coerce attendees to support the party's position on the Kariba draft which would leave the president's powers largely intact.[315] Following numerous outbreaks of violence, the process was halted in a number of areas. In spite of attempts at creating what the GPA mandated as a 'people driven,' "inclusive and democratic" constitution,[316] as much as 80% of what will likely make up the new draft constitution will not have been part of the outreach programme and will have to be negotiated within COPAC.[317]

The constitutional drafting process had been plagued by delays, posturing and bickering between the three main parties and their principles. Disputes remain over the powers of the presidency and the independence of government institutions. While the draft constitution was expected to be released in late January 2012, the parliamentary committee had again announced a delay and the draft was still not ready by early March.[318] ZANU-PF is still trying to stymie reforms and to push for a new election[319], with

[313] Ibid, p. 15
[314] Ibid
[315] Sachikonye, L. "Zimbabwe's Constitution-Making and Electoral Reform Processes: Challenges and Opportunities," draft paper prepared for the conference on *Legitimacies of Power – Possibilities of Opposition*, 30 May – 1 June 2011, Nairobi, p. 14
[316] Article VI, GPA
[317] International Crisis Group. 2011b. *Resistance and Denial: Zimbabwe's Stalled Reform Agenda,* Africa Briefing No. 82, 16 November 2011, p. 3
[318] Moyo, J. "AU Stymies Mugabe's Bid for Elections Without Reforms," *Mail & Guardian,* 3/02/2012, found at http://mg.co.za/article/2012-02-03-au-stymies-mugabes-bid-for-elections-without-reforms/
[319] On 13 January 2012, the association of war veterans burst into a COPAC media briefing, threatening officials and using a combination of legal and violent means to disrupt the constitution-drafting process. The veterans who represented the Zimbabwe National Liberation War collaborators Association (Ziliwaco) association made claims of irregularities in the process; while they argued that they did not represent a particular political party, they openly showed their support for ZANU-PF. They threatened COPAC with legal action to stop the constitution drafting process in the event of the parliamentary body failing to submit a report on the process to them within a 5 day

the party taking the stance that reforms are not necessary prior to the election.[320] Elections must be held prior to March 2013 when the current parliamentary term expires and the constitution mandates a new election.

In February 2012, a draft version of the new constitution was leaked by the Herald newspaper, a ZANU-PF mouthpiece. This draft holds a clause which states that "a person is disqualified for election as president if he or she has already held office for one or more periods, whether continuous or not, amounting to 10 years."[321] The draft constitution would also limit presidential powers to make senior appointments to government and the military. This draft produced a sustained outcry from members of ZANU-PF and prompted Mugabe to call a meeting with his party's COPAC members. Only two weeks later, news reports emerged that this controversial clause had been amended to provide that the term limits would only come into force after the introduction of the constitution and would not apply retrogressively. The result of this is that Mugabe will be able to stand for a further two terms under the new constitutional dispensation.[322] This has reaffirmed civil society fears that the constitution would be a negotiated document which represents the interest of the parties, rather than those of Zimbabwean society. This view was reinforced by Charles Mangongera, the MDC's director of policy and research, who stated that:

> "Ultimately the draft constitution is going to be a negotiated settlement and most likely it will be very close to the Kariba Draft. Political gladiators from the three parties have in fact publicly said so. The political dynamics are such that for as long as the unity government is in place, then key political processes will always be negotiated. In some cases this has supplanted democratic processes and popular will, but that is the nature of politics under negotiated governing pacts".[323]

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period. Makova, P. "Zanu PF steps up efforts to derail constitution-making process," *The Standard*, 15/01/2012, found at http://www.thestandard.co.zw/local/33535-zanu-pf-steps-up-efforts-to-derail-constitution-making-process.html

[320] Moyo, J. 3/02/2012

[321] Banya, N. "New Zimbabwe Constitution could Bar Mugabe Candidacy," *Reuters*, 10 February 2012, found at http://af.reuters.com/article/topNews/idAFJOE81909X20120210, accessed on 24/02/2012

[322] Sibanda, T. "Change to Draft Constitution Ensures Mugabe can Seek Re-election," *The Zimbabwean*, 24 February 2012 found at http://www.thezimbabwean.co.uk/news/zimbabwe/56547/change-to-draft-constitution-ensures.html?utm_source=thezim&utm_medium=homepage&utm_campaign=listarticle&utm_content=headinglink, accessed on 24/02/2012

[323] Scofield, M. "Horse-Trading Over Constitution," *Times Live*, 26 February 2012 found at http://www.timeslive.co.za/africa/2012/02/26/horse-trading-over-constitution, accessed on 26/02/2012

The final problem with the GPA and remaining constitutional provisions with regards to the constitutional reform process is that ZANU-PF retains the power of veto over the process due to their role as a swing vote in parliament. While the GPA mandated that once Constitutional Amendment 19 had been agreed, the parties were bound to ensure its passage through parliament; no such provision exists for the constitutional draft. As a two-thirds parliamentary majority (and thus ZANU-PF support) will be required to enact the new constitution, it is likely that the party will veto a draft that contains clauses which would curtail their power; they would undoubtedly prevent it from being passed into law.[324] From this, it is clear that the GPA was drafted in such a way that would make it virtually impossible to fulfil the mandate of creating a people-centric constitution; the resulting constitution will no doubt be the product of an elite bargain and the reforms are unlikely to drastically alter the power relations within Zimbabwe.

Implementation Mechanisms

The unity agreement allowed for the creation of two monitoring and implementation mechanisms, the first is the Joint Monitoring and Implementation Committee (JOMIC) and the second is the Periodic Review Mechanism.[325] The JOMIC was to be composed of four senior members of ZANU-PF and four from each of the MDC factions while being co-chaired by the parties. The function of the committee is to "ensure implementation in letter and spirit" of the agreement and consider steps that may need to be taken to ensure the speedy and full implementation of the GPA. Contrary to the wishes of the GPA, JOMIC has not been an effective monitoring tool; initially the committee began without funding or resources from the state and even lacked secretarial staff and office space.[326] In spite of blatant disregard for the GPA from some sectors of government, particularly ZANU-PF, and the failure to comply with both the letter and spirit of the agreement, JOMIC has largely been unable to act as an effective mechanism to ensure compliance.

One of the greatest problems with the commission is that it is built on the principle of 'self-monitoring', making the political parties both the players and the referees.[327] As the body is constituted by members of the three signatory parties, their political biases have been imported into the mechanism; this has often led them to report only those issues that are in their party's interest. This may have been effective if SADC kept a keen eye on developments and pressured all sides to ensure compliance, but instead

[324] Matyszak, D. 2010, p. 116
[325] Article XXII and XXIII, GPA
[326] Chigora, P. & Guzura, T. 2011, p. 25
[327] Dzinesa, G. A. & Zambara, W. 2011. "SADC's Role in Zimbabwe: Guarantor of Deadlock or Democracy?" in *Zimbabwe at the Crossroads*, (Open Society Initiative for Southern Africa), p. 65

there was little interaction between SADC and JOMIC until mid-2011.[328] Instead, it is likely that this arrangement emerged as a result of SADC not wanting to be seen to be impinging on Zimbabwean sovereignty, a concept which is often invoked by Mugabe and ZANU-PF in the face of external criticism. The necessity for the JOMIC body to take decisions based upon consensus has made decision-making a cumbersome affair and has prevented the body from making real progress on monitoring the implementation of the GPA.[329] Political and civic analysts have dismissed the 12-member panel as a "toothless bulldog" due to its repeated inability to deal with violations of the agreement. The mechanism has no power to summon violators, nor to sanction violations, it relies only on the power of persuasion. JOMIC reporting doesn't include an evaluative component on GPA implementation and it is often unable to deal with the scope and complexity of the issues brought before it.[330]

Until 2011, JOMIC had largely been reduced to issuing statements requesting that the parties to the agreement abide by their commitments. The body was given new impetus by its development of a new strategic plan and the establishment of sub-committees dealing with violence, media, human rights, land and sanctions and an operational sub-committee to oversee all its operations.[331] Following this, it issued a number of statements on violations of the rule of law and incidents of hate speech by civil servants and security agents. In March, the Commissioner-General of Police and ZANU-PF stalwart, Augustine Chihuri, established a senior team of officers to work with JOMIC and agreed to submit investigation reports to the body.[332] This relationship soon buckled as Chihuri snubbed JOMIC in December following a requested meeting with him to discuss the failure of the police service to take action against increasing political violence.[333] JOMIC's inability to force Chihuri to account for the actions of his officers is an indicator of the mechanism's lack of power.

Following the Livingstone Communiqué of March 2011, South African President Jacob Zuma has promised to increase the efficacy of the JOMIC body by seconding three advisers to augment the power of the committee. The decision taken in June 2011 to deploy a technical team to strengthen the body had still not been carried out by March 2012, calling into question the resolve of SADC to strengthen the

[328] Ibid
[329] International Crisis Group. 2011b, p. 7
[330] Ibid, p. 8
[331] Ibid, p. 7
[332] Ibid
[333] Zulu, B. "Zimbabwe Police Commissioner Snubs Unity Gov't Monitoring Committee," *Voice of America*, 02/12/2011, found at http://www.voanews.com/zimbabwe/news/Zimbabwe-Police-Commissioner-Snubs-Monitoring-Committee-134920393.html

body.[334] In spite of these commitments, JOMIC remains ineffective. The biggest challenge remains political; the response to JOMIC's work and recommendations has never been adequate. Welshman Ncube, the new leader of the MDC-M, lamented that "the most important handicap was our assumption that if something was agreed at JOMIC, it would have the full weight of the political parties and therefore, because of that alone, compliance would be easy; it has not turned out that way."[335] The political will to implement the recommendations of the commission has been consistently lacking, while the body itself has often been torn by partisan interests. The failure of the drafters of the mechanism to include non-partisan members such as members of civil society or respected African leaders has led to the mechanism's lack of efficacy and inadequate buy-in.

While JOMIC has been plagued by problems, the second implementation mechanism has been entirely ineffectual. The Periodic Review Mechanism (PRM) was also to be constituted by two members of each of the principal parties to the GPA and the body was tasked with reviewing progress made on the implementation of the agreement on an annual basis.[336] The first report of the PRM was only published in April 2011, two years after the creation of the inclusive government. Compiled by the very negotiators responsible for the lack of progress on many issues of the GPA, the report was particularly thin on content.[337] It avoided many crucial issues and was unable to provide guidance on the way to overcome the roadblocks to reform. Instead it did little more than to confirm that the primary disputes concern issues such as the rule-of-law, alleged unconstitutional behaviour by security forces, freedom of assembly and association and the continued existence of political violence.[338] In addition, the review highlighted issues regarding the media, electoral reform and delays in capacitating democracy-supporting institutions but reduces the polarisation of the Cabinet on these issues to confusion over the proposed election date.[339] This body has not carried out annual reviews as mandated by the GPA, and the single document that it has produced has done little to help bridge the impasse. Both mechanisms suffer from the same problems, which is the vague and problematic drafting of their mandate and a lack of capacity and adequate terms of reference to undertake effective monitoring and evaluation processes. Aside from this, they are both constituted by members of the very parties whose progress they are intended to monitor, this leads to incentive problems. Finally there has been a conspicuous lack

[334] International Crisis Group. 2012. *Zimbabwe's Sanctions Standoff,* Africa Briefing No. 86, 06 February 2012, p. 11
[335] International Crisis Group. 2011b, p. 8
[336] Article XXIII, GPA
[337] International Crisis Group. 2011b, p. 2
[338] Ibid
[339] Ibid

of political will to abide by the agreement and take the committees' recommendations on board. It is unlikely that either body will have a profound impact on the implementation of the agreement going forward.

Security Sector Reform

The greatest indictment of the multi-party agreement is its failure to include an article on the comprehensive reform of the security sector. Security sector reform (SSR) is often undertaken in the wake of civil wars and conflict, it refers to reform interventions that are undertaken within the sector to address policy, legislation, structural and behavioural matters to realign policy, law, structures and behaviours to a human rights respecting culture.[340] It is intended to promote adherence to principles of accountability, transparency, participation, good governance and respect for the rule of law within bodies that make up the security sector.[341] As was discussed in the second chapter, the personnel of the security sector and the ZANU-PF elite are fused which has led to a militarisation of politics and a politicisation of the security sector. This has continued, largely unabated, during the unity government's term. The continued intimidation and arrest of senior MDC members and party supporters and the refusal of military chiefs to salute the prime minister can be seen as proof of the partisan nature of security personnel. This security elite has conflated the security of the ZANU-PF elite with national security at the expense of human security and human rights. As the GPA failed to mandate parliamentary or civilian oversight of the security sector and the MDC ceded control over these institutions, the sector has continued to be accountable only to the president and the party.

