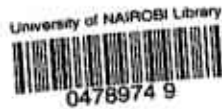


University of Nairobi
Institute of Diplomacy and International Studies

**Power Sharing as an Outcome of Civil War: A Case Study
of Coalition Government Negotiations in Kenya, 2008. ¹**

Vicky Mukami Mbeca
R50/75364/2009



Research project presented in partial fulfillment of the degree of Master of Arts in
International Conflict Management, Institute of Diplomacy and International Studies,
University of Nairobi.

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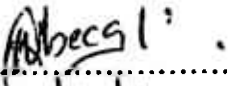
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Declaration

I, Vicky Mukami Mbeca declare that this paper is my original work and has not been submitted for the award of a degree in any other university.

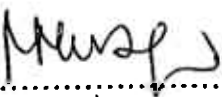
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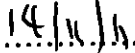
Date.....

Vicky Mukami Mbeca

Reg: R50/75364/2009

This research project has been submitted for examination with my approval as
University Supervisor;

Signed.....

Date.....

Professor Makumi Mwagiru

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Dedication

To my husband Kinuthia Mwangi, Life gets better by the day.

To my father Johnson Mbeca, I am proud to be your daughter.

To my mother Faith Wamutira, you are the greatest joy in my life.

To my Prof. Mwagiru, what a sea of inspiration you are.

To Vivian, Victor, and Violet, the most wonderful companions life could ever give.

Acknowledgements

When I set out to pursue this beauty in a course, I never knew what the end would look like. Today I thank God that I did not as I have only been able to enjoy the journey and marvel at the wondrous glory of the end to a new beginning. The University of Nairobi has indeed been one of the greatest contributors to my personal wealth as I take stock of all the knowledge that has bore life within me. The Institute of Diplomacy and International Studies has in no doubt been the trusted messenger to deliver this magnificent parcel. Without the staff of the institute who treated me like the only student they ever had, I wonder what would have become of my stay. I was just one of the hundreds that were passing through their hospitality, but their charm made me feel like the most distinguished student the institute ever saw. The lectures and especially “The Prof.”, who were tasked with the enormous duty of removing the ignorance in me, besides tearing me into pieces you definitely have made me bolder bigger and better. And what a wonderful group of classmates to be amongst as all I got was value upon value. The journey would not have been magical without Faith who even though knew little of what I was doing endeavored to read the jargon I wrote in her bid to show me her unwavering support and what a bunch of wonderful siblings had I who were left to bear the clutter of a budding intellect by having to clean up my paper mess, my deepest gratitude to your unwavering service. Finally to the greatest constituent and ally I have, Kinuthia, I will endeavor to make me worth of beholding your legacy.

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List of Acronyms

AU:	African Union
BANTA:	Best Alternative to a Negotiated Agreement
EU:	European Union
KANU:	Kenya African National Union
ODM:	Orange Democratic Movement
PNU:	Party of National Unity
Ksh.:	Kenya Shilling

Abstract

On February 2008 Kenyan political leaders engaged in negotiations that saw the signing of a peace agreement following an election crisis. It sought to resolve the impasse by using a power sharing agreement implemented through a coalition government. This was despite of the constant failure of many power sharing agreements in Africa.

However the Kenyan agreement has seemed to stand the test of time and is becoming a case study for conflict managers on its best practices. It has ushered in a ray of hope that possibly all is not lost in using it as a technique. This study therefore sought to examine the Kenyan power sharing accord and what has attributed to its success. It has argued that it is because of the soundness of the negotiation process and hypothesized that the success lies in the negotiation process which must be driven by the ripe moment theory.

To test this assertion the study primarily used secondary data though primary was also relied upon on countable occasions and by exploring and critically analyzing the works that had been published on implementing power sharing agreements in Africa. The study concludes that indeed if the parties in a conflict did attain a mutually hurting stalemate to realize a ripe moment so as to view negotiations as a resolution measure, then it would be difficult to embrace the outcomes irrespective of the other factors used to ensure successful implementation of the power sharing agreements.

CHAPTER ONE

INTRODUCTION TO THE STUDY

Background

The end of the Cold War has given civil war a more prominent place in international conflict management, as well as in scholarship¹. Civil war generally described as a contest between opposing groups of citizens of the same country, has been more frequent and persistent than interstate conflict and more difficult to settle. Its salience in the post cold war era has led to a great deal of interest in whether and how external efforts may help facilitate the resolving of such conflicts.

Efforts to manage civil wars today have been based on the need to employ pacific means, as resulting in un-peaceful or forceful means is a risk of escalating the conflict. This rationale as Mwagiru argues is central to modern international relations, diplomacy and international law². Article 33 of the United Nations (UN) Charter also mandates the parties to a conflict to first seek any peaceful means at their disposal to resolve their issue and provides negotiations, mediation and binding efforts of third party interventions as the three basic methods³. As a result many of the civil wars today have been terminated through negotiations.

Negotiations are well described by Zartman to be the process of combining conflicting positions into a joint agreement⁴. If one is to apply the rational choice theory in civil war, then it means that belligerents are seen to be motivated by the wants or goals that express their

¹ Bethany Lacina, 'From Side Show to Centre Stage: Civil Conflict after the Cold War', *Security Dialogue* 2004;35;191, p 193

² Makumi Mwagiru, *The Water's Edge: Mediation of Violent Conflict in Kenya*, (Nairobi: Institute of Diplomacy and International Studies 2008) p35

³ Jacob Bercovitch, 'Mediation and Conflict Resolution', in Bercovitch, Kremenyuk, Zartman (ed), *The Sage Handbook of Conflict Resolution*, (London: Sage Publications 2009) p 341

⁴ William Zartman, 'Conflict Resolution and Negotiation', in Bercovitch, Kremenyuk, Zartman (ed), *The Sage Handbook of Conflict Resolution*, (London: Sage Publications 2009) p 324

'preferences' therefore conflict is a means to the end. On this basis successful bargaining or negotiating becomes the best option between the belligerents as a means of preventing or resolving the conflict. During negotiations the parties arrive at specific agreements that aim to regulate their interactions within the post conflict phase. These agreements are usually referred to as a *peace agreement* and are as a result of a joint decision making process by the parties. Peace agreements contain various elements which are intended to form the basis of peaceful relations between the parties in the post negotiation phase and thereafter⁵. Hence the function of the peace agreement is to nurture a new order into life and provide the systems and infrastructure which the new order will be entrenched⁶.

In Africa, as civil war continues to scourge the continent negotiation is becoming a widespread method of resolution. In many of these civil war negotiations like in Angola, Chad, South Africa, Mozambique, Papua New Guinea, Kenya and Zimbabwe, peace agreements have been an outcome of the process. One notable element in these peace agreements has been power sharing accords signed between belligerents. As exclusion rather than greed alone has been seen as the key factor behind most of these conflicts, these accords have been undertaken so as to guarantee the parties some level of political representation and decision making power in the post conflict period.

However if experience is any guide, there is doubt about the success of implementing power sharing accords in peace agreements. This has been seen in their limited success during implementation in countries like Chad, Angola, Somalia, Sudan, Mozambique, Rwanda and Liberia. The question that then arises is why they still continue to be advocated for by a growing

⁵ Makumi Mwagiru, *The Water's Edge: Mediation of Violent Conflict in Kenya*, (Nairobi: Institute of Diplomacy and International Studies 2008) p147

⁶ Ibid

number of scholars and intellectuals more so with Kenya and Zimbabwe being the latest countries to sign such accords in 2008.

Ideally the process of negotiation should result to mutually acceptable agreements that create a positive outcome where all parties feel to be better off with them than in conflict. Therefore as an outcome of a bargaining process, one would assume that power sharing accords are an optimal agreement between the parties and there is mutual commitment to implement them. Therefore it can be conversely argued that when peace agreements fail during implementation it is because they were not acceptable outcomes of the negotiation process.

On the basis of this supposition one might conceivably argue then, that the key to successful implementation of power sharing accords in peace agreements lies in the success of the negotiation process. There is therefore need to establish if the process of negotiations is what spells the difference between success and failure of power sharing accords in peace agreements.

Statement of the Research Problem

Civil wars have emerged as the new challenge in conflict studies within Africa with numerous efforts directed towards their solution. In trying to resolve them, many civil wars end with peace agreements signed after difficult negotiations as victory and power assumes a central part in determining the outcome of the negotiation process. To address this power relation concern, a number of civil war negotiations have often focused on including power sharing accords on political, military and territorial aspects of the society. The focus is generally on doing away with centralized political structures while creating new impartial ones determined by the lines of polarization.

However, research has shown that the successful implementation of power sharing accords in peace agreements after civil war is difficult to achieve and often prone to collapse like

in Angola, Chad and Rwanda. But despite this, power sharing accords still continue to draw a lot of support. As an outcome of negotiations, one would expect that they will succeed to sustain peace, as it is assumed that the agreements reached during the dialogue are mutually acceptable.

Generally peace agreements are undertaken in good faith by parties in the conflict with the hope that they will commit to them and help sustain the peace. The concern is then what happens that this commitment does not bear in success during implementation. One important issue that arises from this is whether then their failure is because of a flawed negotiation process that does not yield mutually acceptable agreements, thus a lack of commitment by the parties to implement them. This study therefore seeks to establish a linkage between the negotiation process as a primary determinant to the success or failure of power sharing accords. Kenya being one of the most recent countries in Africa to have a negotiated a peace agreement with power sharing accords and considered successful, it will be the focus of the study.

Objectives of the Research

The overall objective of this study is to determine whether the negotiation process determines the success or failure of implementing power sharing agreements. The specific objectives are;

- To determine the relationship between the negotiation process and the success or failure of implementing negotiated power sharing accords.
- Asses the conditions of a negotiation process that determine the success of implementing power sharing accords in post civil war.

Literature review

The main purpose of this review will be to identify power sharing as an outcome of negotiated peace agreements. It will begin with an overview of negotiations in civil war by identifying the process as a critical aspect of negotiations and the outcome of peace agreements. It will then analyze peace agreements and provisions for power sharing by indicating how the process of negotiations founders the dilemmas identified in implementing power sharing accords.

Negotiations in Civil War

In the international arena, where conflicts can easily escalate into highly destructive and destabilizing wars, negotiation as a resolution mechanism is as common as conflict itself⁷. Negotiations aimed to end civil war often seek to provide a platform for dialogue, discussions or written exchanges with an aim of resolving a disagreement between conflicting parties. Druckman analyses negotiations to be a relationship between a process of give and take and an outcome of settlements and impasses. He argues that as a method of conflict resolution they have the greatest potential of resulting to an optimal solution which has the greatest potential of sustaining peace the longest⁸. Similarly Zartman, Bercovitch, Hartzell, Hoddie and Steadman support this view in various arguments where they all agree that it helps to identify a mutually acceptable solution thus making credible commitment possible as it mitigates the feeling of vulnerability in the post conflict period.

However not all scholars perceive negotiations as the best alternative. In an argument worth noting, Mason, Weingar, and Fett⁹ though agreeing to the fact that many civil wars end with peace agreements signed after negotiations, still contend that termination through a military

⁷ Richard Jackson, 'Successful Negotiation in International Violent Conflict', *Journal of Peace Research*, Vol. 37, No. 3 (May, 2000), p324

⁸ Zartman, I.W., Druckman, D., Jensen, L., Pruitt, D.G. and Young, P. (1996) "Negotiation as a Search for Justice," *International Negotiation* 1: p79-98.

⁹ T. David Mason, Joseph P Weingarten, Jr., and Patrick J. Fett, University Of Memphis, 'Win, Lose, or Draw: Predicting the Outcome of Civil Wars', *Political Research Quarterly* 1999; 52; p 239

victory provides a relatively more enduring peace. This view is supported by Morgenthau who argues that national interest and security is of greater priority over ideology, moral concerns and social reconstructions thereby justifying force as a tool to achieve this¹⁰. Mason et al also observe that negotiations are often not the preferred primary option to resolve the crisis by the belligerents because of what they describe as power asymmetry. They assert that power asymmetry motivates the belligerents to choose a Win-Lose outcome preferably through confrontational tactics so negotiations are hardly considered as their outcomes are often a Win-Win situation. This then qualifies Morgenthau's argument of the use of force to instill order.

In a rejoinder Galtung talks about enacting a positive peace through meaningful dialogue. He observes that continues meaningful dialogue has greater potential of resulting to positive peace rather than the negative peace combative tactics seek to achieve¹¹. Sahadevan additionally agrees by arguing that negotiations must be a process that continues until a turning point is reached¹². The issue then in civil war negotiations becomes how to make them a process with a full cycle where each time a standoff arises it starts anew in its lifecycle, and the parties re-employ the same strategies until a resolution is reached. Licklider further observes that in negotiating an end to civil war it is not an obvious linear process pursued within a structured parameter entailing a set of conventional strategies, but rather a highly complex affair in that, the parties invariably adopts multiple tactics that eventually yield some intended or unintended results¹³.

¹⁰ Hans J Morgenthau, '*Politics Among Nation: The Struggle for Power and Peace*' (Boston:Mc Graw Hill, 1983), p 4-5

¹¹ Johan Galtung, 'Violence, Peace, and Peace Research', *Journal of Peace Research* 6(3):p167-191

¹² P. Sahadevan, 'Negotiating Peace in Ethnic Wars', *International Studies*, 2006; 43; 239, p 263

¹³ Roy Licklider, 'The consequences of negotiated settlements in civil wars, 1945-1993', *American Political Science Review* 89(3): 681-90.