The GPA allowed for the creation of a National Security Council (NSC) which was formalised by the National Security Council Act (2009) to review national policies on security, defence, law and order; review national, regional and international security, political and defence developments; receive and consider national security reports and give orders to the security services as well as ensuring that the operations comply with the constitution.[342] As with much of what is mandated by the GPA, this body has failed to fulfil its obligations due to a lack of political will and the obstinacy of the ZANU-PF securocrats. This body has done little more than to serve as a cover for the continued dominance of the Joint Operations Command. For their part, the MDC's actions with regards to this issue has been worrying; their lack of a policy position on security sector reform in the form of a draft national security policy,

[340] Hendriks, C. & Hutton, L. 2009. "Security Sector Reform in Zimbabwe: What, Why and How?" *Institute for Security Studies*, Policy Brief No. 1, June 2009, p. 1
[341] Ibid
[342] Musavengana, T. 2011. "Security Sector: No Transition without Transformation," in *Zimbabwe at the Crossroads*, (Open Society Initiative for Southern Africa), p. 35

draft defence policy or draft intelligence policy is a serious failing on the part of this 'government in waiting.'[343] The MDC factions have failed to capitalise on their successes and act decisively throughout the period of the GNU.

This does not bode well for the elections that have been scheduled to follow the dissolution of the unity government. ZANU-PF has been willing to mobilise its coercive arms to ensure an electoral victory in the past, and its declining approval ratings will make the use of force a necessary tactic to ensure a victory at the polls. It is crucial that security sector reform is undertaken prior to the elections to prevent a rerun of the violence of 2008.

Land Reform

The parties to the GPA agreed that the coalition government would address the land issue, which has been a veritable powder keg in Zimbabwean history. They agreed to undertake a land audit for the purpose of "establishing accountability and eliminating multiple farm ownership."[344] More than three years after the creation of the unity government following the signing of the GPA, the Ministry of Lands and Rural Resettlement (a ZANU-PF controlled ministry) has announced that it will be undertaking a comprehensive land audit.[345] The recommendations of previous land audits have been ignored by government in spite of the exposure of widespread corruption by government officials. The stalling over the land issue is likely due to pressure by ZANU-PF officials not to undertake the audit as it is likely to expose widespread illegal activities by party members during the 2000-2008 period. It is unlikely that the land audit will be completed by the end of the unity government's term and if ZANU-PF wins another term in office, it is extremely unlikely that this review will be carried through.

Election Roadmap

The communiqué of the SADC troika in Livingstone in March 2011 marked the growing frustration of the region's leadership with the situation in Zimbabwe. Following recommendations from this body, a draft election roadmap was developed and signed by negotiators on 22 April. The roadmap identified 24 key issues which remained unresolved and the regional heads of state called upon the GPA principles to draw up timelines for implementing the plan.[346] A subsequent draft was initialled on 6 July which focussed on 8 key areas, including sanctions, constitution-making, media reform, electoral reform, rule

[343] Ibid, p. 37
[344] Article V, subsection 5.9a, Global Political Agreement, 2008
[345] "Zimbabwe: Third Land Audit on the Cards," *All Africa*, 2 March 2012, found at: http://allafrica.com/stories/201203030015.html, accessed on 5/03/2012
[346] International Crisis Group. 2011b, p. 8

of law, freedom of association and assembly, legislative agenda and commitments and the actual election.[347] In spite of this, the implementation of the roadmap has been hampered by deadlocks. In May, ZANU-PF instructed its negotiators not to engage further on issues relating to security sector reform which created problems in three areas.[348] First, in spite of agreements reached on voter registration and education, there was disagreement on how to ensure the independence of the Zimbabwe Electoral Commission (ZEC). Secondly there are serious disagreements on key rule-of-law concerns such as continued state-sponsored violence, the lack of oversight over the Central Intelligence Organisation (CIO) and the MDC's proposed amendments to the draconian Public Order and Security Act.[349] The final area of contention is over the deployment of SADC election monitors in the upcoming polls. There has been no movement on these issues for months, and there has been no compromising by the three principals. There is growing anxiety that ZANU-PF will not concede an inch on what it views as its strategic advantages.

In November 2011, the MDC formations and ZANU-PF referred 16 issues to the facilitation team which related to deadlocked areas and areas of non-implementation which they felt unable to solve. These issues were i) the failure to establish a National Economic Council; ii) the failures of the re-engagement committee and SADC's efforts to re-engage with the EU over the issues of sanctions; iii) the deadlock over the setting up of a land commission and undertaking of a land audit; iv) disagreements over allegations of the closure of political space; v) failure of the GPA principals to meet with to meet with the attorney-general, commissioner of police and heads of security and intelligence, vii) disagreements over allegations of the partisanship of state organs, viii) unfinished business relating to the legislative agenda (including the human rights bill, amendments to the Electoral and Criminal Procedures Act and realignment of laws with the forthcoming constitution); ix) disagreements on political violence and the role of the police; outstanding issues on x) media reform and regulation and xi) appointments, xii) JOMIC delays on establishing a commission of enquiry to investigate violence, harassment, intimidation and other violations; disagreements relating to xiii)electoral reform as stipulated in the roadmap, xiv) rule of law as defined in the roadmap and xv) freedom of association and assembly and finally the xvi) violations of the GPA provisions on the rule of law, free political activity and respect for constitutional provisions.[350]

[347] "Zimbabwe Elections Roadmap with Timelines," 6 July
[348] International Crisis Group. 2011b, p. 9
[349] Ibid
[350] International Crisis Group. 2012, pp. 10-11

President Zuma was to have met with the principals in October 2011, but the meeting had still not occurred by mid-March. His ability to break the deadlock appears limited, particularly without greater support from SADC on crucial areas such as the security sector. In spite of the creation of the roadmap, the parties continue to disagree on key reforms and this will likely continue to hamper implementation of the GPA and the preparations for a new election.

Conclusion

In spite of the high hopes of many in the region following the signing of the unity accord between ZANU-PF and the two MDC factions, little success has been made on implementing the directives of the Global Political Agreement. Where there has been limited progress, this is tempered with some worrying trends and the maintenance of avenues for political manipulation as in the cases of the Zimbabwe Media Commission and electoral institutions and processes. The GPA itself was a product of political compromise in a situation where Mugabe retained the upper hand, this resulted in a skewed 'sharing' of power which has allowed the intransigent party to consistently frustrate or delay reforms whilst outwardly appearing to be committed to the process. The way in which government was structured as a result of the GPA allowed for the creation of what often seems to be two 'parallel' governments that rarely agree on policy. The institutions presided over by the prime minister have been relegated to a peripheral position and the prime minister has had little influence within cabinet and other ZANU-PF dominated bodies. The wording of the agreement and its failure to nullify contrary constitutional provisions has allowed Mugabe to insist on the retention of the majority of his presidential powers, and he has flouted the GPA a number of times using the defence that his actions were constitutionally justified.

The main aim of the GPA was to end the violence and create a transitional government to oversee reforms with the end goal being a new election. While the violence was halted for a short time after the signing of the agreement, arrests and intimidation of opposition members including members of parliament, have continued largely unabated. The only difference was that ZANU-PF either tried to superficially distance itself from reports of violence (or undertake misinformation campaigns to blame it on the MDC) or would use the 'law' to invent trumped-up charges against the accused. The reforms envisioned by the GPA have largely been frustrated, the constitution-drafting process has been subject to repeated delays and is unlikely to reflect the views of the people while the Zimbabwe Human Rights Commission has been plagued by a lack of resources and political will. ZANU-PF has been able to out-

manoeuvre the MDC factions at almost every turn, while they have been unable to present a united front and have failed to capitalise sufficiently on their strengths.

If the constitutional draft is presented for referendum in early 2012, it is unlikely that it will represent a clean break from the Lancaster House constitution as it is unlikely to be substantially different from the 'Kariba draft' and the MDC will have had to make concessions to ZANU-PF to prevent them from stone-walling the constitutional draft in parliament. Thus the new constitution is likely to largely conserve the pre-2008 status quo. It is also clear that in the absence of comprehensive electoral and security reforms, the next election and possibly even the referendum may be plagued by violence at similar levels to that seen in 2008. Even in the eventuality of the fulfilment of thoroughgoing reforms mandated by the new constitution and legislation governing the elections and security sector, ZANU-PF has repeatedly shown its disdain for the law and its willingness to do anything necessary in pursuit of political survival. Unfortunately, the power-sharing agreement signed in 2008 has failed to transform power relations within Zimbabwe.

Conclusion

The mediation processes that led to the signing of the two agreements were substantially different. The Kenyan mediation was led by Kofi Annan and his team of prominent African personalities, which brought a high level of legitimacy to the proceedings. In addition, they invited technical support teams from private firms to help turn political questions into technical problems. The mediators held the right balance of familiarity with the country balanced by a strong sense of impartiality. In Zimbabwe, the mediation was undertaken by Mbeki and a team of South African political advisors. Mbeki has been repeatedly criticised for his partiality towards the former ruling party and his ideological biases were likely transported into the document and this allowed the creation of an inequitable arrangement. The mediation was not subject to a similar degree of international pressure as that which was seen in Kenya. Consequently, the agreements which were signed differ greatly in character.

The Kenyan agreement wasn't one document, but ten signed over a period of four months. It was comprehensive and included measures intended to resolve long-term issues. In spite of this, it failed to clarify a number of important issues. It failed to specify a guarantor of the accord and didn't stipulate any monitoring and evaluation mechanisms. Kofi Annan and the Panel of Eminent African Personalities were later mandated by the AU to continue to oversee the implementation of the agreement. In this capacity, Annan instituted a civil society monitoring mechanism which would form the basis of

discussions at a series of conferences and review meetings. This will be discussed further in Chapter 5. Ironically, the Zimbabwean agreement allowed for the creation of two monitoring mechanisms, but both were constituted by members of the political parties whose performance the structures were intended to assess. These mechanisms have been ineffective as they lack the necessary independence and political will to monitor the reform process effectively.

The implementation of the Kenyan Accord has been relatively successful. Although it was initially marred by disagreements between the principals, the parties have collaborated meaningfully to implement two review commissions, undertake electoral reform and oversee the promulgation of a new constitution. In contrast, the reforms that have been undertaken in the Zimbabwean case such as the reforms to the ZMC and the electoral commission have still allowed for substantial loopholes which would allow ZANU-PF to halt future progress. Violence has continued in Zimbabwe, albeit in a more discreet fashion. The agreement's failure to mandate security reform is one of its greatest failings. It has allowed the intransigent elite to maintain its grip on the coercive structures of the state and continue efforts to suppress dissent and pressure the MDC into a retreat from the unity government. While the Kenyan agreement has been more successful, it has also had its failings. The government has failed to make adequate progress on addressing the plight of internally displaced persons and has not sufficiently addressed the land question. The reasons for the relative success of the Kenyan case and the stagnancy and lack of reforms seen in the Zimbabwean case will be addressed in the following two chapters.

Chapter 5 – **The Role of Regional and International Bodies**

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Introduction

Regional and international actors and bodies have played crucial roles in ensuring the implementation of the power sharing agreements in both Kenya and Zimbabwe. Interestingly, the roles played in the two cases have diverged, with Kenya experiencing greater international influences, whilst in Zimbabwe the regional body – the Southern African Development Community – has played a primary and almost unilateral role. This chapter will suggest that the different approaches undertaken by numerous actors towards the countries helps to explain the differing levels of success in implementing the reforms between the two cases.

Kenya

Introduction

As noted in the previous chapter, Kenya is an extremely important African country from a geostrategic perspective. It has always been perceived as a stable and maturing democracy in a region plagued by political instability. When it experienced unprecedented levels of post-election political violence in 2007-2008, the international community was taken by surprise and undertook rapid interventions to try to restore the country's stability. This chapter will attempt to gauge the role played by both regional and international actors in ensuring the implementation of the agreement in the post-mediation phase.

Regional Influences

East African States

The East African Community (EAC) was an important regional actor in the 1960s; it undertook experiments in expanded trade and investment links, forged cooperation in services and built a common regional identity.[351] Differences between states served to destroy the emerging regional bloc in 1977, but since the mid-1990s, a new movement has emerged to restore and revive the EAC. Kenya had always been a core member of the group, a regional hegemon and beacon of political stability. This perception was drastically undermined by the 2007-2008 crisis and this called into question the credibility of regional bodies in managing conflicts.[352] The EAC and the regional Intergovernmental Authority on Development (IGAD) remained paralysed and were unprepared to deal with the crisis. In spite of a few unsuccessful attempts on behalf of regional leaders to mediate an agreement in the crisis-torn country, the domestic actors rejected their overtures, preferring 'international' mediation in the

[351] Khadiagala, G M. 2009, p. 432
[352] Ibid

form of the AU-Annan initiative. As a result of this, regional actors have largely been excluded from impacting upon the implementation of reforms in Kenya, preferring instead to defer to the African Union's Panel of Eminent African Personalities (PEAP). As noted by Khadiagala (2009), regional actors have failed to draw important lessons from the 2007 crisis and 2008 mediation and have not capitalised on the opportunity to have a broad debate on collective strategies and institutions to manage diversity across the regional ethnic, racial and class divides.[353] In the event of the re-emergence of hostilities in Kenya, it is likely that regional actors will again play a less than marginal role.

The African Union and Kofi Annan

As noted in the previous chapter, the African Union mandated the Panel of Eminent African Personalities under Kofi Annan to undertake negotiations in 2008. The AU was directly involved through its commission Chairpersons, Jakaya Kikwete and John Kufour. Following the successful negotiation, the AU has not intervened directly to ensure the implementation of the power sharing agreement except through the PEAP Panel and the panel's Chair and former UN chief, Kofi Annan. On 14 March 2008, the AU Peace and Security Council issued a statement which commended both the principals and the negotiators for the agreement that had been reached. The Council requested that the Panel would "continue to support the Kenyan parties in the implementation of these Agreements, including support to the various Committees and Commissions provided therein, as well as in the follow-up to the recommendations emanating from them."[354] Further, the AU requested that the Panel would "provide all the necessary support to the Coalition Government and other stakeholders in the Constitutional Review Process." The AU thus consigned the monitoring and enforcement of the power sharing agreement to the Panel of Eminent African Personalities.