From the foregoing perspectives, Zartman¹⁴ observes that negotiations in civil war are thus pursued as an intricate process with clearly defined phases that influence the outcomes of each other. He notes that the negotiation process goes through a succession of stages whose proper accomplishment makes for a coherent agreement and maximizes the payoffs of the parties involved. This process starts with a hurting stalemate often at the peak of a conflict, then a de-escalation stage as a result of actual negotiations and finally post conflict peace building to implements agreements reached. Just like any other process, events or occurrences after negotiations can also be said to be the result of certain inputs leading to certain outcomes. Therefore one can argue that the success or failure of implementing peace agreements lies within inputs of the negotiation process.

However Sahadevan¹⁵ observes that it's not in all cases that negotiations succeed to bear peace agreements implying a failure in the absence of an absolute hurting stalemate, and the presence of a simple stalemate. The ripe moment is critical as it provides an entry into the negotiation process. It is often as a result of a stalemate process that is mutually hurting to all¹⁶. Mitchell develops and defines the concept where he identifies three forms of stalemates. He identifies a stalemate of desperation, a stalemate of attrition, and a stalemate of frustration. The importance of this moment has been underscored by Zartman, Haass and Stedman¹⁷ who argue that if the moment is not ripe, then an active moderator can induce one. This stage what facilitates the actual bargaining's over the issues.

¹⁴ William Zartman, "Ripeness: The Hurting Stalemate and Beyond," in *International Conflict Resolution after the Cold War* eds., Paul Stern and Daniel Druckman. (Washington: National Academy Press, 2000).

¹⁵P. Sahadevan, 'Negotiating Peace in Ethnic Wars', *International Studies*, 2006; 43; 239, p 263

¹⁶ See Marieke Kleiboer, 'Ripeness of Conflict: A Fruitful Notion?', Reviewed work(s): Conflicts Unending by Richard N. Haass *Peacemaking in Civil War: International Mediation in Zimbabwe, 1974-1980* by Stephen J. Stedman *Ripe for Resolution: Conflict and Intervention in Africa* by I. William Zartman *Journal of Peace Research*, Vol. 31, No. 1 (Feb., 1994), pp. 110

¹⁷ Ibid pp. 111-113

During this period Haass¹⁸ observes that there is usually a shared perception of the attractiveness of conciliation, the ability of political leaders to agree to a desirable settlement, formulas or agreements that are seen to preserve the national interest of their constituencies, and acceptable procedures to further deal with their conflict. It is therefore in this stage that agreements that will bind relations between parties in the post conflict phase are developed and assented to. These conditions are also said to be necessary to yield commitment to peace building that will guide the post conflict stage. The issue of commitment therefore becomes a critical aspect in determining the success of implementing peace agreements in the implementation phase.

Peace Agreements

Peace agreements have become relevant tools in attempts to reconstruct societies in the emerging from civil conflict. They are often an outcome of a negotiation process with an aim to guide the peace process in the post conflict phase. However the prospects of stable peace through the success of the implementation of negotiated peace agreements has been of great concern to scholars and practitioners of conflict management. DeRouen, Ferguson, Norton Park Lea & Bartlett¹⁹ observe that the critical aspect of peace agreements encompasses considerations of how best to mitigate the problem of re-entry so as to make the agreements acceptable to all parties, constituents, and interests in a conflict. In the post conflict phase former combatants are required to occupy the same territory therefore the aftermath of civil war leaves both sides uncertain of the future. The focus then shifts from the obstacles of arriving at an agreement to preventing one or both parties from renegeing on the terms of the agreement.

¹⁸ Ibid: p110

¹⁹ Karl DeRouen, Jr, Mark J Ferguson, Samuel Norton, Young Hwan Park, Jenna Lea and Ashley Streat-Bartlett, 'Civil war peace agreement implementation and state capacity', *Journal of Peace Research* 2010; p334

In a research conducted in 1995 by Licklider, he observed that three out of four peace agreements are not successful. However in defining whether they are successful or not, various scholars seem to diverge in opinion. Two criteria issues arise though they seem to interplay. The first is on the issue of using the time constraint and the second is on the contents of the agreements as being able to sustain peace. On the issue of the time frame Bercovitch and Simpson²⁰ observe that it needs to be looked at in two phases, short term success that relates to signing of the agreement and long term success that relates to the duration of peace following the agreement. However debate still rages on whether specific amount of time should be used and some scholars have even given an arbitrary time of 5 – 15 years as the long-term range. To try and resolve this Fortna suggests that the criterion of whether violent hostilities resumed could be used to distinguish permanent peace from any cease-fire that fails²¹.

The second issue considers the content of agreements to be critical to their success. Stedman asserts that the whole essence of peace agreements is to implement peace by enforcing various accords within the agreement. He further notes that success of whether this is achieved is measured in relation to the conclusion of war on a self-enforcing basis: when the outsiders leave, do the former warring parties refrain from returning to war²². Daley also observes that a perusal of various peace agreements within Africa shows that they contain seemingly pragmatic principles and objectives that appear essential to ensure the ending of the wars and the return to the rule of law²³.

²⁰ Jacob Bercovitch and Leah Simpson, 'International Mediation and the Question of Failed Peace Agreements: Improving Conflict Management and Implementation, *Journal of Conflict Resolution*, p71-73

²¹ *Ibid*:p72

²² Stephen John Stedman, 'Implementing Peace Agreements in Civil Wars: Lessons and Recommendations for Policymakers', *IPA Policy Paper Series on Peace Implementation* May 2001, New York, p7

²³ Patricia Daley, 'Challenges to Peace: Conflict Resolution in the Great Lakes Region of Africa', *Third World Quarterly*, Vol. 27, No. 2 (2006), pp. 303

According to Fortna, it is these specific agreements that reduce uncertainty of intentions and establish measures to control fallbacks²⁴. One of the most common specific agreements within peace agreements that have stood out is power sharing accords. Rothchild, Fortna, Hoddie and Hartzell have all identified power sharing accords as a fundamental in determining the success of implementing peace agreements. Hoddie and Hartzell²⁵ further contend that if a peace agreement does not mandate a power sharing accord then the likelihood of its failure is definite with Fortna asserting that it can be used as a specific attribute to provide greater insight into the success or failure of a settlement²⁶. However Daley observes that though the success may rely on power sharing between the belligerents-political parties and rebel movements, the experience in individual countries is not one of logical progression²⁷.

Power Sharing

Power sharing accords as an element of negotiated peace agreements after civil war, has increasingly become a tool to foster lasting peace with leaders of insurgent groups. As exclusion, rather than greed alone, is the key factor behind most civil conflicts, it is easy to see why power sharing should commend itself as a recipe for peaceful cohabitation²⁸.

Power sharing has been used in negotiations to remedy exclusive governments and provide for accommodative politics, which as Ottaway²⁹ observes may be the only attainable

²⁴ Karl DeRouen, Jr, Mark J Ferguson, Samuel Norton, Young Hwan Park, Jenna Lea and Ashley Streat-Bartlett, 'Civil War Peace Agreement Implementation and State Capacity', *Journal of Peace Research* 2010; 47; p334

²⁵ Matthew Hoddie and Caroline Hartzell, 'Civil War Settlements and the Implementation of Military Power-Sharing Arrangements', *Journal of Peace Research*, Vol. 40, No. 3 (May, 2003), p 304

²⁶ Karl DeRouen, Jr, Mark J Ferguson, Samuel Norton, Young Hwan Park, Jenna Lea and Ashley Streat-Bartlett, 'Civil War peace Agreement Implementation and State Capacity', *Journal of Peace Research* 2010; 47; p334

²⁷ Patricia Daley, 'Challenges to Peace: Conflict Resolution in the Great Lakes Region of Africa', *Third World Quarterly*, Vol. 27, No. 2 (2006), pp. 303

²⁸ René Lemarchand, 'Consociationalism and Power Sharing In Africa: Rwanda, Burundi, and The Democratic Republic of The Congo', *African Affairs*, p 2

²⁹ M Ottaway, 'Democratization in Collapsed States', in I W Zartman, ed. *Collapsed States: The Disintegration and Restoration of Legitimate Authority*, (Boulder, CO: Lynne Rienner, 1995), p 248.

short-term goal compatible with long-term democratization as it serves to manage and mitigate recurrence of conflict. In defining power sharing, Hoddie and Hartzell describe it as how decisions are to be made within a divided society and the distribution of decision-making rights within a state³⁰. Spears, defines it as the distribution of government posts across the most powerful political parties or groupings³¹. Therefore power sharing especially in the political dimension is undertaken in good faith by belligerents with the hope that they will commit to it and help sustain the peace. But if experience is anything to go by, there is every reason to believe that their efficacy has been proved inadequate to prevent the outbreak of violent conflicts in settings as diverse as Angola and Liberia, Somalia, and Ethiopia.

Most of the academic literature³² relating to negotiated power sharing agreements focuses on the implementation phase of the process. The full implementation of peace agreements proves important because it provides reassurances to wartime opponents that their partners in the settlement process value stability over conflict and remain committed to the process of establishing a self enforcing peace. Thus successful implementation is highlighted through the essential role that credible commitment plays in the post civil war environment. However Daley takes on a different perspective where she asserts that one of the fundamental errors made in successful implementation of peace agreements thus power sharing accords can be traced to the process of negotiation peace agreement. She argue that whether they are a preferred solution by

³⁰ Caroline Hartzell and Matthew Hoddie, 'Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management', *American Journal of Political Science*, Vol. 47, No. 2 (Apr., 2003), p 319.

³¹ Ian S. Spears, 'Understanding Inclusive Peace Agreements in Africa: The Problems of Sharing Power', *Third World Quarterly*, Vol. 21, No. 1 (Feb., 2000), p 107.

³² Matthew Hoddie and Caroline Hartzell, 'Civil War Settlements and the Implementation of Military Power-Sharing Arrangements', *Journal of Peace Research*, Vol. 40, No. 3 (May, 2003), pp. 303-320.

the parties, the history of past interactions and outside factors that determine political processes all need to be adequately considered during negotiations.

From this perspective by Daley an important issue arises. Just like any other process, events or occurrences after negotiations, the success or failure of implementing power sharing accords can also be said to be the result of certain inputs leading to a certain outcome. Therefore one can argue that the success or failure of implementing peace agreements and accords lies within inputs of the negotiation process. The case for power sharing is a strong and valid one. Though it may have not stood the test of success, it does not nullify the case for its use. It only means that if properly negotiated, and given the right conditions, the power sharing formula could provide the best chances for lasting peace.

The prospects of stable peace through the success of the implementation of negotiated peace agreements, has been of great concern to scholars and practitioners of conflict management. Of great concern has also been the implementation of power sharing accords within the peace agreement. They have been argued to facilitate institutional development and capacity building in establishing good governance based on collaboration between the state and the society, thus sustaining peace.

However case studies have showed that their implementation failure rate is higher than the success rate, and some degree of research has attributed this to negotiations in terms of structure and strategy, but little to it as an outcome of a process. There is therefore need to enrich the already existing literature on the efficacy of negotiated power agreements as an outcome of a negotiation process. Kenya being a case in point to have undertaken negotiations that led to power sharing accords in the peace agreement, this study will be used to assess Kenya's

adherence to the negotiation process implementation of power sharing accords within the peace agreements as an outcome of the January 2008 negotiations.

Theoretical Framework

Ripe Moment theory will guide this study as conceptualized by William Zartman³³. The concept of a ripe moment centers on the parties' perception of a Mutually Hurting Stalemate (MHS), a situation in which neither side can win, yet continuing the conflict will be very harmful to each although not necessarily in equal degree nor for the same reasons. Also contributing to "ripeness" is an impending, past, or recently avoided catastrophe. This further encourages the parties to seek an alternative policy or "way out," since; the catastrophe provides a deadline or a lesson indicating that pain might be sharply increased if something is not done about it soon. It is a matter of perception of the objective condition, not the condition itself that makes for a mutually hurting stalemate. If the parties do not recognize that they are at an impasse, a mutually hurting stalemate has not yet occurred, and if they do perceive themselves to be in such a situation, no matter how weak the evidence, the mutually hurting stalemate is present.

The other factor necessary for a ripe moment is less complex and also perceptual: a Way Out. Parties do not have to be able to identify a specific solution; they must only have a sense that a negotiated solution is possible and that the other party shares that sense and the willingness to search for a solution too. Without a sense of a Way Out, the push associated with the mutually hurting stalemate would leave the parties with nowhere to go. Not all ripe moments

³³ For an indepth analysis See I William Zartman and Maureen Berman, *The Practical Negotiator* (New Haven: Yale University Press, 1982), 66-78; I William Zartman, "The Strategy of Preventive Diplomacy in Third World Conflicts," in *Managing US-Soviet Rivalry*, ed. Alexander George (Westview, 1983); Saadia Touval & I William Zartman, eds., *International Mediation in Theory and Practice* (Westview, 1985), 11, 258-60; I William Zartman, *Ripe for Resolution* (New York: Oxford, 1985/1989).

are seized and turned into negotiations, hence the importance of specifying the meaning and evidence of ripeness so as to indicate when conflicting or third parties can fruitfully initiate negotiations.

Hypotheses

1. Power sharing agreements are successful when the parties accept negotiations as a mutually acceptable solution.
2. Power sharing agreements are successful when decisions made are shared.
3. Power sharing agreements are successful when new negotiations are initiated on new problems that arise during implementation.

Methodology

The research will be qualitative as it shall focus on exploratory studies and will be done through a case study research. The reason for this choice of research design is because it excels at bringing an understanding of a complex issue and can extend experience or add strength to what is already known through previous research

Case Selection

The case selected for this study is Kenya. The reason for this choice is it the latest of the two countries in Africa that have recently had politically instigated violence and the negotiations that took place to end the violence resulted in peace agreements which encompass power-sharing accords. It is also in the limelight on them to see how it will fare work out so as to qualify or disqualify the possibility of achieving sustainable peace through negotiated power sharing. The case is also convenient to the researcher as it will be cost effective in terms of time and other resources.