To ensure continued engagement and streamline and facilitate the implementation of the agreements and the KNDR process, the Panel created a scaled-down Panel Secretariat, named the Coordination and Liaison Office (CLO) which would be stationed in Nairobi. This office came into force from 30 July 2008 and was mandated to assist in the implementation of the KNDR commitments and support the coalition government in its attempts to address the long-term issues identified by Agenda Four.[355] This body would also ensure clear communication between members of the Panel, government, civil society and the Kenyan public. In August 2010, the coalition government extended the mandate of the CLO for a

[353] Khadiagala, G M. 2009, p. 443
[354] The Kenya National Dialogue and Reconciliation website, found at: http://www.dialoguekenya.org/home.aspx
[355] Ibid

further two years as it envisaged that the body's assistance would continue to be needed ahead of the elections scheduled for 2012.

Although it was noted in the previous chapter that the agreement failed to specify monitoring and evaluation mechanisms and the role of enforcement parties, this has since been established by the AU's request to the Panel and the establishment of the CLO. Rather than creating a political body to monitor and report on the implementation of the agreement, the Panel mandated civil society to undertake independent monitoring of the Accord. This has been done in a participatory, credible and evidence-based manner by the designated institution, South Consulting Ltd. The group has been undertaking independent reviews of the implementation of the KNDR under its Kenya National Dialogue and Reconciliation Monitoring Project since January 2009. The institute uses a mix of methods to collect its data, including interviews, focus groups, baseline surveys and the use of credible government, civil society, UN, media and NGO reports.[356] The resulting reports then formed the basis for discussions in the implementation review meetings and conferences held by the Kofi Annan Foundation in conjunction with other partners such as the CLO, the International Center for Transitional Justice (the ICTJ) and the Geneva-based Centre for Humanitarian Dialogue (HD Centre).

These organisations have been crucial partners in ensuring the implementation of the power sharing agreement. The HD Centre is "is an independent organisation dedicated to helping improve the global response to armed conflict."[357] The Centre has been involved in Kenya since the outbreak of the crisis when, on Kofi Annan's request, it seconded two staff members to provide support to the mediation team and the Panel Secretariat. They also provided strategic advice on tactical issues and the formulation of peace agreements. They have continued their involvement in the post-agreement phase by providing strategic advice to the PEAP Panel. The ICTJ is also an independent, non-political organisation specializing in the field of transitional justice. According to their website, the "ICTJ works to help societies in transition address legacies of massive human rights violations and build civic trust in state institutions as protectors of human rights."[358] The organisation works to support government, civil society and the population at large in four key areas which are: criminal prosecutions, institutional

[356] South Consulting. 2009. "Project Context and Summary of Findings," Kenya National Dialogue and Reconciliation Monitoring Project, found at: http://south.co.ke/Downloads/Reports/Projectcontextandsummaryoffindings.pdf
[357] This brief can be found at: http://kofiannanfoundation.org/kenya
[358] International Center for Transitional Justice, http://ictj.org/our-work/regions-and-countries/kenya

reform, truth-seeking and reparations.[359] Each of these organisations is able to provide specialist advice on key issues surrounding the implementation of the accord and assist in keeping the coalition partners and government accountable. The involvement of these organisations is a substantial break from previous conflict mediation tactics which involved political actors as mediators. The Economist (2011) has referred to the increasing trend to involve private bodies in conflict negotiations as "privatising peace."[360] These bodies are unable to impose the same sanctions for non-compliance as traditional actors, but they also have a wider range of possible actions open to them and are able to be more creative in a search for solutions.[361] This is an area in which further research should be undertaken to outline the positive and negative aspects of the involvement of private actors in negotiations in order to provide guidance for future mediation efforts.

Review meetings on the status of implementation have been held regularly since 2009, with the third KNDR Conference – themed "Building a Progressive Kenya" – having taken place in December 2011.[362] This conference was attended by the KNDR Dialogue Team comprised of the principals from each party, AU Panel members and each party's negotiators from the 2008 mediation process. The members of the AU Panel were John Kufour, Joe Clark, Graça Machel, Kofi Annan, Benjamin Mkapa, Quett Ketumile Joni Masire, Amos Sawyer and Willy Mutunga. There were approximately 350 delegates from government departments, agencies and commissions, civil society, the media, research organisations and UN agencies as well as former ambassadors and technical advisors who gathered to discuss the future of Kenya and debate the progress made on the KNDR process. Following this, on 17 January 2012, the Dialogue Team held its eleventh review meeting. These meetings have been convened regularly in the 4 years since the signing of the power sharing agreement, to review the status of the implementation of reforms by the Kenyan government. The next meeting has been scheduled for 17 April 2012.[363] This meeting and those that have gone before have met to discuss the reports compiled by South Consulting. These civil society reports on the implementation of the KNDR process have formed the basis for decisions that are taken by the Team and have influenced the degree of pressure to be applied to the Kenyan government in specific areas of governance reform.

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[359] Ibid

[360] "Privatising Peace," *The Economist,* 30 June 2011, found at http://www.economist.com/node/18895458?story_id=18895458, accessed on 5/07/2011

[361] Ibid

[362] For information on this conference, see http://kofiannanfoundation.org/newsroom/photos/2011/12/kenya-national-dialogue-and-reconciliation-building-progressive-kenya

[363] Kofi Annan Foundation, found at: http://kofiannanfoundation.org/newsroom/press/2012/01/dialogue-team-kenya-national-dialogue-and-reconciliation-holds-its-eleventh-r

Kofi Annan and the Panel have remained engaged with Kenya's political leadership by undertaking regular visits to the Kenyan capital to meet with the principals. They have also attended regular press briefings and made statements following the announcement of developments that are crucial to the stability of the coalition government. Annan has also returned to Kenya periodically to lend his support to the process at difficult moments.[364] This has been important as it has placed sustained pressure on the two leaders to move forward with reforms in spite of the existence of anti-reform elements within parliament. This has also been bolstered by sustained pressure applied by international actors.

International Influences

Kenya is an important factor on the African agendas of many 'Western' countries. As was noted in the previous chapter, international influences were particularly important in ensuring the success of the mediation efforts in 2008. Although they have played a smaller part in ensuring the success of the accord, foreign governments and multilateral bodies have placed pressure on the principals in times of conflict and deadlock. In April 2008 following the signing of the agreement, the parties were deadlocked on the division of cabinet posts. As a means to pressure the parties to break the impasse, the European Union threatened to cut off aid if a deal was not reached timeously.[365]

The United States of America has also played an important role in applying pressure to the parties. In August 2009, Secretary of State Hilary Clinton met with senior Kenyan officials and informed them that the US government expected the implementation of the political and economic reforms without further delay.[366] She also stated that the Obama administration was considering placing a travel ban on Kenyan officials who were obstructing efforts to implement reforms. In September of the same year, after continued foot-dragging by the Kenyan government, Assistant Secretary of State for African Affairs, Johnnie Carson, wrote a letter to the principals which threatened that the "future relationship with the United States is directly linked to the degree of your support for urgent implementation of the reform agenda as well as a clear opposition to the use of violence."[367] These threats are significant as Kenya is one of the greatest recipients of US aid in sub-Saharan Africa and sees the US as an important trading partner. If the USA had carried through with these threats, it would have had significant ramifications for the Kenyan economy.

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[364] Horowitz, J. 2008, p. 4
[365] Horowitz, J. 2008, p. 11
[366] Dagne, T. 2011. "Kenya: Current Conditions and the Challenges Ahead," *Congressional Research Service,* CRS Report for Congress, p. 3
[367] Ibid

The United States Agency for International Development (USAID) has also undertaken an initiative to promote the "full implementation of the political, institutional and accountability reforms to align Kenyan institutions to the new constitution that are essential (sic) to bring true democracy, prosperity, and stability to Kenya."[368] It has used its local structures and soft power to place pressure on government through civil society structures and by empowering local actors.

Following the maturing of the coalition government and the reduction of overt disagreements and deadlocks, the international community has not played a significant role in exerting pressure for reforms. The perception is that the government is 'hobbling along' and implementing reforms, albeit in fits and starts. There has not been a sufficiently low level of reform to warrant intervention and there is a perception that the Kenyan crisis has passed. This has meant that the Panel has largely been left to its own devices.

The International Criminal Court

The decision by the International Criminal Court (ICC) to confirm the charges and institute cases against four of the people identified by the CIPEV Commission has and will have unintended consequences on the implementation of the Accord and the political stability of Kenya. This is particularly true for Uhuru Kenyatta and William Ruto, the most prominent of the four who have been charged. Both politicians in the coalition government, Kenyatta and Ruto have presidential ambitions and have announced their intentions to run for the presidency in 2012. Prior to the confirmation of charges, the ICC proceedings had begun a process of realignment within Kenyan politics. There was the creation of a political alliance based on opposition to the ICC process and comprised of three ethnicities, Kikuyu (Kenyatta), Kalenjin (Ruto) and Kamba (Musyoka).[369] This has led to it being dubbed the "KKK" alliance. The reason for their collusion was that it was assumed that an umbrella party would make it easier to cross the new threshold for winning the presidency, as the constitution has made this substantially more difficult. The members of the alliance believe that if they win the election and control the government, they will at least be able to delay the ICC proceedings.[370] Subsequent to the confirmation of the charges, Kenyatta stepped down from his role as finance minister, although he retained the position of Deputy Prime Minister. Francis Muthaura, the third Kenyan to be indicted, has stepped down from his role as the Head of Public Service and Secretary to Cabinet. Their resignations may cause delays in the implementation of reforms and the passing of legislation by cabinet. Unfortunately, late in 2011 South Consulting had

[368] Ibid
[369] International Crisis Group. 2012. *Kenya: Impact of the ICC Proceedings.* Africa Briefing No. 84, p. 11
[370] Ibid

already noted that the implementation of crucial reforms had taken a back seat to jostling ahead of the elections that are planned for 2012.

The ICC proceedings have also reignited concerns over a resurgence of political and ethnic violence. In addition, there is a growing perception – aided by the propaganda campaigns of the affected politicians – that the ICC proceedings are merely a means by which the 'West' can pave the way for their preferred candidate, Odinga, who is seen to be the biggest beneficiary of the ICC predicament.[371] This is likely to increase ethnic tensions in the areas most affected during the post-election violence. The Standard, a Kenyan daily newspaper reported that "the frenetic pace of electioneering activities by all political formations point to heightened anxieties, with leading politicians going out to all corners of the country to assert themselves as the next power barons."[372] The ICC proceedings have introduced a significant measure of uncertainty, anxiety and instability into the political system and this is sure to result in continued realignments amongst affected politicians within their parties. This will, no doubt, take precedence over the implementation of the agreement in the short term, and it may even threaten to derail it entirely.

Conclusion

In spite of their proximity and familiarity with the Kenyan case, regional countries and organisations have played peripheral roles in the negotiation and implementation phases of the KNDR process. This is largely as a result of their initial failures in the negotiation phase, but also due to the relative weakness of the regional East African Community (EAC). The most influential actor in ensuring the success of the accord has been Kofi Annan, as Chairman of the Panel of Eminent African Personalities. There is a sense that the AU as a whole has not played a direct role in ensuring implementation, apart from working indirectly through the PEAP Panel. Although the Panel is an AU structure, it seems that ownership of the process has really been demonstrated by the Kofi Annan Foundation and related NGOs. Early in the implementation process, there was discernible pressure from countries such as the USA and regional blocs such as the EU to push the parties towards full effectuation of the agreement. This pressure has largely subsided due to the perception that the Kenyan crisis has passed and that the government is continuing with reforms, albeit at a diminished pace. Interestingly, the Panel of Eminent African Personalities has undertaken a cross-cutting strategy to promote implementation of the agreement.

[371] Ingwe, U. "Beyond the ICC and Kenya's Divisive Politics," *Pambazuka News*, 6 February 2012, found at http://www.pambazuka.org/en/category/features/79589, accessed on 5/03/2012

[372] Mathenge, G. "ICC Round Two Sparks Anxiety," *The Standard*, 7 August 2011, found at: http://www.standardmedia.co.ke/politics/InsidePage.php?id=2000040335&cid=4, accessed on 21/09/2011

They have encouraged the participation of international NGOs as technical experts to help guide the process, while mandating Kenyan civil society with the monitoring of the Accord. The participation of international agencies and eminent Africans has infused the process with legitimacy while the involvement of civil society has encouraged independent and objective reporting as well as broad ownership of the process. This also assists civil society to build its capacity to hold government to account and it encourages domestic advocacy around governance issues which may help to prevent backsliding and the need for constant engagement with the Panel as an enforcement party. Unfortunately, the decision to undertake the criminal prosecution of four Kenyans at The Hague has served to undermine and delay the implementation of the Kenyan Accord as politicians shuffle in a bid to secure their political futures ahead of the 2012 elections.