Unit of Analysis

The units of analysis for this study will be the negotiation process linked to power sharing accords in peace agreements in civil war. The research will narrow in on the role negotiation processes have on implementing power sharing agreements to sustain peace in the post conflict phase. The independent variable will be the negotiation process and the dependent variable will be power sharing.

Data Collection

Data shall mainly be derived from secondary sources. Primary sources will also be used. The data collection tools for the secondary data that will be used will be in-depth information gathering, and document analysis. In-depth information gathering will mainly involve literature research. Data collected in this procedure will include quotations, opinions and specific knowledge and background information relating to the civil conflicts and negotiations that have taken place. For the document analysis technique it will involve an analysis of historical and current documents in the focus areas. Data collected in this procedure will include excerpts, quotations, correspondents and official reports.

The primary data will be collected by direct observation and open ended interviews. Direct observation will be used to study the variables interplay in their natural setting thereby providing a richer understanding of the subject. It will be done by monitoring what's actually going on at case study country. It will be informal, without much thought to the quality of data collected. It will allow for a more systematic, structured process, using well-designed observation record forms. Data collected will include; a description of the event, strategies used, methodology and behavior. Open ended interviews will also be used to generate insights on the concept of power sharing within the context of the case studies so as not to generalize about

them. These findings will not be generalizable but will pertain to the context that limits the study. They will be used to expand understanding and search for exceptions to the 'rule'. The data collected can be validated elsewhere with several other interviews. Participants will be selected using purposive sampling techniques. Data collected will include; opinions, specific knowledge and background information.

Data analysis

Data will be analyzed interpretatively. This will be done by synthesizing, categorizing and organizing the data into patterns that produce the description of the phenomena or a narrative of the synthesis. It will proceed from the belief that all meaning is situational in the particular context or perspective. As a result, there could be different meanings to the same phenomena because the meaning will depend on the context. Since it is a qualitative research the hypothesis will be generated after the data is collected. The data will also be analyzed by making connections to existing, and integrating it with relevant concepts and theoretical framework. This will entail evaluating and analyzing the data to determine the adequacy of its information and its credibility, usefulness consistency and validation of the hypothesis.

Reliability and Validity

Reliability will ensure that an instrument measure the same way each time it is used in under the same conditions with the same subjects. Validity will ensure that an instrument measures what it is supposed to. To ensure these are observed the research will use peer debriefing and an audit trail during data collection.

Chapter Outline

This report has been by six chapters as outlined below.

Chapter One: Introduction and Background - This chapter introduces the topic of the research study by first setting the broad context of the research study, the statement of the problem, literature review, theoretical framework, hypotheses, justification, and the methodology of the study.

Chapter Two: Peace Agreements - This chapter examines peace agreements as an outcome of negotiations in civil war. The chapter analyses peace agreements in Africa, discusses the determinants of successful implementation as highlighted by various scholars. The chapter aims to provide the background on negotiated peace agreements thus make it easy to find the place of the negotiation process in the success or failure of power sharing accords.

Chapter Three: Peace Negotiations- This chapter provides an overview of negotiations as a conflict resolution measure. It examines the structure, process and outcomes of negotiations with an aim of showing the relationship of the power sharing accords in peace agreements as an outcome of negotiations

Chapter Four: Power Sharing as an Outcome of Negotiations - This chapter will analyses power sharing as an outcome of a negotiation process. It provides the background and philosophy of power sharing, examines their implementation in Africa and looks at various factors affecting their implementation with an aim of linking them to the negotiation process.

Chapter Five: The 2008 Coalition Government Negotiations in Kenya - This chapter critically analyzes the case study in light of the data collected in the previous three chapters. It analyses the data in the theoretical framework already stated and tests the hypotheses. It determines if indeed there is a relationship between the negotiation process and the successful outcome of power sharing accords.

Chapter Six: Conclusion - This chapter gives a reflection of the study and offers concluding remarks.

CHAPTER TWO

PEACE AGREEMENTS

Introduction

This chapter examines peace agreements as an outcome of negotiations in civil war. The chapter analyses peace agreements in Africa by highlighting the trend in which they take and examining the concept, content, process of arriving at peace agreements and the determinants of successful implementation as highlighted by various scholars. It further discusses their implementation in the post conflict phase with a focus on the issues affecting implementation and the determinants of successful implementation as highlighted by various scholars. It will examine negotiated peace agreements thus make it possible to place the negotiation process in the success or failure of power sharing agreements.

The Concept of Peace Agreements

The requirement that conflict management must be peaceful is one of the bedrocks of the international legal and political system¹. Article 33 of the United Nations (UN) Charter backs this up by forbidding the use of force and mandating the parties to a conflict to first seek any peaceful means at their disposal to resolve their issue and provides negotiations, mediation and binding efforts of third party interventions as the three basic methods². Conflict management therefore encompasses any process by which parties to the conflict are encouraged to come together and do something about their conflict³. As a result many of the civil wars in the world

¹ Makumi Mwagiru, *Conflict in Africa, Theory, Processes and Institutions of Management*,(CCR Publications: Nairobi: 2006) p 36.

²Article 33, UN Charter

³ Makumi Mwagiru, *Conflict in Africa, Theory, Processes and Institutions of Management*,(CCR Publications: Nairobi: 2006) p43.

today have been terminated through peace processes that engage in negotiations between parties to a conflict so as to come to an agreement on how to peacefully manage their differences.

The emphasis on negotiations as a conflict resolution measure has been built on the bargaining model of war, where it posits that war is always costly, therefore conflicting parties would prefer to conclude an ex ante negotiated agreement to avoid the ex-post inefficiency of war⁴. This preference of wanting to conclude the war is what Zartman identifies as the ripe moment and argues is the basis of any negotiation that is to yield successful outcomes. Bercovitch further asserts that it is also the point that the parties would be able to reach a peaceful bargain that is equal to what would be negotiated at the end of war but without incurring the costs of fighting⁵. This is also the point that peace processes begin where the warring parties either decide to settle or resolve the incompatibility in a process in which one issue at a time is regulated by an agreement, or where an agreement builds on a previous peace agreement is signed⁶.

Therefore peace agreements are as a result of negotiations and often seek to resolve protracted conflicts and provide a new vision for inter-group and interstate relations at the regional, national or local level. They are used as a pivotal means for stemming the violence, resolving conflicts and reconstructing normal social relations⁷. Das has defined them as a “construct that the rivaling parties have made for themselves and once they are entered into they seem not only to exist independently of whatever signatories think about them, but shape and mould their thoughts and practices subjectifying them as it were, by laying down the modalities

⁴ Michaela Mattes, 'Fostering Peace After Civil War: Commitment Problems and Agreement Design' *International Studies Quarterly* (2009), p739.

⁵ Ibid: p739

⁶ Ibid: p739

⁷ Swarna Rajagopalan, 'Peace Agreements in North East India: Journey Over Milestones', *East West Centre, Policy studies*, p4-6.

on the basis of which their affairs are supposed to be conducted in future⁸. Another definition is by Wallesteen⁹ who states they are a particular result in the course of a process that begun before the agreement was signed and continues after the ink has dried. It is therefore evident that peace agreements aim to establish new political and officially permitted structures that guide relationships between belligerents in the post conflict phase.

Once an agreement is arrived at it is expected to alter the perception that a conflict is intractable, and to induce optimism where despair was even if it's only for a brief period¹⁰. At minimum it achieves this by ceasing hostilities or violence and at most it becomes a framework for social and political transformation. It is also expected to provide a way that people with different interests attempt to come to a working relationship that allows them to live together. To achieve their goals, peace agreements rely on reciprocity and mutual deterrence¹¹ of the parties to engage in hostile confrontations. This means that each side will stop fighting to reach some compromised agreement as a way forward in exchange for the other side doing the same. If either side reneges on the terms, the other will respond in kind. It is the prospect of return fire that deters attack and is the central notion that peace agreements rely on¹².

Peace Agreements in Africa

The post cold war years have witnessed the rise of the *peace agreement* as a tool for addressing protracted social conflict within existing state borders¹³. Bell¹⁴ observes that the last

⁸ Ibid: p6

⁹ Peter Wallesteen, '*Understanding Conflict Resolution: War Peace and the Global System*', Sage Publications London, p27.

¹⁰ Swarna Rajagopalan, 'Peace Agreements in North East India: Journey Over Milestones', *East West Centre, Policy studies*, p5

¹¹ Virginia Page Fortna, 'Scraps of Paper? Agreements and the Durability of Peace', *International Organization*, Vol. 57, No. 2 (Spring, 2003), p342.

¹² Ibid

¹³ Christine Bell and Catherine O'Rourke, 'The People's Peace? Peace Agreements, Civil Society, and Participatory Democracy', *International Political Science Review* 2007; p295.

fifteen years have seen a proliferation of peace agreements with some fifty percent of civil wars being terminated through them, making them numerically amount to over three hundred peace agreements in about forty jurisdictions. Hartzell and Hoddie¹⁵ also state that in particular peace agreements through negotiations have increasingly become the preferred method of conflict resolution since the 1990's, with a majority of post cold war civil war terminations having been attempted in this manner.

However the concept and history¹⁶ of peace agreements is not recent and dates back to the pre cold war era where they were used to settle interstate conflict. Peace agreements then were in the form of regional frameworks that regulated how nations in conflict would relate and handle their dispute. They were primarily between states and were based on power relations and often sought to resolve issues to do with territorial sovereignty. Thus the content mainly focused on ceasefire agreements, disarmament, and integration in the army, amnesty, deployment of peace keeping forces and withdrawal of foreign forces. After the cold war interstate conflict was on the decline as intrastate conflict increased. Their effect on managing conflict was notable that when the rise of intrastate conflict in the post cold war era conflict resolution models adopted the use of peace agreements. Today intrastate conflict management has adopted the use of peace agreement but this time between the warring parties within the same territory. The focus of peace agreements has since then expanded to incorporate political provisions and post conflict peace building efforts that aim to reconstruct war torn societies.

¹⁴ Ibid: p373

¹⁵ Caroline Hartzell and Matthew Hoddie, 'Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management', *American Journal of Political Science*, Vol. 47, No. 2, p319.

¹⁶ See research done by Wallesteen in See research done by Lotta Harbom, Stina Högbladh, Peter Wallensteen in 'Armed Conflict and Peace Agreements', *Journal of Peace Research*, Vol. 43, No. 5 (Sep., 2006), pp. 617-631.

In Africa thirty-two of the fifty-three African states experienced some form of violent conflict between 1991 and 2005¹⁷. From 2002 to date, more than half of these countries have been implementing, or have attempted to implement, negotiated peace agreements¹⁸. However, these peace agreements have failed as often as they have succeeded and this mixed outcome has presented conflict managers with a challenge which has raised a discourse that brings to forth a broad range of theoretical, practice and policy questions¹⁹. These concerns have been supported by the trends set in their implementation. In southern Africa²⁰ for instance the 1992 General Peace Agreement for Mozambique has been regarded as successful. In Angola, both the 1991 Bicesse Agreement and the Lusaka Protocol failed. In central Africa²¹, in the Democratic Republic of the Congo (DRC), the 1999 Lusaka Accord also failed and had to be supported by other Agreements, including the Final Act of the Inter-Congolese Dialogue.

The 1993 Arusha Peace Agreement for Rwanda failed, leading to a genocide that cost the lives of 800,000 people. In Burundi, the Arusha agreement held amidst massive challenges, and has had to be supported by several other agreements and protocols. In Somalia, no peace agreement has held and until today the country faces violent conflict. In Sudan²², the 2005 Comprehensive Peace Agreement has been implemented amidst massive challenges but whether the agreement will stay on course will be tested with time. In May 2006, the Darfur Peace Agreement in Sudan collapsed, and the conflict continues to be experienced in the region.

¹⁷ Vasu Gounden, 'Editorial', *Conflict Trends*, The African Centre for the Constructive Resolution of Disputes (ACCORD), 2008 p2

¹⁸ Ibid: 2

¹⁹ Ibid: 2

²⁰ Karanja Mbugua, 'Overview of Peace Agreements in Africa 1990-2007', *Conflict Trends*, The African Centre for the Constructive Resolution of Disputes (ACCORD), 2008 p2 p44,50

²¹ Ibid: 45, 48, 51

²² Ibid: 54

In West Africa there have also been records of shaky peace agreements though they have tried to maintain the peace. In Liberia the Comprehensive Peace Agreement has brought the protracted civil war to an end though time will still tell if the established peace is durable²³. Sierra Leone has finally found peace and the agreement can be said to have held. In Côte d'Ivoire, the 2003 Linas-Marcoussis Agreement failed and war continued until early 2007, when the conflicting parties signed the Ouagadougou Agreement²⁴. Based on this analysis, despite the popularity of peace agreements in resolving conflict the trend set in their implementation has shown that the signing of a peace agreement by antagonists does not necessarily guarantee the return and sustenance of peace.

Crocker and Hampson observe the two worst outbreaks of massive violence in the 1990s, Angola in 1993 and Rwanda in 1994 followed the failure of peace agreements to end those wars, and further state that globally since 1945 only one third of the negotiated settlements have resulted in a lasting peace²⁵. A growing concern has also been raised on the trend of peace agreements where a country has had more than one peace agreement. This has led scholars like Daley²⁶ to raise concerns as to whether peace agreements are indeed panaceas to ending violent conflicts in Africa and if so why have majority of them seemed to fail.

Implementing peace agreements in Africa has by no doubt proven challenging. As Stedman observes for a long time scholars assumed that a contract between state and insurgent leaders would remain binding line the post-agreement phase²⁷. This he states was a shortcoming

²³ Ibid: 49, 53

²⁴ Ibid: 46

²⁵ Chester A. Crocker and Fen Osler Hampson,, 'Making Peace Settlements Work', *Foreign Policy*, No. 104 (Autumn, 1996), p55.

²⁶ Patricia Daley, 'Challenges to Peace: Conflict Resolution in the Great Lakes Region of Africa', *Third World Quarterly*, Vol. 27, No. 2 (2006), p303.

²⁷ Stephen John Stedman, 'Implementing Peace Agreements in Civil Wars: Lessons and Recommendations for Policymakers', *IPA Policy Paper Series on Peace Implementation* May 2001, New York,

of the tendency to conceive of conflict resolution in a linear fashion, where successful negotiations signaled an irreversible reduction in conflict especially backed by successful cases in the 1980s of Zimbabwe, Namibia, and Nicaragua to reinforce these assumptions²⁸. However with the rise of civil war and failure of various peace agreements this thinking has been defied and brought to attention the difficulties of getting parties to honor their commitments to peace as the signing of a peace agreement does not always mean that peace will be achieved.

However Lederach argues that though agreements bring a quick end to conflict with pragmatic and humanitarian values, they are still social and political antacids incapable of improving the health of a polity in the long run²⁹. He further asserts that while peace agreements constitute milestones they cannot be expected to either end violence conclusively or solve problems that led to the conflict. This argument is further supported by Rothchild who observes that a number of negotiated agreements ending internal wars in Africa have proven brittle, ultimately causing incoherent relations when implemented³⁰. He highlights the Mozambique and Liberia agreements where observes that even though laborious efforts to negotiate an end to civil wars have been crowned with success, peaceful relations remain to be consolidated. Nonetheless Rothchild³¹ observes that peace agreements need reliable commitments to the peace process as early as possible and argues that a peace agreement must be perceived as a framework for further negotiations during the implementation stage, otherwise the inevitable ambiguities in peace agreements will lead to new conflicts between the rival parties.

²⁸ Ibid

²⁹ John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies*, (Washington D.C. United States Institute of Peace: 1997), p30.

³⁰ Donald Rothchild, 'On Implementing Africa's Peace Agreements: From Defection to Cooperation', *Africa Today*, Vol. 42, *The Military and Democratic Transitions* (1st Qtr. - 2nd Qtr., 1995), p8.

³¹ Ibid: p9-10.

The experience of the last fifteen years has taught the international community, and those who live in conflict situations, that reaching a peace agreement is a beginning and not an end and that it is very hard to deliver a peace that lasts beyond a cease fire, and delivers democracy and tangible benefits to local communities. Nonetheless, peace agreements continue to be signed and remain one of the main ways of trying to move societies away from violent conflict.

Process of Reaching a Peace Agreement

Peace agreements are often the result of some form of bargaining and compromise through negotiations or mediation. The negotiation process is inter-connected and encompasses the stages of pre-negotiation, negotiation, and the implementation of agreements. As the processes evolve, a wide variety of documents that can be termed as a "peace agreement" are produced at various stages³². Each of these stages involves an ongoing set of political exchange relationships and reciprocities that result in agreements between the parties that have a distinct purpose and provide a worth in them towards developing the final agreement³³.

Bell³⁴ and Rothchild³⁵ observe that the process of reaching a peace agreement anchored in the process of negotiations and mediation can be classified into three main types, which tend to emerge at different stages of a conflict. These are the pre-negotiation agreements, framework/substantive agreements, and implementation/renegotiation agreements. In a violent conflict the first aim in the peace process is to temporarily stop war or any armed conflict for an agreed upon time frame or within a limited area as further negotiations are taking place. If the

³² Christine Bell, 'Peace Agreements: Their Nature and Legal Status', *The American Journal of International Law*, Vol. 100, No. 2 (Apr., 2006), p375.

³³ Donald Rothchild, 'On Implementing Africa's Peace Agreements: From Defection to Cooperation', *Africa Today*, Vol. 42, No. 1/2, *The Military and Democratic Transitions*, p9.

³⁴ Christine Bell, 'Peace Agreements: Their Nature and Legal Status', *The American Journal of International Law*, Vol. 100, No. 2 (Apr., 2006), p. 375-6.

³⁵ Donald Rothchild, 'On Implementing Africa's Peace Agreements: From Defection to Cooperation', *Africa Today*, Vol. 42, No. 1/2, *The Military and Democratic Transitions* (1st Qtr. - 2nd Qtr., 1995), p9

conflict is not violent agreements undertaken are made to ensure that violent means of resolving the conflict are as a last resort. These agreements often referred to as ceasefire agreements or cessation of hostilities require parties to agree to suspend aggressive actions, without necessarily making concessions of any kind³⁶. Bell observes that these agreements are however fragile and short lived and need to be followed by further agreements known as interim agreements undertaken by the parties to demonstrate their commitment to conducting future negotiations. These commitments then lead to pre-negotiation agreements which focus on the procedural and substantive issues that will govern the actual negotiations.

Pre-negotiation agreements define how the peace will be negotiated by outlining procedural issues, such as schedules, agendas, participants and location, as well as the mediator's role and the procedure for drafting the agreement. In this phase Bell observes that agreements emerging are incremental with the aim of building to a formal agreement that will enable multiparty talks³⁷. She further notes that they typically do not include all the parties to the conflict but take the form of bilateral agreements between some of the parties and remain secret until a later date. If the parties honor their commitments in this phase the pre-negotiation agreements are often then followed by negotiations that focus on generating the substantive or framework agreements. Rothchild³⁸ observes that they provide a framework for governance designed to address the root causes of the conflict and thus to halt the violence more permanently. It is the agreements reached at this stage that Bell argues deserve the label "peace agreement". This she defends by noting that they tend to be more inclusive of the main groups

³⁶ Jullian Ouellet "Peace Agreements" in UN Peacemaker Databank, Policy Planning Unit, Department of Political Affairs, United Nations. URL <http://peacemaker.unlb.org/index1.php>. Accessed on 30/6/2010 at 6:06 PM.

³⁷ Christine Bell, 'Peace Agreements: Their Nature and Legal Status', *The American Journal of International Law*, Vol. 100, No. 2 (Apr., 2006), p376

³⁸ Donald Rothchild, 'On Implementing Africa's Peace Agreements: From Defection to Cooperation', *Africa Today*, Vol. 42, No. 1/2, *The Military and Democratic Transitions* (1st Qtr. - 2nd Qtr., 1995), p11-12.

involved in waging the war by military means and are usually public and formally recorded in a written, signed form and include international participants.

During the actual negotiations the agreements focus on issues that deal with mechanisms for demilitarization and demobilization intended to end military violence if any, by linking them to new constitutional structures addressing governance, elections, and legal and human rights institutions³⁹. These agreements vary in the degree of detail as conflicts are unique and can contain either full detail or principles on which the processes of reform will be managed. Bell observes that in this stage some processes work toward one framework agreement with lengthy and detailed provisions aimed at dealing holistically with the issues, and other processes, build up consensus issue by issue in a set of agreements that are ultimately brought together or ratified by a comprehensive final agreement⁴⁰.

When the final peace agreement is arrived at it will need to be actualized in a guided process that will seek to institutionalize the peace. Thus developing implementation agreements follows so as to begin to move ahead and develop the aspects of the framework agreement by detailing how they will be implemented and include all parties to the framework agreement. By their nature, implementation agreements will involve new negotiations and in practice often undergo a measure of renegotiation as parties test whether they can claw back concessions made at an earlier stage⁴¹.

³⁹Christine Bell, 'Peace Agreements: Their Nature and Legal Status', *The American Journal of International Law*, Vol. 100, No. 2 (Apr., 2006), p377.

⁴⁰ Ibid: p377

⁴¹ Jullian Ouellet "Peace Agreements" in UN Peacemaker Databank, Policy Planning Unit, Department of Political Affairs, United Nations. URL <http://peacemaker.unlb.org/index1.php>. Accessed on 30/6/2010 at 6:06 PM.

Implementing Peace Agreements

A review of cases on implementation of peace agreements studied by various scholars⁴², shows that there is a gap between the promises made in the peace agreement and the steps needed to realize those agreements. The delicate nature of implementing peace agreements makes each of these steps crucial in avoiding a return to conflict. Therefore in order for peace agreement signatories to abide by their promises, they must be committed to do so not only for positive gains from compliance but also for the mutual benefit of the society. Commitment thus becomes one of the most central aspects for a peace agreement to lead to its ultimate goal of peace, as the parties' need to commit to stick to the deal and transform it into reality by further credibly committing to implement it⁴³.

A great deal of uncertainty surrounds the implementation of a peace agreement, as a party's decision to comply may be affected by unexpected changes in the implementing environment. However, it is important to also observe that unknown variables may work to encourage compliance. This, as Steadman observes can be done by manipulating the environment using appropriate strategies to counter the commitment threat. In conceptualizing the aspects of the environment that can be manipulated, Serrano⁴⁴ identifies four aspects. The first he states is the parties themselves; the second is the set of social alternatives or outcomes; the third is the parties' preferences over these outcome; and the fourth is the information possessed by each party regarding the environment itself. Therefore it can be arguably observed that successful implementation of peace agreements is dependent on the strategies used to

⁴² See Dorina A. Bekoe, 'Toward a Theory of Peace Agreement Implementation: The Case of Liberia', *Journal of Asian and African Studies* 2003; p 258.

⁴³ Anna Jarstad & Ralph Sundberg, 'The Theory and Data on Peace Agreement Implementation', *Conflict and Development Research*, Uppsala, 6–8 November 2006, p1-2.

⁴⁴ See Roberto Serrano, 'The Theory of Implementation of Social Rules', *Departments of Economics Brown University*, Working Paper No. 2003-19 September 2003, p.3

manipulate the implementing environment, so as to make to the outcomes in the peace agreements a preferred option to the alternative preferences thus creating a commitment to implement the peace agreement.

Implementing the outcomes of a peace agreement is a distinct and crucial aspect of the peace processes. If the negotiations were in good faith then comprehensive implementation of the outcomes will lead to durable peace after civil wars. While agreements obviously differ in terms of specific content, all settlements are generally made up of agreements on a range of issues and sub-issues such as demilitarization, demobilization, policing, constitutional issues and human rights⁴⁵. Because of this Lynch notes that agreements therefore differ in the design of the implementation process, i.e. the rules and procedures of implementation that determines the sequence, timing and content of each 'round'⁴⁶. The design she further asserts determines how and when commitments are to be rolled out, and the relevant institutions either created or charged with interpreting the rules of, and driving, the process.

However, she still notes that the implementation of peace agreements is generally steered by a single institution or by a number of institutions that each deals with a specific issue(s)⁴⁷. These institutions she asserts often drive and interpret the rules and procedures for implementation and for conflict resolution⁴⁸. Once an agreement has been signed she states that sequencing and issue breakdown begin. This she says is done so as to increase the prospects of a successful implementation by helping to maintain the equilibrium that prevailed at signing. Where an agreement has clear cases of issue hierarchy, she notes that including unilateral

⁴⁵ Catherine Lynch, 'Implementing the Northern Ireland Peace Settlement: Factionalism and Implementation Design', *Irish Studies in International Affairs*, Vol. 16 (2005), p209.

⁴⁶ Ibid

⁴⁷ Ibid:p213

⁴⁸ Ibid

deadlines becomes almost impossible to adopt this procedure but where it does not, insulated institutions can facilitate the emergence of this procedure. This assumes that the external conditions that prevailed at signing remain more or less stable.

Lynch observes that from here on, the implementation is done according to the rules set out in the agreements and the timing provided for various agreements. Parallel to the actual implementation she asserts must be the ongoing activities of monitoring and evaluation. In regard to monitoring Boulden⁴⁹ argues that key to the ability to enforce a peace agreement is the provisions for monitoring the implementation of peace agreements. She asserts that monitoring should be divided into two distinct areas. Monitoring which can either be highly generalized or highly directed actions to gather information, and verification which compliance of the parties to the terms of peace agreement is judged. However she further states that at the lowest level, observation can be used where there is simple observation of what is going on. However implementing peace agreements may not always be successful and when it collapses it necessitates for a return to the negotiation table to iron out the emerging issues.

Problems of Implementation

Bercovitch asserts that one of the major challenges in implementing negotiated agreements is the lack of precision and clarity of goals at the earlier stages of negotiations that contribute substantially to the collapse of agreements during the implementation phase⁵⁰. This clarity of goals is based on the structure of negotiations where interests and issues must be clearly identified if the outcomes of the process are to be successfully implemented. Rothchild supports this argument by observing the vagueness on important political issues to be

⁴⁹ Boulden, Jane. *The Verification and Monitoring of Peace Agreements*. United Nations Institute for Disarmament Research. Available at: <http://www.unidir.ch/pdf/articles/pdf-art133.pdf>. Accessed on 25/7/2010 at 2.46pm

⁵⁰ Jacob Bercovitch and Leah Simpson, 'International Mediation and the Question of Failed Peace Agreements: Improving Conflict Management and Implementation', *Peace and Change* Vol.35, No 1, January 2010, p75

major contributors to later misunderstandings in the implementation phase⁵¹. Another perspective is by Fortna who based on her studies observes most successful settlement types in prolonging peace delve into specific attributes of the agreements that include; power-sharing, provisions for formal reconciliation which can be translated to be peace management efforts and integrative efforts to provide greater insight into the success or failure of agreements⁵². She asserts that in negotiated agreements the content of the agreements thus becomes a determinant of its success.