Zimbabwe

Introduction

International and regional actors have long played a significant role in post-independence Zimbabwe, albeit in different ways. The role played by South Africa has been particularly important, and this has not ceased to be true during the tenure of the inclusive government. While in the Kenyan case, the African Union (AU) played a pivotal role, in Zimbabwe it deferred instead to the Southern African Development Community (SADC), a regional body with a relatively strong history of cooperation between states. SADC in return appointed South Africa as the main party to intervene in Zimbabwe, first through the mediation efforts of President Thabo Mbeki and later through President Jacob Zuma who served as a mediator and guarantor of the implementation of the GPA. This chapter shall look briefly at the roles played by these important actors on impacting the outcome of the Global Political Agreement of 2008. It will also seek to understand the ways in which these actors were manipulated by the principals in an attempt to influence political outcomes.

Regional Influences

South Africa and Mbeki

South Africa has played an important role in Zimbabwean affairs since early 2000. This was borne out in the country's numerous engagements with Zimbabwean leaders and with regional and international

organisations concerned with the deepening crisis in the country. South African President Thabo Mbeki's approach to Zimbabwe has been the subject of an extensive academic debate which will not be covered in detail here. However, it is important to understand this history in order to make sense of the failings of the GPA and the inherent bias within the document towards ZANU-PF.

Mbeki's approach towards Zimbabwe was characterised by three aspects. The first is the policy of 'quiet diplomacy,' the calling card of this framework is a refusal to recognise and address human rights abuses perpetrated by the Mugabe government and a tendency to refrain from criticism of the ZANU-PF government.[373] This policy was evident in many speeches and statements made by the South African statesman. Secondly, following from this, Mbeki acted to block all criticism and proposed action against Mugabe in international fora. Thirdly, he deflected pressure for action on the Zimbabwean issue by claiming that negotiations between the principals were underway and that this mitigated the need for alternative actions by outside actors.[374] Mbeki's actions and statements towards Zimbabwe and the stance of the ruling African National Congress is illustrative of these points.

Following the land invasions of 2000 and the accompanying widespread state-sponsored violence, Mbeki announced his support for the land reform process and wrote off South African concerns over the issue as residual racial prejudice.[375] In spite of the extensive violence as a result of the reform process and the growing repression ahead of the 2000 elections, Mbeki allayed concerns expressed by the United States over the high levels of conflict and the credibility of the election and was still photographed walking hand-in-hand with Mugabe. Election observer missions from South Africa consistently declared the 2000, 2002 and 2005 polls 'free and fair,' or 'credible' in the face of widespread mayhem, oppression and human rights violations.[376] A critical report on the 2002 elections written by Judges Moseneke and Khampepe was suppressed by Mbeki and had still not been released into the public domain a decade after its drafting. The findings of the South African election observer missions stood in stark contrast to those of most international delegations, such as those issued by the EU mission in 2002 which led to the imposition of travel restrictions on a number of senior ZANU-PF functionaries.[377]

[373] Matsyszak, D. 2010. *Law, Politics and Zimbabwe's 'Unity' Government*, Harare: Konrad Adenauer Stiftung, p. 2
[374] Ibid
[375] Ibid, pp. 3-4
[376] Ibid
[377] Ibid, p. 6

Mbeki repeatedly frustrated attempts by international multilateral institutions to criticise the Mugabe government. Following the 2002 election, Mbeki blocked a condemnatory resolution on Zimbabwe at the annual meeting of the United Nations High Commission on Human Rights (UNHCHR). After this, he and his administration repeatedly introduced motions of 'no action' on the Zimbabwean situation at the UNHCHR and other UN bodies over the following years as a means to squash any formal debate on the issue.[378] Even in April 2008, following the first round of elections, the South African government used its position on the UN Security Council to prevent the issue from appearing on the Council's agenda. In July of the same year, following the widespread clamp down on the opposition, Mbeki lobbied Russia and China to exercise their veto against a resolution which would have imposed an arms embargo on Zimbabwe and sanctions on Mugabe and 11 of his core collaborators.[379] Time and again, the reason cited to prevent action on Zimbabwe was that South Africa was in the process of initiating or facilitating negotiations between ZANU-PF and the MDC factions.[380] Even in April 2008, at the height of the state-sponsored crackdown, Mbeki insisted that the situation in Zimbabwe was *not* a crisis, but a normal electoral process.[381]

During his tenure, Mbeki was repeatedly criticised by the official opposition and large sections of South African society for his policy towards Zimbabwe. As President, Thabo Mbeki continually acted in a partisan manner towards Robert Mugabe. Sabelo Ndlovu-Gatsheni (2011) contends that this can partly be explained by the ties that Mbeki created with ZANU-PF since the 1980s, his ideological sympathies with other African governments constituted by former liberation movements and his personal views of the complexity of the Zimbabwean situation.[382] Crucially, he suggests that Mbeki's stance was informed by his wider foreign policy imperatives. His foreign policy emphasised multilateralism rather than the unilateralism that had backfired in the country's dealings with Nigeria, Lesotho and the Democratic Republic of Congo (DRC). He also wanted to avoid the bullying strategy that had been pursued by the Apartheid regime in the SADC region and crucially, he wanted to avoid being seen to be pushing a western regime-change agenda in Harare. Finally, Mbeki intended to position South Africa at the head of the 'African renaissance' by taking a leading role in stabilising the continent politically and economically

[378] Ibid, p. 7
[379] Ibid, p. 8
[380] Ibid
[381] Badza, S. 2008. "Zimbabwe's 2008 Elections and their Implications for Africa," *African Security Review,*17, 4, p. 11
[382] Ndlovu-Gatsheni, S. 2011. "Reconstructing the Implications of Liberation Struggle History on SADC Mediation in Zimbabwe," *The South African Institute of International Affairs*, Occasional Paper No. 92, p. 12

and fighting for a more respected place for Africa within the global political order.[383] Each of these aspects encouraged Mbeki's perceived soft stance on the situation in Zimbabwe.

Following the March election, Levy Mwanawasa, the Zambian president and chair of SADC convened an emergency summit to discuss the refusal of the ZEC to declare the results of the presidential poll. On his way to the summit, Mbeki detoured to Zimbabwe and greeted Mugabe with the usual displays of affection including hugging and holding the hands of the ageing dictator.[384] After this meeting, Mbeki addressed a group of reporters and stated that the delay in announcing the results from the election was part of the 'normal electoral process in terms of the law of Zimbabwe' in spite of its blatant illegality. As Mugabe had decided not to attend the SADC meeting, Mbeki delivered the disputed president's input to the heads of state of the 15-member union and he tried, unsuccessfully, to prevent Tsvangirai from addressing the meeting.[385] As a result of these issues and those highlighted above, Mbeki's mediation in the 2008 negotiation process came under increasing criticism from a number of sectors including the MDC-T, sections of the ANC tripartite alliance, countries like Tanzania and Botswana and the West. Each of these groups expressed doubts regarding the South African president's neutrality.[386]

Following from the close relationship between Mbeki and Mugabe, and the South African president's inclination to protect the Zimbabwean regime from international criticism, it is far easier to understand the failings written into the GPA and the uneven sharing of power between the parties. This is not necessarily to say that Mbeki conspired to create a lop-sided agreement, but that his ideological leanings and propensity to defer to the elder statesman most likely led him to employ less leverage and accept a weaker agreement than may have been the case under a different mediator.

The Southern African Development Community

Zimbabwe's economic and political implosion has had wide-reaching regional implications. As a result, the Southern African Development Community (SADC), a 15-member regional security grouping, has long been involved in the situation in Zimbabwe. The country has been a constant feature on the agenda of the SADC Organ on Politics, Defence and Security Cooperation (OPDSC) for the past decade. In spite

[383] Ibid
[384] Matsyszak, D. 2010, p. 13
[385] Ibid
[386] Mlambo, A & Raftopoulos, B. "The Regional Dimensions of Zimbabwe's Multi-Layered Crisis: An Analysis," paper presented at a conference on *Election Processes, Liberation Movements and Democratic Change in Africa,* Maputo 8-11 April 2010, p. 9

of its increasing frustration with Zimbabwe in the 2007-2008 period, SADC's principles of solidarity prevented the organisation from criticising Mugabe's policies in the early 2000s. However, even SADC was unable to pronounce the 2008 election processes as credible, particularly in light of the 2004 protocol on elections developed by the regional body.[387] Following the SADC-mandated mediation initiated by SA President Thabo Mbeki in 2007, the union deferred to this nation and allowed the regional hegemon to take the lead on ensuring the implementation of the power sharing agreement. In spite of SADC's decision not to legitimise the 2008 election and to begin negotiations to institute a power-sharing government, they still invited Mugabe to the summits of heads of state under the guise of "President of Zimbabwe" and refrained from direct criticism of the aging leader.

SADC's mission is "to promote sustainable and equitable economic growth and socio-economic development through efficient productive systems, deeper co-operation and integration, good governance and durable peace and security, so that the region emerges as a competitive and effective player in international relations and the world economy."[388] However, the principles in Article 4 of the SADC treaty have largely trumped concerns with good governance and durable peace and security. Article 4 provides for the "sovereign equality of all states" and "solidarity, peace and security."[389] Sovereignty has repeatedly been invoked as a reason for the states to refrain from interference in each other's affairs, and solidarity has prevented the body from making statements condemning the actions of a member state.

SADC's reluctance to criticise or apply direct pressure to Mugabe to implement the GPA also has historical roots. The countries of the SADC region were plagued by similar experiences of colonial repression and stark similarities in their subsequent liberation struggles. Countries in this regional bloc remain dominated by governments constituted by former liberation movements whose ideology is still deeply rooted in anti-colonial and anti-imperialist sentiment.[390] Mugabe has played upon this and deliberately models himself and his party as the guardians of the 'African nationalist revolution', a bastion in the region and internationally against resurgent neo-imperialist forces led by Britain in collusion with the United States and European Union.[391] While his anti-imperialist rhetoric often seems laughable, it still resonates deeply with many of the leaders in the region, particularly the remaining 'old

[387] SADC Principles And Guidelines Governing Democratic Elections, found at: http://www.eisa.org.za/PDF/sadcguidelines.pdf
[388] Found at http://www.sadc.int/index/browse/page/715, accessed on 25/02/2012
[389] Found at http://www.sadc.int/index/browse/page/120, accessed on 25/02/2012
[390] Ndlovu-Gatsheni, S. 2011, p. 6
[391] Ibid

guard.' In addition, many of the leaders of SADC still feel indebted to Mugabe and hold him in high esteem. This is a result of the important role that he and the Zimbabwean defence forces played in various struggles in a number of the region's countries. Zimbabwe intervened in Mozambique in behalf of the FRELIMO government in the 1980s; actively participated in UN peacekeeping operations in Angola; played an important role in the mediation of disputes in Mozambique and Angola; supported the ANC struggle in South Africa in its later years and commanded a force of Zimbabweans, Angolans and Namibians during the war in the Democratic Republic of Congo (DRC) in 1998.[392] Angola, Mozambique, the DRC and South Africa are all indebted to Zimbabwe and Mugabe, thus making it difficult for these regional powers to openly criticise the Zimbabwean president even within the SADC forum.

Following the resignation of Mbeki as president and the election of Jacob Zuma in 2009, the new South African president assumed the role of mediator in Zimbabwe. While Mbeki had been lenient on Mugabe, Zuma took a stronger stance. In a clear break with Mbeki's era, Zuma appointed three of his most powerful and trusted advisors to act as his points persons for the mediation process. These three – Lindiwe Zulu, Mac Maharaj and Charles Nqaqula – would act on Zuma's behalf and report to him on all developments in the Zimbabwean situation.[393] At SADC's special summit on Zimbabwe in Maputo in November 2009, Zuma was reported to have been firmer with Mugabe than anyone in SADC had been since the emergence of the crisis. He reportedly told the three principles that "with him at the helm of the mediation, it was no longer business as usual."[394] This stronger stance was as a result of South African frustration with the slow pace of reform and an intention to have settled the Zimbabwean issue ahead of the soccer world cup in June 2010. Meanwhile, SADC allowed South Africa to keep their position as facilitator and continued to defer to the state while calling for adherence to the GPA, continued negotiations on outstanding issues, renewed foreign investment and assistance and the removal of sanctions.[395]

It soon became apparent that in spite of the stronger stance adopted by President Zuma, the unity government had continued to stumble along and the reform process continued to be stymied. This led to a perceptible hardening of SADC's stance towards the Zimbabwean parties, and ZANU-PF in particular

[392] Ibid, pp. 13-14
[393] International Crisis Group. 2010. *Zimbabwe: Political and Security Challenges to the Transition,* Africa Briefing No. 70, 3 March 2010, p. 13
[394] Ibid
[395] Ibid, p. 14

during 2011. At its summit in Livingstone in March, the organisation noted the lack of progress on the Zimbabwean situation and the concurrent resurgence of political violence. The summit then issued a communiqué which resolved that:

- there must be an immediate end of violence, intimidation, hate speech, harassment, and any other form of action that contradicts the letter and spirit of GPA;
- all stakeholders to the GPA should implement all the provisions of the GPA and create a conducive environment for peace, security, and free political activity;
- the Inclusive Government in Zimbabwe should complete all the steps necessary for the holding of the election including the finalisation of the constitutional amendment and the referendum;
- SADC should assist Zimbabwe to formulate guidelines that will assist in holding an election that will be peaceful, free and fair, in accordance with the SADC Principles and Guidelines Governing Democratic Elections;
- The Troika of the Organ shall appoint a team of officials to join the Facilitation Team and work with the Joint Monitoring and Implementation Committee (JOMIC) to ensure monitoring, evaluation and implementation of the GPA. The Troika shall develop the Terms of Reference, time frames and provide regular progress report, the first, to be presented during the next SADC Extraordinary Summit. Summit will review progress on the implementation of GPA and take appropriate action.[396]

This communique caused considerable distress and frustration within ZANU-PF's ranks. The party then undertook a regional lobbying effort to prevent the statement from being endorsed by the member states. In spite of their efforts, the statement was endorsed at the summit of heads of state in June and it seemed that the body would be taking a much harder stance on the Zimbabwean issue.