The next set of problems in implementing peace agreements are those related to the problems of re-entry. After the signing of a peace agreement, parties are expected to return to the conflict environment and implement what was agreed. They achieve this by selling the agreement they have reached to their constituents⁵³. However if a peace agreement fails to build the necessary societal support it may cause overwhelming pressures during implementation. Mwangi⁵⁴ notes that the issue of re-entry it is an important factor during implementation as it can unravel the whole negotiation and any progress that it made.

The first issue concerning the problems of re-entry is where the implementation phase open's up the structure of negotiations more by bringing forth actors who until then were not directly involved in the negotiation process⁵⁵. These actors cannot be ignored as they are also parties in the conflict and have real interests in the outcomes. They are thus crucial to implementation and may aid in the implementation in various ways like financing, being

⁵¹ Donald Rothchild, 'On Implementing Africa's Peace Agreements: From Defection to Cooperation', *Africa Today*, Vol. 42, No. 1/2, *The Military and Democratic Transitions*, p8.

⁵² Virginia Page Fortna, 'Scraps of Paper? Agreements and the Durability of Peace', *International Organization*, Vol. 57, No. 2 (Spring, 2003), p337-372.

⁵³ Makumi Mwangi, *The Waters Edge: Mediation of Violent Electoral Conflict in Kenya*, (IDIS: 2008), p161.

⁵⁴ Ibid

⁵⁵ Makumi Mwangi, *Conflict in Africa, Theory, Processes and Institutions of Management*, (CCR Publications: Nairobi: 2006), p115.

guarantors or monitoring the implementation. The second issue concerns legitimacy of the outcomes in the eyes of the constituents. Normally negotiators are not free to make concessions out of their own will but rather must respond to the claims of their constituents, if they are to build the necessary support for the agreement approval⁵⁶. However negotiators may need to make decisions under turbulent conditions, leading to less than satisfactory arrangements for their constituents. Mitchell⁵⁷ observes that negotiations engaged in long face to face discussions and may not have built a stable and trusting relationship with their constituents thus the constituents end up feeling sold out in the process and outcome of the negotiations and hence make it impossible or difficult for the parties to re-enter the environment.

The third issue is that of the constituent's aspirations and expectations being inevitably higher than the eventual compromise even when the party's negotiate from the most adverse circumstances⁵⁸. Rothchild observes that this was the problem for societies such as Angola that lacked a consensus on the new rules of the game, thus the negotiated peace agreements inevitably came under severe strain in the new reality of the post-agreement times, not only because of a lack of precision regarding the terms of the agreement itself, but also because of the emerging pressures of intransigent politicians, identity group claims, and intense struggles for government positions and fiscal resources as also reflected in the collapse of the 1975 Alvor Agreement⁵⁹.

Perhaps one of the greatest expectations of a peace agreement is that it will bring from commitment from the groups on its Implementation. This is based on the assumption that the

⁵⁶ Rothchild, 'On Implementing Africa's Peace Agreements: From Defection to Cooperation', *Africa Today*, Vol. 42, No. 1/2, *The Military and Democratic Transitions* (1st Qtr. - 2nd Qtr., 1995),p9.

⁵⁷C. R. Mitchell, *The Structure of International Conflict*, (Macmillan: London, 1981), p246.

⁵⁸ Ibid: p231.

⁵⁹ Rothchild, 'On Implementing Africa's Peace Agreements: From Defection to Cooperation', *Africa Today*, Vol. 42, No. 1/2, *The Military and Democratic Transitions* (1st Qtr. - 2nd Qtr., 1995),p9.

agreements were reached on a mutual basis thus there is will to honor the promises made. The lack or presence of credible commitment in the implementation of peace agreements has seen many fail or succeed. Mwangi⁶⁰ also points out that it is during the implementation stage that parties discover whether the other was acting in good faith during negotiations and whether they are willing to deliver on what was agreed. Negotiated agreements may have all the elements necessary for their success but still fail if the necessary commitment from groups to proceed with implementation.

As earlier noted that civil war leaves parties to the conflict uncertain of the future, and peace agreements must therefore seek to guarantee security for the groups. Post civil war settlements require former combatants to occupy the same territory, and in many cases may be socio-geographically intermixed with one another. Thus Rothchild⁶¹ argues that the issue of credible commitment is often motivated by information failure often created by perceptions parties have created over time of one another. He argues that if parties manipulate the information during the negotiation process other parties may doubt their intentions on committing to the agreement thus also reciprocate with low commitment. Mediators therefore need to create situations where all parties' are assured that commitments undertaken will be followed through.

Perhaps one of the major issues related to commitment is that of the ripe moment during the peace process. The issue of the ripe moment relates to commitment to honoring a peace deal because of the parties reaching a mutually hurting stalemate. Studies conducted by DeRouen Jr

⁶⁰ Makumi Mwangi, *The Waters Edge: Mediation of Violent Electoral Conflict in Kenya*, (IDIS: 2008), p161.

⁶¹ Donald Rothchild, *Managing Ethnic Conflict in Africa*, (Washington DC: Brookings Institution Press, 1997)

& Lea⁶² suggest that belligerents appear to have higher commitment levels to implementation efforts when they reach a point which they may consider “ripe” for resolution. Bekoe⁶³ observes that for parties to follow through on promises they make, they must feel compelled to do so not only from the positive gains from compliance but also from the negative repercussions for reneging on them. Therefore parties to a conflict can only reach successful implementation of peace agreements if parties are equally vulnerable to the changes concessions in an agreement bring. Agreements must thus provide assurances that erase the doubts that other parties are committed to abiding by peace agreement.

Zartman⁶⁴ also takes a similar line of argument where observes that although the content and substance in peace agreements is vital in ensuring the implementation success after a civil war, one cannot simply ignore the role of ripeness when structuring agreements after civil war. He suggests that a critical consideration for a break in the cycle of conflict is a mutually hurting stalemate where parties to a conflict conclude that victory is unlikely and settlement is of greater benefit and offers greater reward than continued conflict. Bercovitch and Diehl⁶⁵ express similar sentiments where they state that “the assumption here is that in the waxing and waning of complex social forces that make up an international conflict, there are moments that may affect the perceptions and attitudes of the disputants and thus the likelihood mediation success” , therefore observing that even though elements of rivalry may persist after an agreement in many cases, the fact that conflict is no longer an option paves way for the success of the agreement.

⁶² Karl DeRouen Jr & Jenna Lea, ‘Peace Agreements and Civil War between Enduring Internal Rivals’, *Department of Political Science* University of Alabama.

⁶³ Dorina A. Bekoe, ‘Toward a Theory of Peace Agreement Implementation: The Case of Liberia’, *Journal of Asian and African Studies* 2003; pp258- 259.

⁶⁴ Zartman, William. 2001. “The Timing of Peace Initiatives: Hurting Stalemates and Ripe Moments.” *The Global Review of Ethnopolitics* 1 (1):pp8-18.

⁶⁵ Bercovitch, Jacob and Paul F. Diehl. 1997. “Conflict Management of Enduring Rivalries: The Frequency, Timing and Short-Term Impact of Mediation” *International Interactions* 22: pp299-320.

Conditions for Successful Implementation

There is a large and growing body of literature on the requirements of successful implementation of peace agreements after civil. It would be impossible to give an account of all arguments put forward and all approaches in this field. Only a selection of the main works will be selectively quoted here to underline those relating to negotiations and its nexus with power sharing agreements contained in peace agreements after civil war.

Negotiation Process

Central to making peace agreements is the process of negotiation. Rothchild⁶⁶ argues that each of the stages of negotiations involve an ongoing set of political exchange relationships and reciprocities that result in political learning among the rival parties and that a failure at any of these stages can prove fatal, and can bring the peace process to a standstill or even trigger the resumption of a more devastating civil war than had occurred previously. He points out the cases of Angola, Rwanda and Sudan as examples. Negotiations he further argues should have a dual purpose: to bring the immediate conflict to an end, and to structure future relations in such a way as to facilitate a transition to what Adam Przeworski calls a "self-enforcing" regime, one where "all the relevant political forces find it best to continue to submit their interests and values to the uncertain interplay of the institutions."⁶⁷ However this is not the case in peace negotiations in Africa as Mwagiru observes.

In linking the failure or success of peace agreements to the negotiation processes, Mwagiru⁶⁸ argues that many peace agreements in Africa have resulted from track one conflict

⁶⁶ Rothchild, 'On Implementing Africa's Peace Agreements: From Defection to Cooperation', *Africa Today*, Vol. 42, No. 1/2, *The Military and Democratic Transitions* (1st Qtr. - 2nd Qtr., 1995),p8

⁶⁷ Ibid

⁶⁸ Makumi Mwagiru, *Conflict in Africa, Theory, Processes and Institutions of Management*,(CCR Publications: Nairobi: 2006), pp125-7.

management efforts that are often founded on power relations and the methodology used is bargaining which is a zero sum game. This framework he observes accounts for the short life of the outcomes as the losing party does not consider the conflict as ended as it has not gotten its values satisfied. Bargaining he asserts cannot be used to resolve values as they are non negotiable and thus its not surprising that the agreements are challenged as soon as the weaker party feels strong.

Values he argues need to be resolved using the un-official processes of negotiations which approach conflict management as a resolution process rather than a settlement process. They therefore concentrate on addressing values through problem solving workshops. He therefore asserts that every conflict has negotiable and non negotiable aspects, which must be addressed by the official and un-official processes of negotiations.

Third Parties and Security Guarantees

Research done by Walter⁶⁹, Hoddie and Hartzell⁷⁰, has shown that guarantees of post conflict influence is the best way to get warring parties to sign on to peace settlements, and that this can have positive effects on durable peace in the post conflict environment. Third parties can therefore become guarantors to the terms of a settlement in the peace building phase with Bekoe⁷¹ observing that a lot of literature on implementing peace agreements concludes that the more the international community as a third party is involved, the higher the probability for a successful negotiated settlement.

⁶⁹ Barbara Walter, 'The critical Barrier to Civil War Settlement', *International Organization*, 51(3).

⁷⁰ Caroline Hartzell and Matthew Hoddie, 'Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management', *American Journal of Political Science*, Vol. 47, No. 2 (Apr., 2003).

⁷¹ Dorina A. Bekoe, 'Toward a Theory of Peace Agreement Implementation: The Case of Liberia', *Journal of Asian and African Studies* 2003; 38; pp 258-259

More pointedly Walter asserts that the willingness and ability of a third party to forcefully enforce peace leads parties to ensure stable settlements⁷². Walter argues that, in most cases, combatants will choose to walk away from the negotiating table and return to war unless a third party is present to assist and help guarantee the implementation of the agreement.³⁵ The greatest challenge is to design a peace agreement that convinces the combatants to lay down their arms, shed their partisan armies, and surrender conquered territory even though such steps will increase their vulnerability and limit their ability to enforce all the provisions of the agreement. Achieving that is no mean feat.

Groups, just like individuals, need security guarantees. Walter contends that when groups obtain third-party security guarantees, they have a motivation and incentive to implement their settlement. Combatants do not have as much difficulty resolving underlying problems and reaching an agreement as they do in implementing the agreement. Walter asserts that civil war negotiations often fail not because the circumstances on the ground are not “ripe” for resolution, or because the peace agreement itself was not comprehensive enough, improving conflict management and implementation but rather because the parties in conflict cannot credibly promise to abide by the terms of the agreement. Only third-party security guarantees she concludes will give them the necessary feeling of security to fulfill their commitments under the peace agreement.

Resources

Coordination among global, regional, state, and unofficial actors is crucial in implementing peace agreements and promoting a return to normal relations⁷³. Civil war often

⁷² Barbara Walter, 'The critical Barrier to Civil War Settlement', *International Organization*, 51(3).

⁷³ Donald Rothchild, 'On Implementing Africa's Peace Agreements: From Defection to Cooperation', *Africa Today*, Vol. 42, No. 1/2, *The Military and Democratic Transitions* (1st Qtr. - 2nd Qtr., 1995).

leaves a state with huge economic obligations. Rothchild observes that if peace agreements are to be successful, proper demobilization and reintegration of the armed forces, the reconstruction of the economic and social infrastructure and resumption of economic activity after a civil war are central tasks in a peace-building environment⁷⁴. Therefore exhausted states cannot accomplish more than a minimum on their own and therefore require substantial assistance during the transition period.

As Fortna⁷⁵ posits Peace is hard to maintain among deadly enemies, but mechanisms implemented in the context of peace agreements can help reduce the risk of further conflict. Peace is precarious, but it is possible. Agreements are not merely scraps of paper, as their content and implementation affects whether peace lasts or war resumes.

⁷⁴Ibid

⁷⁵ Virginia Page Fortna, 'Scraps of Paper? Agreements and the Durability of Peace', *International Organization*, Vol. 57, No. 2 (Spring, 2003), p.365.

CHAPTER THREE

PEACE NEGOTIATIONS IN CIVIL WAR

Introduction

The previous chapter provided a background of negotiated peace agreements so as to make it easy to find the place the negotiation process in the success or failure of power sharing agreements. If parties to a conflict hit a stalemate and no possible victory is envisaged, they may decide to end their conflict through bargaining which may first begin as a long range engagement and at some point abandon it and engage in face to face bargaining. This bargaining is usually what leads towards ceasefires and agreements that will govern the post conflict phase. Taking into consideration that parties usually are still hostile to one another and communication may not be easy, initiating and conducting negotiations between the parties is often not an easy task. It involves a process that comprises of a series of actions and reactions that will determine the eventual outcome of the conflict. This chapter will provide an overview of negotiations as a conflict resolution measure. It will examine the structure, process and outcomes of negotiations with an aim of showing the relationship of the power-sharing accords in peace agreements as an outcome of negotiations

Defining Negotiations

When parties to a conflict can no longer engage in hostilities or violence usually a decision is made to sit down and talk out their issues. This talking between the parties is what Mwagiru¹ defines as negotiations and is often a process that combines conflicting positions into a joint agreement². Mitchell³ conceives the term negotiation to mean all the strategies and inter

¹ Makumi Mwagiru, *Conflict in Africa, Theory, Processes and Institutions of Management*, (CCR Publications: Nairobi: 2006), p113.