Unfortunately, the resolutions of the SADC communiqué have not translated into significant changes in the Zimbabwean situation. The team of officials that were to be deployed to bolster the work of JOMIC had still not been mobilised more than 8 months since the endorsement of the communiqué. It seems that the Zimbabwean issue has been an Achilles heel for the regional organisation. A ruling on Zimbabwe by the SADC Tribunal and the Tribunal's subsequent suspension show the inability of the regional body to enforce rulings and decisions against Mugabe. The SADC Tribunal was established in 1992 to ensure adherence to the SADC treaty by member states and to adjudicate disputes between member states and individual persons who are citizens of SADC countries. The case which appears to have led directly to the suspension of the tribunal involved Zimbabwe; the court ruled that a number of white Zimbabweans had been subjected to racial discrimination and had been denied access to legal recourse in the country after their land had been seized during the Fast Track Land Reform process.[397]

[396] Communiqué of the Summit of the Organ Troika on Politics, Defence and Security Cooperation, 31 March 2011, Livingstone, Republic of Zambia. Found at http://www.sadc.int/index/browse/page/858, accessed on 25/02/2012

[397] International Crisis Group. 2012. *Zimbabwe's Sanctions Standoff,* Africa Briefing No. 86, 6 February 2012, p. 11

The Tribunal found the government guilty of a breach of its treaty obligations and directed the state to pay compensation to the claimants. The government of Zimbabwe first ignored and then violated the ruling.[398] The Tribunal then referred Zimbabwe to the SADC Council of Ministers for appropriate action, who was then obliged by the SADC treaty to recommend sanctions or suspension.[399] Instead of suspending Zimbabwe as it had in the case of Madagascar, SADC suspended the tribunal citing the need for a review of the institution's role, functions and terms of reference. This is an example of the toothless way in which the regional body deals with Zimbabwean intransigence, and it does not bode well for its ability to enforce compliance with the GPA.

Unfortunately, late in 2011 there was a noticeable slackening in the commitment of Zuma's facilitation team to ensure the full implementation of the Agreement. Zuma's international relations adviser, Lindiwe Zulu acknowledged this problem citing more immediate domestic and international commitments.[400] The recent decision by Tanzania not to appoint a monitor to the JOMIC committee is also a major victory for Mugabe's regional lobbying efforts. Dar es Salaam has agreed with Mugabe that sending such a monitor would be a breach of national sovereignty.[401] Recent remarks made by Zambian President Michael Sata to London's Daily Telegraph suggesting that Tsvangirai is "pro-Western" and unreliable are seen as part of a growing trend towards growing SADC sympathy for the aging Zimbabwean president and his election plans. The situation in the former 'breadbasket of Africa' seems to have split SADC into various alliances, particularly along generational lines.[402] Following a meeting in January 2012 held between President Sata and Mugabe in Livingstone, the Zambian president came out in support of the holding of elections in 2012 in the crisis-ridden state, a move that is seen as a significant crack in the uniform position of the regional body which may enable Mugabe to split the bloc.[403] Zimbabwe-fatigue has also begun to set in following the third anniversary of the creation of the unity government and the continuing frustration of reform efforts. South Africa has quietly suggested that in the face of the looming 2013 deadline, it may negotiate a GPA-2 – a second period of compulsory

[398] Ibid
[399] Fritz, N. 2011. "SADC Tribunal: Will Regional Leaders Support it or Sabotage it?" in *Zimbabwe at the Crossroads*, published by the Open Society Initiative for Southern Africa, p. 62
[400] AllAfrica. "Zimbabwe: Under the Carpet," *Southern Africa Report*, 9 February 2012, found at http://allafrica.com/stories/201202100224.html, accessed on 25/02/2012
[401] Ibid
[402] Qobo, M. 2009. "Outlines of Intra-State Conflict in Zimbabwe and Regional Challenges," in S R Khan (ed.) *Regional Trade and Conflict Resolution*, (London: Routledge), p. 175
[403] Moyo, J. "AU Stymies Mugabe's Bid for Elections without Reforms," *The Mail & Guardian Online,* 03 February 2012, found at http://mg.co.za/article/2012-02-03-au-stymies-mugabes-bid-for-elections-without-reforms/, accessed on 26/02/2012

power sharing.[404] Undoubtedly this would be against the wishes of Mugabe and ZANU-PF, and it is likely that they will increase regional and continental lobbying efforts to endorse the holding of a new election within 2012.

In sum, the Southern African Development Community was tasked with the oversight of the implementation of the GPA along with the AU. Rather than taking a strong stance on the issue, the regional body deferred to the South African mediators and facilitators. This meant that the process was largely guided by the whims and personalities of the South African facilitator. Regardless, SADC has a vested interest in seeing the Zimbabwean crisis resolved as members of the body are estimated to have lost more than US$36 billion in potential investments in Zimbabwe as a result of the protracted crisis.[405] The regional bloc has continued to call for the full implementation of the GPA and the election roadmap as well as the removal of international sanctions on the members of Mugabe's ruling elite, but has refrained from placing sanctions on the intransigent parties. How these contradictory trends in SADC's role in settling the Zimbabwean issue will play out remains to be seen in light of the favoured principles of sovereignty and solidarity amongst member states in a climate of increasing Zimbabwe-fatigue. The SADC body has few enforcement mechanisms, and even fewer that it is willing to use against one of its founding members.

The African Union

The African Union (AU) has not played as strong a role in resolving the crisis in Zimbabwe as it had in mediating the Kenyan impasse. The crisis in Zimbabwe split AU states into pro- and anti-Mugabe camps.[406] The post-election crisis was a crucial area for debate at the 11th AU Summit in Sharm el Sheikh, Egypt in July 2008. Eventually the summit adopted a resolution that didn't apply sanctions against the government nor even insist on the upholding of AU core principles on the conduct of elections.[407] Instead, the resolution encouraged the continuation of mediation by SADC to enable the two main political parties to negotiate a solution to the impasse. The reluctance of the AU to be firm with Zimbabwe, particularly over its overt disregard for AU principles governing elections, suggests that solidarity remains a vital imperative in the AU and it continues to complicate the AU's role as an honest

[404] AllAfrica. "Zimbabwe: Under the Carpet"
[405] Mwalubunju, O & Otitodun, E. 2011. "State Reconstruction in Zimbabwe," *Centre for Conflict Resolution*, Policy Brief 09, p. 6
[406] Ikome, F. 2010. "The Role of the African Union in the Prevention, Management and Resolution of Election-Related Conflicts in Africa," in K. Matlosa, G. Khadiagala and V. Shale (eds.) *When Elephants Fight: Preventing and Resolving Election-Related Conflicts in Africa,* (Johannesburg: EISA), p. 193
[407] Ibid

broker in national conflicts.[408] The reluctance of this body to condemn the violence in Zimbabwe is evidenced by the defeat at an AU Summit in 2006 of a resolution issued by the AU Commission on Human and People's Rights in 2005 condemning the excessive use of force by the Zimbabwean state against its citizens.[409] The failure of the African Court on Human and People's Rights – established in 2004 – to pass a judgement on the deteriorating situation in Zimbabwe is a further indictment of the failure of AU organs to deal adequately with the situation in the Southern African country.

The African Union has played a largely marginal role in the situation in Zimbabwe in spite of its status as a guarantor. Instead the continental body has deferred responsibility for guaranteeing and overseeing the implementation of the Zimbabwean agreement to the regional SADC body. This has served to undermine efforts to ensure the resolution of the crisis as SADC is often unwilling or unable to take a strong stance on the Zimbabwean situation and the lack of intervention from the AU has not provided the adequate pressure on the Zimbabwean parties to overcome the numerous deadlocks. At the January 2012 Summit in Addis Ababa, the Zimbabwean issue was not debated, in spite of Mugabe's lobbying to garner support for elections in 2012. In the absence of a stronger position taken by the AU Summit of heads of state and a concerted effort by SADC, the problems with the GPA's implementation are likely to linger on and success will be determined almost entirely by the efforts of the South African facilitation team.

International Influences

The influences of international organisations and foreign powers on the implementation of the power sharing agreement have been limited. The United Nations has played almost no role, particularly after South Africa, China and Russia frustrated moves by the UN Security Council to introduce resolutions on intervention in Zimbabwe in 2008.[410] Attempts by Secretary General, Ban Ki Moon, and his Assistant Secretary-General were snubbed by Mugabe when they sought deeper engagement. In spite of this, it is worth noting that the UN Development Programme (UNDP) has remained consistently engaged in the country and has escalated its involvement since the creation of the inclusive government.[411] The UNDP has engaged through the Multi Donor Support Fund and provided substantial funding to the COPAC process, enabling considerable progress to be made in the consultation and drafting stages.

[408] Ibid
[409] Qobo, M. 2009, p. 175
[410] Bazda, S & Masunungure, E. 2010. "The Internationalisation of the Zimbabwe Crisis: Multiple Actors, Competing Interests," in *Journal of Developing Societies*, 26, 207, p. 228
[411] Ibid

The Commonwealth of Nations would have been well placed to influence the implementation of the power sharing agreement, had it not been for a decision taken in 2003 to suspend the errant country and Mugabe's subsequent withdrawal from the body.[412] This move placed the African nation firmly outside the realm of influence of the organisation, and as a result the Commonwealth has played no role in influencing the outcomes of the inclusive process.

Sanctions

The only area in which international players have had limited influence is in imposing and maintaining a sanctions regime against members of ZANU-PF. These 'targeted' sanctions are a relatively new form of sanctions regime which is targeted at specific individuals (in the form of travel bans and asset freezes); others involve policies that relate to the international financial institutions (IFIs) and government-to-government relations (such as restrictions on loans, credit and development assistance as well as arms embargoes).[413] There are exceptions within and distinctions between all of these measures and they are not uniformly applied by different states, but the generic term 'sanctions' will be used in this chapter for simplicity. These sanctions were first applied by the European Union and United States of America in the early 2000s as a response to state-sponsored violence and governance problems. Currently the USA has imposed sanctions against 121 individuals and 69 entities and its Zimbabwe Democracy and Economic Recovery Act (ZDERA) instructs US representative in the IFIs to vote against credit and loan extensions except those intended for basic human needs or good governance purposes.[414] The EU's measures also target individuals within the ZANU-PF elite and their business interests; these individuals were identified as being inhibitors of democratic change within Zimbabwe. These measures are a new form of sanction which is intended to "constrain and change certain behaviour and promote international norms and standards as well as meet domestic policy needs."[415] The impact of these measures has been difficult to gauge and detailed evaluations of the impact of sanctions have not been undertaken, which leads to a reliance on anecdotal evidence. It seems that while the sanctions have become a frustration for members of the ZANU-PF elite, they have not had the desired effect of pushing members of the party to commit to the full implementation of the GPA.[416] Instead, anecdotal evidence points to the possibility

[412] Ploch, L. 2008. "CRS Report for Congress: Zimbabwe," *The Congressional Research Service*, 26 September 2008, p. 35
[413] International Crisis Group. 2012, p. 1
[414] Ibid, pp. 2-3
[415] Ibid, p. 4
[416] Ibid

that sanctions have strengthened ZANU hardliners against the party's moderates and the MDC factions and has provided a justification for the frustration of reform efforts.[417]

The removal of sanctions was included as a clause within the GPA and intransigent members of the former ruling party have used the MDC's inability to have these sanctions removed as a justification for their foot-dragging and the slow pace of reforms.[418] MDC-M[419] representatives and members of civil society have suggested that these individuals want sanctions to remain so that the ZANU-PF – which has already mounted a successful misinformation campaign around this issue – can use the sanctions regime as a rallying-point during the coming elections. ZANU-PF and Mugabe have used the sanctions issue as a propaganda narrative to reinforce their image of Zimbabwe as a victim of external interference and neo-colonialism and have repeatedly insisted that the country's economic woes are directly attributable to the Western-imposed sanctions. The MDC formations have failed to counteract ZANU-PF's propaganda machine and a large percentage of Zimbabweans have bought into the party's rhetoric. The former ruling party has also used this issue to discredit the former opposition, arguing that they take direction from Washington and London and are little more than Western puppets.[420]

While there is little hard evidence relating to the impact of the sanctions regime, there is mounting agreement that they have not been effective in promoting behavioural changes or greater implementation of the GPA. The amounts of money that have been frozen are generally small both in absolute and relative terms to the likely resources of the individuals targeted.[421] In addition, the looting of mineral resources from the recently-discovered Marange and Chiadzwa diamond fields have allowed senior party members and security force leaders to circumvent the negative impacts of the sanctions regime. In particular, the arms embargoes that have been imposed have been inefficiently enforced and monitored and are often not comprehensive.[422] Members of the security forces have still been successful in finding alternative arms sources, particularly from China. The sanctions have been ineffective in promoting the implementation of the GPA, but western states maintain that the removal of sanctions will only occur upon full execution of the GPA and the holding of free and fair elections. In a

[417] Ibid
[418] Ibid, p. 5
[419] This party is now often referred to as the MDC-N following the election of Welshman Ncube to the head of the splinter MDC faction. This has created substantial problems as Arthur Mutambara remains as one of the principals of the GPS, but no longer heads the party.
[420] International Crisis Group. 2012, p. 7
[421] Ibid, p. 5
[422] Ibid, p. 6

number of ways, the sanctions have helped to slow down the reform process and provide a platform for antagonism between the principals to the agreement. The role of international actors has thus been ambiguous with regards to the implementation of the GPA.

Conclusion

In the Zimbabwean case, international bodies and states have largely played peripheral roles in ensuring the implementation of the power sharing agreement. The measures they have undertaken to coerce compliance have been largely ineffectual. At a continental level, the African Union has not played a significant role, in spite of its position as a guarantor of the agreement. This is a result of an AU policy which defers to regional organisations as the primary interlocutors in instances of crisis and mediation. The Southern African Development Community has played a primary role in mediating and facilitating the Global Political Agreement through its South African facilitators, Thabo Mbeki and Jacob Zuma. SADC has shied away from being firm with the Zimbabwean parties and in spite of the firmer stance adopted at the March 2011 summit, little has come of the resolutions adopted by the body. The lacklustre performance of the principals and the stuttering reform in Zimbabwe is largely attributable to the inadequacies within SADC and the body's inability to deal harshly with intransigent parties. The enforcement of the implementation of the 2008 agreement is likely to continue to be left up to the South African facilitation team, who are currently preoccupied with other important issues both at a continental and international level. Zimbabwe has been an Achilles heel for the regional bloc, and may well succeed in rendering a significant split in the body.

Conclusion

Regional and international bodies and organisations have had divergent, but extremely important impacts on the implementation of the power sharing agreements in Kenya and Zimbabwe. While in Kenya, the regional body was unable and unwilling to participate in mediation and implementation processes, the Southern African Development Community has been directly responsible for the Zimbabwean situation from early on in the crisis. The African Union participated in the Kenyan process through giving the Panel of Eminent African Personalities a mandate to both negotiate and enforce an agreement. In Zimbabwe, this continental body refrained from acting as an enforcer, opting instead to defer to the regional SADC bloc.

From the above discussions, it is clear that the personality and perceived legitimacy of the negotiator and facilitator is a crucial determinant of the success or failure of the agreement. In South Africa, Thabo

Mbeki's ideological leanings and sympathies for the former ruling party in Zimbabwe led to the creation of a lop-sided agreement and a lack of innovative thinking around the promotion of a balanced coalition. In Kenya, Kofi Annan exhibited inspired leadership and innovative thinking. In spite of the faults built into the Kenyan Accord, he ensured that cabinet positions were evenly distributed and through a sharing of assistant positions, that no party could turn allocated government ministries into personal or party fiefdoms. This has led to the Kenyan government performing more effectively than its Zimbabwean counterpart, for which the term 'government of national unity' is a laughable misnomer.

In terms of the monitoring and evaluation of the agreement in Kenya, Annan again displayed inspired leadership through his decision to have independent civil society organisations act as monitors of the implementation of the Accord. The reports created through this inclusive civil society process were then taken to the highest levels and discussed in a series of review meetings which included implementing partners, government functionaries, PEAP members and technical advisors. This allowed for greater pressure to be placed on government by civil society, technical experts and independent international actors, and it promoted the cooperation of the coalition partners in spite of the existence of anti-reform elements in government. In Zimbabwe, the monitoring mechanisms were instead sabotaged at birth by the decision that they would be comprised of members of the political parties who were party to the agreement. Accordingly, it would be in their interests not to report accurately or to ensure that the committee would be wracked by internal conflicts. When monitoring has been undertaken in Zimbabwe, the follow-through from the regional body has not been sufficient to place pressure on intransigent elements and enforce implementation. Both Mbeki and Zuma failed to garner the support of the international community to place concerted pressure on the principals, and where this happened, it was successfully deflected and dismissed by Mugabe as neo-imperialism. Both Mbeki and Zuma failed to include members of civil society or technical experts in the process, preferring instead to have their own political functionaries involved in monitoring and evaluation. This has led to a lack of sufficient skills in mediation and navigating the complex issues facing the unity government and an increasingly politicised process. The situation in Zimbabwe needs to be 'depoliticised' and reduced to a technical exercise of monitoring and evaluation and the enforcement of decisions.

In spite of the role of SADC as a guarantor of the agreement, it has been unwilling and unable to enforce its decisions taken against Robert Mugabe, and has instead allowed the 88 year old president to dictate the agenda. In the Kenyan case, the agreements neglected to nominate an enforcement agency, but the

effective use of carrots and sticks by the lead negotiator in the post-agreement phase has allowed for a substantial degree of progress to be made.

Finally, the role of sanctions and the ICC prosecutions in ensuring implementation has been mixed. The sanctions have allowed anti-reform elements in Zimbabwe to justify their foot-dragging and there is little evidence that they have contributed substantially to changing norms and behaviour as was intended. The ICC prosecutions have introduced substantial anxiety and tension into the political environment and it is likely that the concern with ensuring their political futures will lead politicians to place the implementation of the reform agenda on a back-burner.

The role of different bodies and organisations has been a crucial determining factor in the implementation of the power sharing agreements. This is not to ignore the age-old debate over structure and agency; in fact, the sixth chapter in this report will briefly examine the role of political culture and spoilers in determining the outcomes of the agreements.

Chapter 6 – **Local Circumstances, Partisan Players and Political Culture**

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Introduction

The influence of 'spoilers' and local political actors is particularly relevant to the Kenyan and Zimbabwean cases, as the interests and disposition of participants have been important to determine the degree of success or failure of power sharing agreements. Stedman (1997) points out that the greatest risk to peace-building in post-conflict situations can come from 'spoilers' – these are defined as leaders and parties that have the capacity and will to resort to violence to subvert peace processes through the use of force.[423] This is not an uncontroversial statement, but the following chapter will attempt to gauge the veracity of this claim for the two cases under consideration. This definition needs to be slightly amended for the purposes of this report and for its application to instances of power sharing in the context of democratic deadlock. Instead, spoilers in this case can be seen as leaders and parties that have the capacity and will to frustrate reform processes through obfuscation, delays and non-implementation. Although the influences of regional and international actors have been vital in ensuring the implementation of the agreement, their ability to achieve success is determined and constrained to some degree by the cooperation and actions of local political actors. Both cases display the 'politics of survival' in which members of the political elite do what is necessary to ensure their political futures. The way in which this has played out in each case has been different as each country's particular history and political culture has shaped incentives and avenues for action. The divergence seen in the implementation of the power sharing agreements across the two cases can largely be explained by the disparate interests and motivations of the principals in each country. This chapter will attempt to build upon the chapters that have come before and briefly outline the political culture prevalent in each country and the impact of political actors on the implementation of the agreements.

Kenya

Introduction

Chapter 2 of this report outlined the major fault lines existent in Kenyan society prior to the outbreak of violence in December 2007. This chapter noted that Kenyan political parties are inadequately institutionalised and prone to undertaking ephemeral alliances which have short shelf-lives. Due to inadequate institutionalisation of these parties, politics in Kenya has long been characterised by a preoccupation with ethnicity and ethnic mobilisation during times of heightened political tension. Alliances that have been struck across ethnic fault lines have not been deep or altruistic, but rather

[423] Stedman, S. J. 1997. "Spoiler Problems in Peace Processes", in *International Security*, 22, 2, pp. 5- 53

opportunistic attempts to maximise personal or party political agendas. During the multi-party era, Kenyan politics has undergone periods of concentration – as leaders brokered viable electoral pacts – and fragmentation when these alliances inevitably broke down following the completion of the election.[424] This has led to a situation where few political actors have not, at one or another point, worked as colleagues.[425] This high level of elite cohesion would have important repercussions for the implementation of the power sharing agreement.

Corruption and Patronage Politics

Since the late colonial period, Kenyan politics has been characterised by a strong patronage system that was enhanced and continued under Kenyatta and Moi. These patronage systems were largely perpetuated along ethnic lines, and a perception that economic privileges were accruing inequitably along ethnic lines was a significant driving force for ethnic animosity in the lead-up to the 2007 election. The signing of the Kenyan accord did not eradicate the patronage system; instead both parties experienced strong pressure from below to provide avenues for patronage for political leaders at both national and local levels who had mobilised support during the election campaign and its aftermath.[426] This led to the creation of the bloated cabinet and the exorbitant salaries and benefits paid to parliamentarians which has placed them amongst the highest paid legislators in the world.[427] This move was made in June 2010, shortly before the referendum for the new constitution which would prevent arbitrary salary increases for parliamentarians.[428] This shows the disdain of law-makers for the people of Kenya, and their intention to accumulate as much as possible before the new constitution serves to constrain the resources available to them to maintain their dense patronage networks.

The post-agreement era has not seen a significant reduction in corruption in spite of statements made by the principals regarding the rooting out of corrupt officials. In December 2010, officials from the finance ministry reported that corruption may be costing the government as much as $4 billion per year,

[424] Cheeseman, N & Tendi, BM. 2010. "Power-Sharing in Comparative Perspective: The Dynamics of 'Unity Government' in Kenya and Zimbabwe," *The Journal of Modern African Studies*, 48, p. 210
[425] Ibid
[426] Kanyinga, K. 2009, p. 10
[427] Their salaries were increased from Sh851 000 to Sh1.1 million (US$13 500). "Kenyan MPs Vote to Join World's Best Paid Law Makers," *BBC*, 1 July 2010, found at: http://www.bbc.co.uk/news/10476388, accessed on 4/03/2012
[428] Clottey, P. "Kenyan Parliament Pay Hike Called 'Illegal,'" *Voice of America*, 30 June 2010, found at: http://www.voanews.com/english/news/africa/Kenyan-Parliament-Pay-Hike-Called-Illegal-97531754.html, accessed on 5/03/2012

reportedly by siphoning money from development projects.[429] In July 2011, the World Bank suspended a drought management project after an audit determined that more than US$4.4 million dollars or Sh362 million had been embezzled over two financial years.[430] Corruption has long been a major problem in Kenya in spite of the existence of anti-corruption legislation and the existence of the Kenyan Anti-Corruption Commission created in 2003. The 2002-2007 Kibaki government's failure to prosecute high-level corruption has not been corrected by the new government, in spite of it taking an outwardly strong stance against graft by public officials. Leaked US embassy cables from 2011 suggest that Kibaki and Odinga intentionally failed to take action against officials implicated in corrupt activities relating to a maize scheme and the free primary education system. The reason for their lack of action is reportedly due to the implicated persons being members of their families and their close associates.[431] It took nearly four years for the Ethics and Anti-Corruption Commission (EACC) Bill to be passed into law, and it only took effect on 5 September 2011. This bill created a new anti-corruption commission with better oversight institutions and an increased mandate. The Act fundamentally alters the legal institutional framework of anti-corruption efforts.[432] However, the creation of the commission is not an end in the fight against corruption. The commission is awaiting the enactment of other legislation and the drafting of regulations to enable a number of its functions. It will also require substantial political will to ensure the independence and successful functioning of this institution.

Elite Cohesion

As noted above, the elite nature of politics in Kenya and the continual reshuffling of political alliances in Kenya had led to a high level of elite cohesion. The crisis in 2007 and 2008 had been the result of mounting distrust between Kibaki and the ODM alliance which centred on Odinga. The ODM had been created as an alliance of the disenchanted following Kibaki's reneging on the founding promises of the NARC coalition. The cleavages fomented in this period of fragmentation had not fundamentally split the elite, as the alliances formed were only loose coalitions based on individual self-interest and

[429] Mwachiro, K. "Kenya Corruption Costs Government Dearly," *BBC*, 3 December 2010, found at http://www.bbc.co.uk/news/world-africa-11913876, accessed on 5/03/2012
[430] "Donors Cut Aid Over Fresh Funds Scandal," *The Daily Nation*, found at: http://www.nation.co.ke/News/Donors+cut+aid+over+fresh+funds+scandal+/-/1056/1196592/-/62ggocz/-/index.html, accessed on 5/08/2011
[431] Leftie, P. "Kenya: Wikileaks – Principals Accused of Covering Up Scandals," *The Daily Nation*, 1 March 2011, found at: http://allafrica.com/stories/201103010989.html, accessed on 5/03/2012
[432] Oiteno, W. "The New Ethics and Anti-Corruption Commission: An analysis of its functions and administration," *Transparency International – Kenya*. Found at: http://www.tikenya.org/index.php?option=com_docman&task=doc_download&gid=89&Itemid=146, accessed on 5/03/2012

considerations of political survival. Many of the leaders such as William Ruto, Musalia Mudavadi and Charity Ngilu who found themselves as members of the ODM in 2007, had previously been protégés and allies of Kibaki and Moi. Considering the deep connections that cut across perceived party lines, the violence in 2007 and 2008 had not rendered a deep divide within the political elite, but had called into question how the spoils would be divided in the post-election phase.[433] In Kenya there has not been a long history of fierce rivalry between parties such as that seen in Zimbabwe.