² William Zartman, 'Conflict Resolution and Negotiations', in Bercovitch, Kremenyuk, Zartman (ed), *The Sage Handbook of Conflict Resolution*, (London: Sage Publications 2009), p32.

³ C. R. Mitchell, *The Structure of International Conflict*, (Macmillan: London, 1981), p197.

actions previously considered as long range tacit bargaining that precede and often accompany any actual face to face efforts to argue with and modify the position of leaders of an adversary. Another notable definition is that of Lall where he conceives negotiation to be the process of consideration of conflict by peaceful means with a view to promoting or reaching among the parties concerned or interested some understanding, amelioration, adjustment or settlement of the conflict⁴. Negotiations therefore happen when two or more parties in a conflict decide they can obtain better outcomes by collaborating on some agreement rather than going their separate ways⁵.

Negotiations can happen in various ways and Lall identifies them to include of all forms of discussion, meeting, conference, mediation, conciliation, good offices and other direct or indirect liaison among the parties concerned. Being a process negotiation consists of a number of separate but interrelated elements. Mitchell⁶ identifies them to be some form of direct face to face contact between representatives of the rival parties who meet and exchange compromise offers and counter offers both trying to get the best final outcome for their party, attempts to argue the opposing representative out of any rigid uncompromising position of salient issues often backed by appeals to shared standards of morality, concessions already proffered, general conditions outside the negotiating chamber, and sometimes an external audience if the opponent proves recalcitrant and unyielding.

UN Secretary-General Boutros Boutros Ghali asserts that negotiations can be used to deal with conflict by: reducing the violence, through deescalating violent conflict or preventing impending violence from occurring; peace-making; peace enforcement; and part of peace

⁴ Arthur Lall, *Modern International Negotiations: Principles and Practice*, (Columbia University Press: New York, 1966) p5.

⁵ William P. Smith, 'Reviewed work(s): Negotiation Behavior by Dean G. Pruitt Bargaining: Power, Tactics, and Outcomes by Samuel Bacharach ; Edward Lawler', *Political Psychology*, Vol. 5, No. 1 (Mar., 1984), p117.

⁶ C. R. Mitchell, *The Structure of International Conflict*, (Macmillan: London, 1981),p197.

building⁷. Thus negotiations in conflict resolution may be used to prevent conflict from escalating or from turning violent; it may be used to manage conflict that is deescalate the means of its pursuit from violence to politics; or it may be the means to actually resolve the basic incompatibilities of positions or to transform them into cooperative relationships.

However, negotiation may not always be successful. They can become deadlocked or even fail to get under way if, the level of hostility between the parties is too high, if there is a serious power imbalance between them, if one side fails to recognize the legitimacy of the other, or if the negotiation process is tainted by misperception or miscommunication⁸. Negotiation can also be hampered by relationship blockages, such as ongoing rivalries, historical enmity or the lack of effective communication channels⁹. Therefore the nature, form, and outcomes of negotiation in a particular dispute are determined by a large number of factors related to the nature of the parties, the nature of the dispute, and the nature of the interaction of the parties during the bargaining process¹⁰.

The Structure of Negotiations

Kissinger states that the way negotiations are carried out is almost as important as what is negotiated and the choreography of how one enters negotiations, what is settled first and in what manner, is inseparable from the substances of the issues¹¹. Therefore success or failure will be determined by how diagnosis of the aspects that form the basis of the structure of the negotiation is done.

⁷ William Zartman, 'Conflict Resolution and Negotiations', in Bercovitch, Kremenyuk, Zartman (ed), *The Sage Handbook of Conflict Resolution*, (London: Sage Publications 2009),p323.

⁸ Richard Jackson, 'Successful Negotiation in International Violent Conflict', *Journal of Peace Research*, Vol. 37, No. 3 (May, 2000), p325.

⁹ Ibid: p325

¹⁰ Ibid

¹¹ C. R. Mitchell, *The Structure of International Conflict*, (Macmillan: London, 1981),p218.

Negotiations are unique to the context in which they occur implying that diagnosis of the structure would need to be done from scratch for every negotiation that took place. However several scholars agree that majority of negotiations have underlying structural similarities which can give a comprehensive view of the negotiation terrain and identify the parties, issues, interests, alternatives, agreements, linkages and action forcing events as basic elements that would feature in any negotiation.

Parties

This element involves who will participate in the negotiations. Traditional analysis of negotiations painted a very simple picture of the parties as being those that engage in actual negotiations and sometimes they were exactly as they appeared. However as research became more sophisticated it was realized that the true picture of a conflict and the parties involved is much more complex than was thought earlier and this influenced the outcome of a particular management process such as negotiation and mediation¹². In analyzing the actors in negotiations Mwagiru¹³ observes that a focus on the parties engaged in the negotiations alone would be fool hardy as each of the parties involved have their own constituents, friends and allies all of whom expect to derive some benefits from their support and their views cannot be ignored. Therefore they can exert pressures on the parties they support and make them act in desired ways or make certain concessions.

Rosegrant also observes that if negotiators decide to invite mediators or other intermediaries into the process, another set of allies' constituents and friends becomes a part of

¹² Makumi Mwagiru, *Conflict in Africa, Theory, Processes and Institutions of Management*,(CCR Publications: Nairobi: 2006) p 96.

¹³ Ibid: p 96-99

the structure with the potential to alter the process and outcomes of the negotiation¹⁴. She also observes that influential relationships in the negotiation environment do exist between the allies and friends. They argue that there are winning coalitions that are capable of making decisions and imposing outcomes on others and blocking coalitions which are not able to impose an agreement but can prevent one from being imposed on them. Therefore in mapping out parties she asserts that it is important to identify not just those already involved but also those who could interfere and intervene.

Issues and Interests

This element of negotiations seeks to address what agenda of issues will be negotiated and to find out what goals are being pursued by all the parties in the negotiation process¹⁵. The agenda is a very important aspect of any negotiation as it lays out the set of issues that the parties have decided to sit and have face to face negotiations¹⁶. Pruitt observes that agendas are a means of structuring discussions between individuals and groups, and their formation focuses on the ordering of issues and the range of issues to be discussed¹⁷. Mwagiru notes that the more parties that enter the conflict the more complex the issues become¹⁸. He asserts that this is because each of the parties' entering the negotiation process brings its own concerns and interests which then interact in a complex way. Interests on the other hand reveal themselves once the parties have been mapped out by assessing how each party is likely to conceptualize its objective and scope of action¹⁹. The question to pose is what the parties are trying to achieve. Mwagiru²⁰ cautions

¹⁴ Watkins M. and Rosegrant S., *Breakthrough International Negotiations: How Great Negotiators Transformed the Worlds Toughest Post-Cold War Conflicts*, (2001) p 17-20.

¹⁵ Ibid: p22.

¹⁶ Ibid: p 20-22.

¹⁷ P. V. (Sundar) Balakrishnan Charles Patton, Phillip A. Lewis, ons,Patton, 'Toward a Theory of Agenda Setting in Negotiations', *The Journal of Consumer Research*, Vol. 19, No. 4 (Mar., 1993), p. 639.

¹⁸ Mwagiru M. *Conflict in Africa, Theory, Processes and Institutions of Management*,(CCR Publications: Nairobi: 2006) p99.

¹⁹ Ibid: 22

that it's not all interests that are negotiable. He states that there are amenable issues that are negotiable like governmental interests, and those that are not like values and are the core issues that lie at the heart of the conflict. He argues it is therefore important to classify them as such so that their appropriate resolution measures are identified.

Alternatives

This aspect seeks to address what happens when negotiations are not able to reach an agreement. When parties in a conflict agree to engage in negotiations it is assumed that they do so because they have concluded that it will yield more value than pursuing other alternatives. However the issue of lack of commitment in negotiations may be experienced and is often fueled by the various interests that each party has and how they perceive the BANTA after the process²¹. If parties to a conflict feel that the mediation outcomes may not favor them their dedication to resolving the conflict reduces and focus shifts to alternatives they have.

Good alternatives to agreements are often a source of power in negotiations and the better the alternatives parties have the better the agreements are likely to be. Parties are constantly pursuing efforts to build their alternatives, as they are not static nor given²². Parties often analyze what their opponent's alternatives are and how they perceive them and if they feel both their BANTAs are not attractive, an agreement is easier to arrive at. If they feel their BANTA is better it brings forth a source of power for the party and walk away positions in negotiations become a constant feature.

Agreements

²⁰ Mwangi M. Conflict in Africa, *Theory, Processes and Institutions of Management*, (CCR Publications: Nairobi: 2006) p125-6

²¹ Leigh Thompson, ' *The Mind and Heart of the Negotiator* ', (New Jersey: Prentice Hall, 2001), p.

²² Watkins M. and Rosegrant S., *Breakthrough International Negotiations: How Great Negotiators Transformed the Worlds Toughest Post-Cold War Conflicts*, (2001) p 22-25

This element seeks to answer the question of whether there are any agreements that are acceptable to all sides. Agreement making²³ depends on the perception that parties have towards the negotiations, that is do the parties view the negotiations about claiming value by dividing the pie or about creating value by enlarging the pie. This then steps down to whether the negotiation is a distributive or integrative one.

Distributive negotiations²⁴ are cases where there is a fixed pie to be divided among the parties and one side gains while the other loses. Most single issue negotiations fall in this category. Therefore parties are always jostling to get a larger wedge of the pie thus a zero sum outcome which may result to a resumption of hostilities. Integrative negotiations²⁵ are when parties have some shared interests or opportunities to realize mutual gains through trade off on multiple issues. This means that the party's interests will be integrated in ways that will create joint value for them. This is often achieved by unbundling the issues and making offers simultaneously. Thompsons²⁶ suggests that when people perceive themselves as having more choices they may be more likely to comply. This strategy is based on inductive reasoning where the negotiator can unilaterally deduce what the other party's true interests are and what the joint gains are.

Linkages

Because of the nature of parties, issues and interests involved in negotiations, stand alone negotiations are rare. Relationships are usually established prior and during negotiations and can influence the outcomes of current or future negotiations. Linkages can either be sequential,

²³ Watkins M. and Rosegrant S., *Breakthrough International Negotiations: How Great Negotiators Transformed the World's Toughest Post-Cold War Conflicts*, (2001), p 28

²⁴ Ibid: p29

²⁵ Ibid: p31

²⁶ Leigh Thompson, *The Mind and Heart of The Negotiator*, (New Jersey: Prentice Hall,2001), p68

competitive or reciprocal. Sequential linkages²⁷ are those that are linked in time and may or may not involve the same parties. For example the US-North Korea negotiations took place in the context of prior negotiations and had constraints on the actions of the parties. The US was committed to defending South Korea and to forestalling arms proliferation, while North Korea had signed onto the NPT treaty and had to negotiate in the shadow of this agreement. Therefore both the US and North Korea were under influence of previous negotiations they were engaged in.

Competitive linkages²⁸ on the other hand are those that are linked if the agreement in one prohibits an agreement in the other. Using the same case of the US North Korea negotiations, China was a key party and any alliance with it was an advantage during the negotiations. Therefore both parties were constantly negotiating with it to become an ally therefore stalling an agreement on the current negotiations. Reciprocal linkages²⁹ occur when a party is in concurrent negotiations with other parties and agreements must be reached with them before an agreement is to be reached in the current negotiation. Still on the US North Korea negotiations, the US had to concurrently negotiate with South Korea before a deal with North Korea would be brokered, therefore both North and South Korea were codependent on the US.

Action-forcing events

This aspect of the structure seeks to diagnose what events can compel action on the part of the players. Rosegrant et al³⁰ posits that some parties may be more sensitive to the passage of time than others as they may for example be incurring high costs, or their constituents might be putting pressures on deadlines of when they want outcomes. Other events can include threats and

²⁷ Watkins M. and Rosegrant S., *Breakthrough International Negotiations: How Great Negotiators Transformed the World's Toughest Post-Cold War Conflicts*, (2001) p 33-4

²⁸ Ibid: 33-4

²⁹ Ibid: 33-4

³⁰ Ibid: 35-36

coercive measures by guarantors of the outcomes. They further observe that in the structure of negotiations, it is these action forcing events that push parties back to the process of reaching agreements when tension arises and a breakdown of the negotiation process is evident.

The Process of Negotiations

Negotiations involve mixed motives for the negotiators, a desire to cooperate in reaching some agreement, but a strong conflict of interest over which agreement alternative should be chosen, thus the process of negotiation is seen as one of the exchange of agreement proposals, characterized by pressure tactics, refusal to concede, threats, and other manipulative tactics, and concessions; if successful, these tactics result in the choice of a compromise agreement³¹. This process as Mitchell observes can be identified from any preceding tacit bargaining aimed to coerce or persuade an adversary to abandon the goals in dispute to a final agreement on how to manage further conflict. He further observes it is then helpful to consider it as having a number of stages and identifies them as the pre-negotiation, face to face negotiations and implementation phases.