Impunity

The violence 2007 and early 2008 was extremely complex and was perpetrated by a wide range of actors. Both the ODM and PNU were implicated in the violence and culpability permeated through all levels of party and government hierarchies. As a result of the diffusion of violence, neither the government nor the opposition were able to claim a monopoly over victimhood, and both had reason to fear prosecutions.[434] This helps to explain why the Kenyan government has consistently failed to hold perpetrators to account and has undermined the TJRC, for fear that these processes would implicate government functionaries and disrupt patronage structures. Indeed the 'KKK' alliance created by William Ruto, Uhuru Kenyatta and Kalonzo Musyoka based on their opposition to the ICC proceedings is a clear example of the alliances created to continue the culture of impunity and frustrate attempts to bring justice within reach.

Politics of Collusion[435]

There are a number of ways in which these dynamics have undermined the implementation of the power sharing accord. The disagreements seen during the early days of the power sharing agreements were less the result of an open rivalry between the parties and the principals than clashes over how the spoils of the new government would be divided.[436] The implementation of the agreements was initially slow, characterised by foot-dragging and inadequate political will. This was particularly true of the attempts to achieve justice for the victims of the post-election violence. In spite of the CIPEV commission's report being published in October 2008, the recommendations to institute a special tribunal had not been implemented by 5 November 2009.[437] Parliament had repeatedly frustrated

[433] Ibid, p. 211
[434] Cheeseman, N & Tendi, BM. 2010, p. 211
[435] This is an argument and a phrase borrowed directly from Nick Cheeseman and Blessing-Miles Tendi in the article "Power-Sharing in Comparative Perspective: The Dynamics of 'Unity Government' in Kenya and Zimbabwe," cited above.
[436] Kanyinga, K. 2009, p. 10
[437] International Crisis Group. 2012, p. 7

attempts to create a court to address the issue of impunity for the violence. Four years later, in spite of the ICC proceedings, far-reaching justice for victims is still kept off the agenda. The Truth, Justice and Reconciliation Commission has been hobbling along, but achieving little due to time constraints and an overly broad mandate. This seems to be contrived rather than incidental as government tries to stymie the processes that may lead to members of the political elite being implicated in violent activities. The *politics of collusion* theorised by Cheeseman and Tendi (2010) suggests that the history of elite cohesion, corruption, patronage and a shared responsibility for violence has led to the creation of a broad anti-reform alliance within cabinet and within parliament. This explains the distinct lack of reform on the areas identified in the previous chapter. As few of the reforms enshrined in the new constitution threaten to disenfranchise one particular party disproportionately over the other, there has been a relative consensus between the parties over reform efforts. The 2010 constitution's reduction of presidential powers is thus not seen to be threatening by either of the parties as they stand on a relatively equal electoral footing and it is reassuring that should they lose, their opponent will not be all-powerful.

Conclusion

The lack of an opposition culture such as that prevailing in Zimbabwe has led to a better record on the implementation of the power sharing agreement in Kenya. Kenya's high level of elite cohesion enabled dialogue across the two parties and resulted in progress in a number of areas, particularly on constitutional reform.[438] Due to the relatively equal standing of the two parties to the agreement, and the uncertainty of the outcome of the 2012 elections, the reforms to government institutions in the Kenyan Accord have not been stymied to the degree of the Zimbabwean case. This relative uncertainty has provided an atmosphere in which the parties have allowed for a reduction of executive powers to prevent the possibility of the opposition gaining an all-powerful presidency. However, in areas in which there is widespread culpability within the political elite, such as corruption and human rights violations, these groups have collaborated to prevent prosecution and continue a culture of impunity. The political lobbying that has begun in earnest ahead of the 2012 elections is likely to further delay the effectuation of the Accord.

[438] Cheeseman, N. 2011. "The Internal Dynamics of Power-Sharing in Africa," *Democratization*, 18, 2, p. 352

Zimbabwe

Introduction

The political culture in Zimbabwe has, for more than two decades, been characterised by a 'politics of survival.' Threats to the dominance of President Robert Mugabe and his liberation coterie have been countered with the increasing militarisation of government and the creation of a dense web of liberation-nationalist propaganda which has not only been mobilised against the internal opposition but also against external threats to their continued hegemony. This politics of survival has led to a hardening of political boundaries and the reinforcement of a siege mentality on the part of a small ZANU-PF elite which has undermined the functioning of the unity government and hindered the implementation of the power sharing agreement. It is clear that in Zimbabwe, the full implementation of the agreement has been hindered by political 'spoilers.' This chapter will argue that this siege mentality is reinforced by the propensity of the agreement to fundamentally alter the structures of power and threaten the political survival of the ZANU-PF elite. This has led to the extremely slow pace of reform in Zimbabwe and a high propensity of reneging and 'double-speak' amongst members of the former ruling party. It is recognised that the members of ZANU-PF and their interests are not uniform, but that the intransigent core of the elite holds the levers of power and has successfully managed to side-line the party's moderates. Building on previous chapters, this chapter will aim to delineate the political culture prevalent in Zimbabwe and outline how this and the influence of political spoilers have undermined the full implementation of the Global Political Agreement.

Building the Laager[439]

In the mid-1990s in response to economic crisis which was engendering growing frustration with the ZANU-PF government, the party began its encampment. Increasingly, government decisions were taken within party structures and technocrats were replaced with party functionaries. Following the rise of labour militancy and the war veteran revolt of the late 1990s, Mugabe began to militarise government, appointing military personnel to important posts within state structures. In defence of the status quo, ZANU-PF began to institutionalise its patriotic nationalism, claiming to be the only legitimate power-holders and demonising political opponents as treasonous enemies of the people and of the project of

[439] A 'laager' is a defensive tactical formation in which an encampment is protected by a circle of wagons. It is relevant in the Zimbabwean case where threats to the incumbency of ZANU-PF have led to an ever-tightening encirclement of the government and positions of power.

national liberation.[440] The emergence of the opposition in 1999 and the defeat of the constitutional referendum in 2000 led to a growing militancy against the opposition and those who were perceived to have supported them. This, in turn, reinforced the importance of the Joint Operations Command and the securocrats within government ranks. The military became Mugabe's key constituency, particularly as the fight for succession to the ZANU-PF throne became more heated.[441]

As the economy began to plunge in the 2000s, ZANU-PF functionaries and particularly members of the upper echelons of the party were able to accumulate enormous wealth. This was largely through the illegal exploitation of resources and contracts in the DRC and via trading in foreign currency and commodities during the country's darkest economic times. While the country fell apart, the elite concentrated its efforts on shoring up their gains and protecting their access to the state. This is the context in which increasing state repression and violence must be understood.

What the GPA Means for ZANU-PF

While there were no mechanisms for achieving justice or national healing – such as the Kenyan Truth, Justice and Reconciliation Commission – written into the Global Political Agreement, the new constitution and a change in the Zimbabwean structures of power and political authority pose a significant threat to the ZANU-PF elite. These raise the spectre of criminal prosecution for human rights violations, corruption and fraud.[442] The GPA and the constitutional reform process threaten to dismantle the coercive architecture of the state that has been the mainstay of the ZANU-PF elite. It also threatens to reform the executive presidency and repeal the repressive legislation that has allowed the security forces to suppress the population while maintaining a façade of the rule of law. It is also unlikely that the party will win a free and fair election, in spite of the population's growing disenchantment with the two MDC formations. As such, the changes envisaged by the GPA threaten the economic and political survival of this elite and introduce the possibility of being held accountable for past atrocities. Accordingly, it is not in their interest to allow the full implementation of the power sharing agreement. These issues help to explain the reluctance of the party to undertake the necessary reforms.

Liberation Nationalism

In a bid to justify the continued dominance of the ruling party in a context of burgeoning repression and societal demands for change, the ZANU-PF elite has increasingly relied on a discourse of liberation

[440] Mlambo, A & Raftopoulos, B. 2010, p. 17
[441] International Crisis Group. 2010, p. 11
[442] Ibid, p. 12

nationalism and perceived internal and external threats. Since the emergence of the looming threat of the opposition MDC gaining a foothold in Zimbabwe during the 2000 and 2002 elections, Mugabe has repeatedly divided Zimbabweans into authentic and inauthentic citizens, patriots and sell-outs.[443] Only those Zimbabweans who voted for ZANU-PF are authentic national citizens with patriotic hearts, while those who voted for the opposition have been deemed to be traitors, sell-outs, enemies and puppets of imperialism.[444] This fierce patriotic nationalism based on the liberation history has enabled the exclusion of a large number of Zimbabweans and the authorisation of violence against those who were no longer 'citizens.'[445] In this context, Mugabe has been characterised as the only trusted guardian of national history, land and Zimbabwean heritage. Within this discourse, Mugabe's incumbency does not derive legitimacy from elections, but from his fight against British imperialism and neo-colonialist forces within the country that seek to undermine this patriotic history. The use of this patriotic history and the MDC's monopoly over victimhood has served to harden political identities and it has undermined the potential for finding a middle ground between the principals.[446]

Mugabe has successfully mobilised the perceptions of external and internal threats against citizens and countries alike. Mugabe and ZANU-PF leaders have repeatedly employed what Andrea Grove (2011) has described as a strategy of 'framing threat.' This involves depicting particular actors as dangerous to one's constituency in order to rally support.[447] Grove argues that Mugabe's successful use of this strategy has enabled him and his elite to overcome challenges such as economic crisis, turbulence over land reform, the rise of the opposition, a loss of regional leadership and broad international condemnation.[448] Mugabe regionalised and internationalised his domestic concerns by framing the threat of economic collapse and opposition ascendency within Zimbabwe as a vast white conspiracy supported by the US and the UK to overthrow a liberation movement.[449] He 'shrewdly caught the mood of most developing-world leaders…' and framed the problems within Zimbabwe and the growing international condemnation within a discourse of the protection of sovereignty and Zimbabwe's role as

[443] Ndlovu-Gatsheni, S. 2009. "Making Sense of Mugabeism in Local and Global Politics: 'So Blair, You Keep Your England and Let Me Keep My Zimbabwe,'" *Third World Quarterly*, 30, 6, p. 1140
[444] Ibid
[445] Ibid
[446] Cheeseman, N & Tendi, BM. 2010, p. 205
[447] Grove, A. 2011. "The International Politics of Survival: The Case of Mugabe's Staying Power," *Politikon*, 38, 2, p. 277
[448] Ibid, p. 287
[449] Ibid, p. 289

a vanguard against Western interference in the region and globally.[450] His framing-threat strategy held two themes, the first was that all of Zimbabwe's problems had external roots, and secondly that the problems faced in Zimbabwe are the same as those facing all of Africa and even the rest of the developing world – this is the threat of neo-colonialism.[451] This is a crucial element of his strategy as it has led to a tendency for many African leaders to tread lightly around Zimbabwe, as condemnation of the leader and his policies could be perceived as selling out to neo-colonialism and the pushing of a western regime-change agenda. This reframing of his domestic politics within a continental discourse has allowed Mugabe to act with relative impunity, as to oppose him is to 'pander' to western agendas.

"A Regime-Change Agenda"

During the three years since the creation of the GPA, Mugabe and his allies have framed all attempts to alter the structures of power in the country as the pushing of a 'western regime-change agenda.' Emerson Mnangagwa, the Zimbabwean Defence minister and ZANU-PF hardliner was quoted in the government mouthpiece, the Herald, in January 2012 as saying "With the emergence of the regime change agenda around the year 2000, our defence policy had to be tailored towards countering influences that were being spread by the Western media through such devices as the Internet, CNN, BBC and Sky News."[452] This offensive security policy was justified through a recourse to the constitution and the principle of national sovereignty: "The constitutional obligations of the ZDF are threefold, that is, to defend Zimbabwe's independence, sovereignty, territorial integrity and national interests, to participate in the creation of a common regional security architecture and to contribute to the maintenance of international peace and stability," he said. These threats of the western regime-change agenda have also increasingly been wielded against the SADC facilitator, Jacob Zuma, and his team following their adoption of a stronger stance on the lack of reform within the country.[453]

Mugabe has played on the fears of countries within the region and across the continent to frame ZANU-PF's intransigence and resistance to reform as the resistance to a neo-colonial agenda of regime change. He has successfully invoked sovereignty to undermine the efforts of SADC and to marginalise calls for

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[450] Ibid

[451] Ibid, p. 291

[452] "'Defence Geared to Counter Regime Change Agenda,'" *The Herald*, 24 January 2012, found at: http://www.herald.co.zw/index.php?option=com_content&view=article&id=32163, accessed on 5/03/2012

[453] Jonathan Moyo, a ZANU-PF MP, hardliner and former Minister of Information, posted an article on the site New Zimbabwe denouncing Lindiwe Zulu as an agent for regime change. This is part of an increasing discourse which seeks to frame Zuma's efforts as constituting a 'regime change agenda.' Moyo, J. "Lindiwe Zulu: Regime Change Agent," *New Zimbabwe*, found at: http://www.newzimbabwe.com/opinion-5597-Lindiwe%20Zulu%20regime%20change%20agent/opinion.aspx, accessed on 5/03/2012

greater implementation of the GPA. In February 2012 in response to a call by Lindiwe Zulu, a member of Zuma's facilitation team, for the full implementation of the GPA prior to the holding of new elections, Mugabe has threatened to reject Zuma as mediator.[454]

The Politics of Partisanship[455]

These trends have resulted in what Cheeseman (2011) refers to as the *politics of partisanship*. This is theorised as a power sharing arrangement which is characterised by deep divisions between rival parties and which is likely to result in frequent periods of deadlock and little meaningful reform.[456] The willingness of partisan players and spoilers within Mugabe's clique to obstruct and subvert reform in Zimbabwe has resulted in painstakingly slow progress and a deep divide separating the MDC formations and ZANU-PF.[457] The intransigent former ruling party has continued to use its exclusionary patriotic history to polarise the political system and prevent meaningful collaboration. ZANU-PF has repeatedly taunted both MDC factions during the tenure of the unity government in an attempt to provoke them into withdrawing from the accord, thus ensuring its failure without ZANU-PF incurring the blame.[458] This is due to provisions in the constitutional amendment that stipulate that should either of the parties withdraw from the unity government, the country would return to the pre-GPA constitutional dispensation. This would be a substantial victory for ZANU-PF and this goal has motivated many of their actions during the post-agreement phase. The MDC formations have remained divided and have been unable to outmanoeuvre ZANU-PF.

The intended 'government in waiting' of the MDC-T has proved to be a weak partner in the unity government. It has not undertaken an effective regional lobbying campaign to increase support for its cause amongst regional leaders who are somewhat predisposed against opposition movements.[459] The MDC factions have also failed to consolidate their resources and present a united front against Mugabe, a strategy which would have given them substantially more leverage against the former ruling party.[460] For their part, the MDC-M leadership has threatened their legislators with party expulsion if they are

[454] "Mugabe threatens to reject Zuma as mediator," *Independent Online News*, 20 February 2012, found at: http://www.iol.co.za/news/africa/mugabe-threatens-to-reject-zuma-as-mediator-1.1238169, accessed on 5/03/2012

[455] This is an argument and a phrase borrowed directly from Nick Cheeseman's article: Cheeseman, N. 2011. "The Internal Dynamics of Power-Sharing in Africa," *Democratization*, 18, 2, p. 349

[456] Ibid, p. 344

[457] Ibid, p. 223

[458] Ibid, p. 33

[459] Makumbe, J. "Zimbabwe: Opposing and Authoritarian System – the Case of the MDC," in h. Solomon (ed.), *Against All Odds: Opposition Parties in Southern Africa,* (Johannesburg: KMM Review Publishing), p. 235

[460] Ibid, p. 234

seen to be getting too close to the MDC-T.[461] In spite of the mandate given to the party during the 2008 elections, the MDC-T has failed to lead in parliament where it has not used its speakership and majority to initiate progressive legislation or even to move aggressively against repressive laws such as AIPPA and POSA.[462] The MDC-T's policy documents and medium-term plans are vague on action steps and the Prime Minister's office is often by-passed on policy decisions.[463] The party's strategy with regards to ZANU-PF decisions and policy seems to be one of protestation and capitulation; they have been overly accommodating of the former ruling party and have been unable to exert sufficient influence over the policy agenda. Morgan Tsvangirai has also failed to collaborate successfully with ZANU-PF moderates such as Vice President Joyce Mujuru which would help to marginalise the hardliners within the party and create a broad reform-minded coalition within government. Finally, the MDC-T has not taken concrete steps to undermine the obduracy of ZANU-PF, rather than mobilising civil society or political moderates, Tsvangirai had repeatedly called for interference from SADC which has increased the perception of him by many in the region as a soft leader, incapable of governing without external support. These failings have allowed ZANU-PF to retain its dominance and out-manoeuvre the MDC factions at every turn.

Conclusion

The culture of entrenched political camps and identities has contributed significantly to the lack of thorough-going reform that has been seen in Zimbabwe. The efforts of the ZANU-PF elite to maintain their grip on power and prevent possible prosecution for human rights violations have frustrated GPA implementation efforts. The reforms to the structures of power that have been proposed in the GPA and in the draft constitution threatens the very survival of the ZANU elite and their continued access to the state's resources. This has provided them with incentives to maintain the status quo and prevent the dilution of power that would be associated with the full implementation of the power sharing agreement. The politics of partisanship as seen in Zimbabwe is likely to lead to the continuation of attempts to subvert the GPA and delay the reform process until the next elections in 2012 or 2013.

Conclusion

The differing levels of reform seen in both cases relates to the different political cultures prevailing in the two countries. While regional and international actors have been critical to ensure the implementation of the agreements, their available avenues for action are constrained by the interests

[461] International Crisis Group. 2010, p. 10
[462] Ibid
[463] Bratton, M. & Masunungure, E. 2011, p. 38

and actions of local political actors and spoilers. In Kenya, a history of elite cooperation and cohesion as well as the equality of the parties and substantial uncertainty of electoral outcomes has led to the relatively successful implementation of the Accord and the introduction of a new constitutional dispensation. In spite of this, widespread culpability for corruption and the perpetration of violence has led the parties to collaborate to frustrate efforts to end the culture of impunity in the country. In the Zimbabwean case, the siege mentality of the coterie of securocrats around Robert Mugabe and their intention to protect their ill-gotten gains has prevented real cooperation between the principals. The reform process presents a number of dangers for this group which has led to their propensity to frustrate the full implementation of the Global Political Agreement. The MDC factions have also proved to be wholly ineffective in providing an alternative to ZANU-PF and have been unable to capitalise on their opportunities to encourage change. In both Kenya and Zimbabwe, the prevailing political culture and the interests of the elites have served to help determine the reform agenda and undermine attempts to achieve justice.

Chapter 7 – **Conclusion**

In a context where power sharing agreements have increasingly been proposed as a means to end violence and restore stability to crisis-wracked states in the aftermath of highly contested elections, it is fundamentally important to review the success of these arrangements and their propensity to encourage change within government and society. The great diversity of power sharing agreements makes comparative studies particularly difficult. This has played out within this report, as there are substantial differences in the form that power sharing has taken across the two cases. It is vital to keep in mind that these agreements are the result of fire-engine diplomacy in which the immediate goal of reaching an agreement takes precedence over long-term issues and concrete structural changes to the nature of power relations. This report has argued that the success of the implementation of the power sharing arrangements in Kenya and Zimbabwe has largely been determined by the agreement itself, the level and quality of engagement by mediators, regional and international forces and the interests of the parties to the agreement. These variables are considerably interlinked and interdependent as the behaviour of political actors influences both the nature of the agreement and the constraints facing the guarantors of the agreement. In addition, stronger action undertaken by regional and international actors can help to determine the nature of the agreement and the constraints placed on the actions of domestic political actors. It is crucial that negotiators understand and attempt to anticipate the way in which each of these elements will play into the successful implementation of power sharing accords.

Barbara Walter (1997) suggested that the more power sharing was built into an agreement, the more likely its chances of success. This has been partially validated by this report, but the author would argue that the equal distribution of power allows for a more successful reform process. Mehler (2009) suggests that the extent or degree of power sharing is an important variable in the success of these accords.[464] This has proven to be of vital importance in this case. In Kenya, the decision to enforce the equal distribution of power within ministries as well as across cabinet worked to promote cooperation and undermine unilateralism within government. By contrast, the Zimbabwean agreement failed to adequately share power, instead it created parallel structures which worked independently and allowed ZANU-PF to marginalise its agreement partners within government and policy-making. The creation of a

[464] Mehler, A. 2009, p. 2

lop-sided agreement in the Zimbabwean case has resulted in little reform and relative stagnancy within government as the parties constantly compete for dominance. The importance of creating a balanced, well-formulated agreement which accounts for all interests and creates incentives for cooperation cannot be overstated.

Stedman (1997) intended to bring a discussion of personal interests and the role of 'spoilers' back into the debate on power sharing. Although his definition of spoilers was developed in conversation with the role of personal interests in undermining power sharing in contexts of civil war, this concept still remains applicable. Chapter 6 of this report sought to underline the vital role of political interests and culture in promoting or undermining reform efforts in the two cases. In spite of initial disagreements between the parties, a long history of elite cohesion in Kenya has allowed for the achievement of substantial reforms and the relatively successful implementation of the Kenyan Accord. In spite of the success of a number of reforms, parties in Kenya have colluded to prevent meaningful progress in strategic areas such as land reform and addressing corruption and impunity. This is as a result of the widespread culpability of political actors in these areas. In Zimbabwe a history of political polarisation and a siege mentality amongst members of the ZANU-PF old guard have frustrated reform efforts which would serve to undercut their power and introduce possibilities for criminal prosecution. Additionally, the former opposition parties have been unable to capitalise on their strengths in parliament to make substantial changes to government policy.

Sriram and Zahar (2009) theorised that the degree of third party engagement was an important factor in determining the success of power sharing agreements. This assertion has been validated by the analysis of power sharing in the Kenyan and Zimbabwean cases. The author would argue that it is not only the degree but also the quality of engagement that has been a vital determinant of success. While in Kenya the mediator undertook innovative and reflexive strategies to level the playing field and create incentives for reform, the impact of SADC and South African mediation has been less positive. The influence of Thabo Mbeki on the mediation of the Global Political Agreement and the relationship between the principals has cast a long shadow over the process and has allowed ZANU-PF hardliners the freedom to subvert change. SADC has also been unable or unwilling to apply adequate pressure to enforce compliance with the agreement due to the dominance of principles of solidarity and non-interference alongside a shared liberation history and vestiges of respect for the elder Zimbabwean statesman.

On the basis of the preceding discussion it is somewhat difficult to recommend strategies to improve the process currently underway in Zimbabwe. The history of the GPA has allowed for the entrenching of ZANU-PF hardliners in positions of power from which it would be particularly difficult to disengage them. It is clear that SADC and the South African facilitation team must apply increased pressure to the parties. This could be in the form of either soft power such as economic pressure or incentives from South Africa or a show of hard power via sanctions from SADC. The facilitator should also apply pressure to ZANU-PF by involving civil society in the monitoring and implementation of the agreement, although the intransigent party has proved itself to be particularly resilient to civil society concerns. In the event of South Africa mediating a 'GPA-2' as has been suggested, it is vital that the revised agreement is subject to better formulation and contains defined roles for the principals. This agreement will likely need to include a number of exit strategies such as protection from prosecution for hard-line elements within the old guard. The monitoring mechanism must also be independent of political interests and influence and pressure to conform must be consistently applied by all parties including the African Union. Finally it is important for the agreement to contain clear and enforceable timelines to transform the reform process from an inherently political to a more technical exercise.

From an analysis of the implementation records of both cases it is clear that these agreements are unlikely to fundamentally transform Kenyan and Zimbabwean society and their prevalent political cultures. In some ways they seem likely to have only delayed meaningful reform and reinforced a culture of impunity. While the promulgation of a new constitution is an important milestone, it is necessary to reflect that a constitution is unlikely to result in change if the political elite do not adopt a culture of constitutionalism. Political cultures prove to be extremely resistant to change, as the history of implementation in both countries has shown. It is important that civil society and regional and international actors collaborate to 'pull in one direction' to prevent reneging and backsliding and effect substantial transformation.

Power sharing agreements are often seen as a betrayal of the popular will of the people and they create perverse incentives for incumbents to refuse to step down following a loss at the polls. They tend to reroute the channels of accountability and alter direct relationships between citizens and governments. However, in the context of widespread violence and loss of life, it is difficult to envisage other methods by which to mediate a return to stability. It is thus extremely important that mediators pay close attention to the political dynamics at play in the crisis-wracked country and use regional and international pressure effectively to negotiate an equitable arrangement to prevent stagnancy and

inflexibility in the resulting government. It is vital that guarantors are impartial mediators who are able to employ a balanced set of 'carrots and sticks' to ensure compliance and reduce reneging. The process underway in Kenya has highlighted a number of best practices that should be extended to future mediation efforts. To begin with, the mediator and mediation team held the right balance of familiarity, moral integrity, international authority and legitimacy to be widely perceived as honest brokers in the process. The mediator then employed innovative strategies to reduce the process from a political to a technical exercise through employing the services of private mediation bodies. Pressure was consistently applied to the principals through mandating a civil society organisation with the monitoring of the agreement and by using these reports to exert pressure for reform on specific bodies. Finally, the monitoring and implementation processes were given additional impetus through both national conferences and regular internal implementation review meetings to oblige the principals and intransigent elements to commit to implementing the precepts of the agreement.

It is important that a process is undertaken to identify both best and worst practices in the mediation and facilitation of power sharing agreements to help fortify future agreements and increase the likelihood of success. Power sharing agreements should only be seen as a stop-gap measure and should be negotiated in such a way that allows for the strengthening of oversight capacity while placing horizontal checks through power sharing institutions to encourage cooperation and help to prevent polarisation. Finally, it is important to see power sharing as a process rather than a once-off event; engagement in the post-agreement phase must continue in a regular and reflexive manner to encourage the successful implementation of reforms and ensure future democratic consolidation.

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