An adequate understanding of negotiations must include an analysis of the decisions and interactions that preceded the start of the formal negotiation³². Tomlin asserts that this analysis is crucial if an explanation of how the parties came to negotiate in the first instance and an understanding of the process and outcomes of the negotiation is to be given³³. This he states is because of the dynamics of the pre-negotiation process that contributes to the establishment of the parameters within which formal negotiation subsequently unfolds. He thus defines pre-

³¹William P. Smith, Reviewed work: Negotiation Behavior by Dean G. Pruitt Bargaining: Power, Tactics, and Outcomes by Samuel Bacharach ; Edward Lawler, *Political Psychology*, Vol. 5, No. 1 (Mar., 1984), p 117

³²Brian W. Tomlin, 'The Stages of Prenegotiation: The Decision to Negotiate North American Free Trade', *International Journal*, Vol. 44, No. 2, *Getting to the Table: Process of International Prenegotiation* (Spring, 1989), p 254

³³ *Ibid*:254

negotiations as the period in relations when negotiation is considered, and perhaps adopted, as a behavioral option by some or all of the parties. This definition is also shared by Stein and Mwagiru who describe it as the process that begins when one or more parties consider negotiation as a policy option and communicates this intention to other parties and ends when the parties agree to formal negotiations or when one party abandons the consideration of negotiation as a policy option³⁴ and the phase that captures the activities that precede around the table negotiations³⁵. These definitions expose the character of pre-negotiation to be about convincing the parties to arrive at the conclusion that some joint solution to their conflict is possible whether or not the parties' actually get to the table.

The next phase is the actual phase where face to face negotiations take place, the parties come up with an agreement or officially agree to disagree³⁶. It is also one that has stages and is characterized by strategies that are aimed at getting parties to agree on a mutual outcome of the conflict. Challenges in this phase have been immense and have even resulted to total collapse of negotiations. How negotiators handle these challenges is very crucial as it will determine whether or not a successful phase will be achieved. The first challenge that is often faced is that of hostile and contentious behavior³⁷. This is usually aimed at defending the party's interest with no regard for the other party's interest. Tactics used in contentious behavior are such as threats to either pull out or intimidate the other party. This generates defensiveness and low trust among the parties involved. Defensiveness will then divert the energy from the problem solving stage

³⁴ Janice Gross Stein 'Getting to the Table: Processes of International Pre-negotiation' *International Journal*, Vol. 44, No. 2, (Spring, 1989), pp. 231-236

³⁵ Mwagiru M. *Conflict in Africa, Theory, Processes and Institutions of Management*, (CCR Publications: Nairobi: 2006) pp. 114

³⁶ Mwagiru M. *Conflict in Africa, Theory, Processes and Institutions of Management*, (CCR Publications: Nairobi: 2006) p115

³⁷ See Josephine M. Zubek, Dean G. Pruitt, Robert S. Peirce, Neil B. McGillicuddy, Helena Syna, 'Disputant and Mediator Behaviors Affecting Short-Term Success in Mediation', *The Journal of Conflict Resolution*, Vol. 36, No. 3 (Sep., 1992), pp. 546-572

and the low trust will encourage holding back of information thus difficult to develop mutual solutions.

Another challenge is the lack of commitment to the process and may often be experienced during face to face negotiations. This is often fueled by the various interests that each party has and how they perceive the BANTA after the process. If parties to a conflict feel that the negotiation outcomes may not favor them their dedication to resolving the conflict reduces. Rothchild³⁸ observes that the success or failure of the negotiation stage involves much more than the hammering out of an accord. The negotiating parties he observes are in constant engagement of working out the rules for a stable and self-sustaining relationship. He argues that especially in civil war the negotiating parties not only seek an immediate cessation of hostilities, but also the creation of political institutions that will lead to some form of democratic order. He further observes that somewhat inevitably, negotiations involve a tension between the short term accommodations necessary to produce an agreement between adversaries on the return to order and the long term search for a legitimate, self-sustaining order. The results of this tension he says can be seen in the complications that sometimes arise in the post agreement peace building phase.

The final stage is of implementation where agreements reached by the parties during the negotiation will be executed³⁹. It is in this stage that the commitment of the parties to the negotiated outcome is tested. The issues that dominate this phase are re-entry of the negotiating parties into the conflict environment, commitment to and implementation of the outcomes of

³⁸ Donald Rothchild, 'On Implementing Africa's Peace Accords: From Defection to Cooperation', *Africa Today*, Vol. 42, No. 1/2, *The Military and Democratic Transitions* (1st Qtr. - 2nd Qtr., 1995),p13

³⁹ Mwagiru M. Conflict in Africa, *Theory, Processes and Institutions of Management*,(CCR Publications: Nairobi: 2006) p 115

negotiations⁴⁰. Rothchild observes that the circumstances that prevail at the time of negotiations may differ significantly from those at the time of implementation therefore negotiators often need to make decisions under turbulent conditions, leading to a process of lock-in, where old insecurities, ambiguities and bad choices become fixed in place and difficult to alter in the unstable period . For this reason negotiated accords in Africa have collapsed during the implementation phase.

The Outcomes of Negotiation

Two issues inform the study of outcomes of negotiations. These are the conditions that are necessary for successful outcomes and the index of what constitutes successful outcome of negotiations⁴¹. In analyzing the conditions that affect the likelihood of a successful outcome, Sawyer & Guetzkow⁴², and subsequently Druckman⁴³, came up with a model that was inspired by research done in social psychology that is known today as the contingency framework. This approach is based on the notion that conflict management is a social process whose outcomes are dependent upon, or contingent on, aspects of the structure and process of the conflict⁴⁴. The framework then identifies factors that affect the consequences or outcomes of negotiation as antecedent and concurrent factors. Antecedent factors include the nature of the dispute in terms of its intensity, issues and complexity and the nature of parties and their relationship in terms of

⁴⁰ Ibid: 115

⁴¹ Mwangi M., *Conflict in Africa, Theory, Processes and Institutions of Management*, (CCR Publications: Nairobi: 2006) p. 103

⁴² Sawyer Jack & Harold Guetzkow, 'Bargaining and Negotiation in International Relations', in Herbert C. Kelman, ed., *International Behavior: A Social-Psychological Analysis*, (New York: Holt, Rinehart and Winston, 1965), p

⁴³ Druckman, Daniel, 'Dimensions of Inter-national Negotiations: Structures, Processes, and Outcomes', *Group Decision and Negotiation* 1997 6: 395-420.

⁴⁴ Mwangi M., *Conflict in Africa, Theory, Processes and Institutions of Management*, (CCR Publications: Nairobi: 2006) p. 103-106

power difference, alignment and precious relations. Concurrent factors include the conflict management characteristics in terms of timing, environment, initiator and rank⁴⁵.

Therefore based on the contingency framework the outcomes are determined by the interaction of the aforementioned variables that are mediated through the structure and actual situation of the conflict management. Mwagiru argues that this approach to outcomes is useful because it can enable negotiators to know the type of conditions that may lead to a successful outcome and the kind of action that may be necessary to push the process to a successful outcome⁴⁶.

In devising an index of successful negotiation outcomes Jackson⁴⁷ observes that it is a complicated and contentious matter. This is because firstly, there is the problem of identifying terminal points in what is a dynamic and ever changing process. Secondly, how parties perceive and define the negotiation depends on whether negotiation one is a party to the conflict, a related third party, the international community or just an interested observer. Thirdly, perceptions can change over time and what may have been considered successful at one point could now be considered a total failure at a later point. Finally, outcomes can be evaluated in terms of certain normative criteria, such as fairness, efficiency and legitimacy.

To avoid these confusions, Jackson advocates for the contingency model as it adopts a strictly behavioral approach which focuses on the observed differences the negotiation has on the parties' behavior. Thus in modification to Haas's success index, he argues that the negotiation can be considered unsuccessful when no agreements are acknowledged, and there is no visible or reported impact on the dispute or the parties' behavior. It can be considered to have limited

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Richard Jackson, 'Successful Negotiation in International Violent Conflict', *Journal of Peace Research*, Vol. 37, No. 3 (May, 2000), p325.

success if it achieves a ceasefire agreement and/or an actual cessation of hostilities. It can be considered to be partially successful when it results in an agreement to initiate or continue dialogue between the parties and/or results in agreement on side issues or portions of the major issues. Lastly, the negotiation can be considered fully successful when an agreement is reached on the majority of the major issues in dispute.

However Mwangi⁴⁸ criticizes this method of indexing by observing that by using it no negotiation or conflict management effort that would be fully a failure hence any outcome would be considered to have some measure of success and this is not a satisfactory state of affairs. However Jackson still defends it by arguing that it still helps to prevent many of the conceptual confusions and disagreements that are typically part of evaluating conflict management outcomes and is the only realistic alternative for a large scale empirical study of this kind. This he argues is because it would be impractical to effectively operationalize and evaluate notions of fairness, justice, efficiency, legitimacy, satisfaction or long term success for such a large body of cases. Also he states that assessing the behavior recognizes that some issues, often the most contentious ones, may be deliberately and skillfully omitted from consideration in order to secure agreements' and it has the advantage of effectively disentangling the act of successfully reaching an agreement from the conceptually distinct task of implementing its terms.

⁴⁸ Mwangi M., *Conflict in Africa, Theory, Processes and Institutions of Management*, (CCR Publications: Nairobi: 2006) p. 103-106

CHAPTER FOUR

POWER SHARING AS AN OUTCOME OF NEGOTIATIONS

Introduction

The previous chapter sought to discuss the structure, process and outcomes of negotiations with an aim of showing the relationship of the power-sharing accords in peace agreements as an outcome of negotiations. Limited focus has been given to the link power sharing agreements have with the structure and process of negotiations. This chapter therefore seeks to add knowledge to this growing field by addressing this relationship of negotiations to power sharing accords as the determinant to their success or failure during implementation.

In recent times institutionalizing power sharing has increasingly become a recommended political recovery mechanism as a way out of the intractable conflicts that have been and continue to be experienced by various African societies. Its popularity has grown as immense calls¹ continue to be given by the western countries for Africa to move from having exclusive societies to inclusive ones. As a result a growing number of peace negotiations in internal conflict have continued to yield power sharing agreements as a resolution mechanism. However power sharing as a successful resolution mechanism to civil war in Africa has continued to receive heavy criticism on its efficacy as its failure heavily outweighs its success where tested. Examples include countries like Chad, Angola, Somalia, Sudan, Mozambique, Rwanda and Liberia². Notwithstanding its limited success in the continent to warrant advocating for, it still continues to be one of the most recommended methods of resolving civil strife. Attempts to

¹ For example see K Annan, 'Annan: this may be a turning point for Africa', *Globe and Mail (Toronto)*, 18 May 1998.

² See Caroline Hartzell and Matthew Hoddie, 'Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management', *American Journal of Political Science*, Vol. 47, No. 2 (Apr., 2003).

address its shortcomings have led various scholars³ into research and multiple reasons have resulted as to why power sharing accords are often prone to failure.

Defining Power Sharing

Power-sharing whereby government posts are distributed across the most powerful political parties or groupings has increasingly been seen as a way out of otherwise intransigent conflicts in divided, multi-ethnic African societies⁴. It is seen as the most sensible means of conflict resolution and governance problems within the continent as it gives an alternative to the type of high stakes, winner-takes-all elections which often lead to many conflicts within the African continent.

Various scholars have offered varying definitions of power sharing. To sample but a few, Hoddie and Hartzell⁵ define it as how decisions are to be made within a divided society and the distribution of decision-making rights within a state. Ian S Spears also defines it as where government posts are distributed across the most powerful political parties or grouping⁶. Daley describes it as dividing the transitional institutions of governance between political parties and rebel movement's⁷. Despite their seemingly different approaches to its definition these scholars seem to agree that it can be a means of achieving inclusive peace where all parties are involved in forging a way out of the conflict by undertaking to offer some form of representation at the political center and the opportunity to take part in decision making. Lijphart observes that this is what serves to manage and mitigate the recurrence of conflict. More concisely, Marian Ottaway

³ For example Donalith Rothchild, Ian Spears, Caroline Hartzell and Matthew Hoddie amongst others

⁴ Ian S. Spears, 'Understanding Inclusive Peace Agreements in Africa: The Problems of Sharing Power', *Third World Quarterly*, Vol. 21, No. 1 (Feb., 2000).

⁵ Caroline Hartzell and Matthew Hoddie, 'Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management', *American Journal of Political Science*, Vol. 47, No. 2 (Apr., 2003), pp. 318-332

⁶ Ian S. Spears, 'Understanding Inclusive Peace Agreements in Africa: The Problems of Sharing Power', *Third World Quarterly*, Vol. 21, No. 1 (Feb., 2000), p. 107.

⁷ Patricia Daley, 'Challenges to Peace: Conflict Resolution in the Great Lakes Region of Africa', *Third World Quarterly*, Vol. 27, No. 2 (2006), p. 303.

notes that a 'power-sharing pact may be the only attainable short-term goal compatible with long-term democratization'⁸.

Therefore power sharing as Spears argues can seem to offer a promising solution to groups who can neither envision secession nor tolerate the status quo and who, like the SPLA, Sudanese Peoples Liberation Army, in the Sudan, call for a 'radical restructuring' of power. He also adds that it does not have to mean democratic principles and procedures must be abandoned but rather power sharing arrangements can be made compatible with democracy while diminishing its most destabilizing side effects⁹.

Philosophy of Power Sharing

The philosophy of power sharing has its origins in the consociational model developed by Lijphart in his ground-breaking work *The Politics of Accommodation: Pluralism and Democracy in the Netherlands (1968)* and elaborated upon in his book *Democracy in Plural Societies (1977)*¹⁰. Today his work strongly influences the viewpoints that scholars have continued to present in the academic community.

Consociationalism is a form of governance that guarantees group representation, and is often recommended as a conflict management mechanism in deeply divided societies which in other terms can be described as power sharing. Political scientists define a consociational state as, a state which has major internal divisions along ethnic, religious, or linguistic lines, with none of the divisions large enough to form a majority group, yet nonetheless manages to remain stable, due to consultation among the elites of each of its major social groups¹¹.

⁸ M Ottaway, 'Democratization in collapsed states', in I W Zartman, *Collapsed States: The Disintegration and Restoration of Legitimate Authority*, (Boulder, CO: Lynne Rienner, 1995), p 248.

⁹ Caroline Hartzell and Matthew Hoddie, 'Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management', *American Journal of Political Science*, Vol. 47, No. 2 (Apr., 2003), pp. 318-332

¹⁰ Ibid

¹¹ <http://en.wikipedia.org/wiki/Consociationalism>. (accessed September 3 2010, at 3:30 pm)

For one to define a state as consociational, Lijphart argues for four essential elements of that need to be in place. He identifies a grand coalition, a mutual veto, a proportional electoral system and proportionality in the distribution of administrative appointments, and either territorial or corporate autonomy¹². His fundamental idea is elite cooperation and the formation of a grand coalition among ethnic representatives¹³. His argument is the way leaders will form coalition governments in situations such as wars where unity is paramount and thus a need to get all onboard for inclusive peace; they should also do the same for fragmented political systems.

This model has had its fair share of support and criticism. Supporters of power sharing argue that it is a more realistic option in deeply divided societies than integrationist approaches to conflict management¹⁴. They argue that its success is undeniably, as it has been successful internationally in some countries that have managed to implement it and as a result it has led to enduring peace that has provided a favorable environment for reconstruction of the society. More so power sharing has been credited with supporting successful and non-violent transitions to democracy in countries such as South Africa and Malaysia.

Critics of consociationalism however look at things from a different stand point. Horowitz, Barry and Lustick¹⁵ argue that consociationalism focuses on diverging identities such as ethnicity instead of integrating identities such as class, institutionalizing and entrenching the former. It also relies on rival cooperation, which is inherently unstable. Horowitz also argues that consociationalism can lead to the reification of ethnic divisions, since grand coalitions are unlikely, because of the dynamics of intra-ethnic competition. The very act of forming a

¹² <http://en.wikipedia.org/wiki/Consociationalism> (accessed September 3 2010, at 3:30 pm)

¹³ Ian S. Spears, 'Understanding Inclusive Peace Agreements in Africa: The Problems of Sharing Power', *Third World Quarterly*, Vol. 21, No. 1 (Feb., 2000), p. 107.

¹⁴ McGarry, John and O'Leary, Brendan, "Consociational theory, Northern Ireland's conflict, and its agreement: What critics of consociation can learn from Northern Ireland". *Government and Opposition* (2006), pp 249–277.

¹⁵ See <http://en.wikipedia.org/wiki/Consociationalism> (accessed September 3 2010, at 3:30 pm).

multiethnic coalition generates intra-ethnic competition if it does not already exist. Consociationalism also assumes that each group is cohesive and has strong leadership. Therefore consociationalism focuses too much on the set up of institutions and not enough on transitional issues which go beyond such institutions.

None the less Spears¹⁶ while criticizing the effectiveness of power agreements posits that if it remains the only option between the status quo and total disintegration, then the thin strands of its progress must be built upon until a peaceful government is achieved. Above all he states that, power sharing can only work where there is a genuine desire and commitment among the respective leaderships towards peace, and sufficient imagination and innovation to create appropriate structures and institutions which simultaneously accommodate all groups.

Power Sharing Agreements in Africa

The practice of power sharing practices can be traced as early as 1961 in Iraq to date in Britain and Kenya amongst others¹⁷. Internationally a growing number of states have continued to established power sharing measures as part of negotiated agreements to end civil conflicts. Such states include Afghanistan, Philippines, Chechnya, Bosnia, and Northern Ireland amongst others. In Africa it indeed is not a new phenomenon as its employment dates back to 1972 in Sudan, in 1979 in Zimbabwe and thereafter in the 90's in Angola in its negotiations in 1994, Chad in 1979 and 1996, Liberia in 1993 and 1996 and lately Kenya in 2008 and again Zimbabwe in 2008. Other countries in Africa that have tried institutionalized or formalized power sharing as a properly negotiated agreement¹⁸ include, Guinea Bissau, Liberia, Mozambique, Papa New Guinea, Rwanda, Sierra Leone, and South Africa. It is important to note that most of these

¹⁶ Ian S. Spears, 'Understanding Inclusive Peace Agreements in Africa: The Problems of Sharing Power', *Third World Quarterly*, Vol. 21, No. 1 (Feb., 2000), p.117.

¹⁷ See research done by See Caroline Hartzell and Matthew Hoddie, 'Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management', *American Journal of Political Science*, Vol. 47, No. 2 (Apr., 2003).

¹⁸ Ibid

countries have had more than one conflict despite power sharing agreements emanating from previous negotiations of the.

African societies have no doubt used power sharing accords as a result of negotiated peace agreements after civil conflict. As a resolution mechanism it has increasingly been seen as a way of resolving governance issues that have dominated African civil wars, especially due to the high-stakes politics where the winner-takes-all. Its implementation has often been through formalization or institutionalization of the power sharing agreements¹⁹.

However Rothchild points out that power sharing agreements have informally existed since the formation of sovereign nation states in the continent, and there many examples where African leaders informally sought to include ethnic representatives in their respective governments and was central to a regime's longevity in the face of rapid social change. Rothchild²⁰ shows how in the 1970's and 1980's African leaders were committed to maintaining some level of ethnic balance so as to manage the spiraling effects of ethnic tension. State leaders chose to give representation to ethnic leaders rather than face their defection. They did this by including powerful ethnic notables in the central cabinet and legislature and the party national executive.

Though countries varied in their willingness to legitimize the political role of those ethno regional intermediaries in national politics, their strategies of including the main patrons and allowing a limited bargaining to take place within the central political machine had roughly similar consequences²¹. An example can be seen in Cameroon where former president Ahmadou Ahidjo despite his heavy handedness used his ministerial appointments to balance ethno regional, linguistic, religious and economic interests and this has also been the case with his

¹⁹ Ibid

²⁰ Donald Rothchild, "*Managing Ethnic Conflict in Africa*" (Washington DC: Brookings Institution Press, 1997).

²¹ Ibid

successor president Paul Biya. He observes that these informal agreements were through linkages that were personalized and frequently involved bargaining and exchanges between ethnic representatives over government resources. Based on this argument the kind of consociationalism described by Lijphart seems not so foreign, nor new to Africa. However during the post cold war transitions to democracy, agreements have been inclined to be formally negotiated at large where everything is done within defined process and structure. Leaders are now expected to attain office through open competitive elections rather than through skillful regional and ethnic balancing and manipulation²². Thus the often informal, backroom pattern of inclusiveness, which relied on generous clientele ties to keep these 'coalitions' together, is incompatible with the open, non-clientele democratic systems expected in the post Cold War era²³.

The success of power sharing agreements in Africa has no doubt elicited sharp debate on whether it is a useful model for the continent in regard to conflict management mechanisms. This is because today, power sharing agreements have seemed to collapse more than succeeded and in some cases have resulted to worse off conflicts than those they were addressing and this has made Africa be regarded as the graveyard of consociationalism²⁴. In analyzing the implementation of power sharing accords in the great lakes region, Lemarchand²⁵ observes that in Rwanda, the limits of power sharing found their most dramatic illustration in the collapse of the 1993 Arusha agreement in the wake of the shooting down of President Juvénal Habyarimana's plane on 6 April 1994 and the ensuing carnage of Tutsi civilians. Contrary in Burundi, it exemplifies a highly promising effort to share power among a large number of

²² Ibid

²³ Ibid

²⁴ René Lemarchand, 'Consociationalism and Power Sharing In Africa: Rwanda, Burundi, and The Democratic Republic Of The Congo', *African Affairs*, 106/422,.

²⁵ Ibid

parties. In DRC in spite of the broadly based political compromise violence has gone unabated and would seem to substantiate the Tull–Mehler thesis that power sharing creates incentives for aspiring politicians to ignite insurgencies, thus resulting in ‘the reproduction of insurgent violence’. This trend applies for many other states like Chad, Angola, and Mozambique amongst others. These trends have left scholars in constant pursuit of answers as to why

Although power sharing experiments in Africa have generally failed, it does not nullify the case for consociationalism. What needs to happen is continued research to bring to light the obstacles involved in the implementing the theory. Based on the success cases of Burundi and South Africa, it seems that if properly implemented based on the right conditions, it could provide the best chances for a successful sharing of power among competing groups.

Implementation of Power Sharing Accords

There is a large and growing body of literature on the failure or success of conflict resolution measures that use power sharing accords. It would be impossible to give an account of all arguments put forward so only a limited selection of work will be quoted for the sake of the argument that the success or failure of implementing power sharing accords in peace agreements, depends on the negotiation process.

A huge scholarly base²⁶ has supported the use of power sharing in deeply divided societies. This is because as a mechanism it provides the necessary security to opponents that their grievances will be addressed. As exclusion, rather than greed alone, is the key factor behind most African conflicts, it is easy to see why power sharing should commend itself as a recipe for peaceful cohabitation²⁷. But if experience is any thing to go by, there is every reason to believe

²⁶ See Caroline Hartzell and Matthew Hoddie, ‘Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management’, *American Journal of Political Science*, Vol. 47, No. 2 (Apr., 2003).

²⁷ René Lemarchand, ‘Consociationalism And Power Sharing In Africa: Rwanda, Burundi, And The Democratic Republic Of The Congo’, *African Affairs*, 106/422, p. 2

that their efficacy has been proved inadequate to prevent the outbreak of violent conflicts in settings as diverse as Angola and Liberia, Somalia, and Ethiopia. One can almost say consociationalism finds its graveyard in Africa. Although power-sharing in Africa may have not stood the test of success, this does not nullify the case for consociationalism. What it does is to bring to light the obstacles involved in the course from theory to practice.

Most of the academic literature relating to negotiated power sharing agreements focuses on the implementation phase of the process²⁸. It tends towards the view that an immediate post-civil war environment of pervasive uncertainty and distrust among former opponents makes the full implementation of settlements a challenging but crucial prerequisite to peace. According to this perspective, full implementation of peace agreements proves important because it provides reassurances to wartime opponents that their partners in the settlement process value stability over conflict and remain committed to the process of establishing a self-enforcing peace²⁹. This perspective highlights the essential role that the issue of credible commitment plays in the post-civil war environment. As former opponents commit to living side by side following the end of war, they require proof that their contributions to settlement stability will not redound to their detriment in future interactions with their competitors³⁰.

Hoddie and Hartzell³¹ in their quest to determine the variables for successful implementation of power sharing accords conducted a study which came to the conclusion that power sharing for a long time had focused only on the political aspects of the parties' grievances yet other variables like economic, military and territorial aspects were largely ignored. This

²⁸ See the analysis done by Matthew Hoddie and Caroline Hartzell, 'Civil War Settlements and the Implementation of Military Power-Sharing Arrangements', *Journal of Peace Research*, Vol. 40, No. 3 (May, 2003), pp. 303-320

²⁹ Matthew Hoddie and Caroline Hartzell, 'Civil War Settlements and the Implementation of Military Power-Sharing Arrangements', *Journal of Peace Research*, Vol. 40, No. 3 (May, 2003), pp. 303-320

³⁰ *Ibid*: pp 303-320

³¹ Caroline Hartzell and Matthew Hoddie, 'Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management', *American Journal of Political Science*, Vol. 47, No. 2 (Apr., 2003).

study led them to argue that the consociational model by Lijphart needed to be expanded to include political, military, territorial and economic issues of governance. Their study is very important in analyzing the implementation of power sharing agreements but however leaves us asking whether the parties to the peace agreements studied saw the issues and interests to do with territory, military and economic aspects of power, as necessary to share. For example if one uses their perspective in the Kenya peace accord of 2008 one would conclude that it has very high chance of failure as it only focuses on the political aspect of power sharing. Interestingly, today it is being considered as one of the successful power sharing accords in Africa which means that the parties were satisfied with the political aspect alone. This leads us to argue that during negotiations interests and issues in a conflict must be properly diagnosed for the right components to be included in the peace agreement. Predecessor

Walter³² another key supporter of power sharing poses that power sharing agreements are prone to failure if a heavy presence of the international community as third party guarantees is not built into the peace agreement. Mehler³³ notes that this belief in power sharing as a miracle formula is not rare, but should lead to further questions, what is meant by power sharing, who has to share power with whom, and who can still be excluded from the sharing arrangement? He then concludes that these questions are essential, for power sharing may be limited to only a few areas of governance, or power may be shared only between the government and hand-picked rebel groups or radical movements, on the one hand, and civilian opposition parties, on the other, may be left out. This analytical questioning further leads us to interrogate the structure of the negotiations that led to the peace agreement by asking if the parties are truly committed to the

³² Babara walter , 'Designing Transitions from Civil War: Demobilization, Democratization, and Commitments to Peace', *International Security*, Vol. 24, No. 1 (Summer, 1999), pp. 127-155

³³ Andreas Mehler, 'Peace and Power Sharing In Africa: A Not So Obvious Relationship', *African Affairs*, 108/432, pp 453-473,

peace agreement why would the pulling out of third parties affect the implementation process instead of it being a self sustaining one.

Steadman³⁴ another notable supporter identifies spoilers as the major obstacle to successful power sharing agreements. The argument of spoilers by Steadman is very important as it draws us back to the structure of negotiations in regards to interests. He observes that spoilers act based on their selfish interests and thus efforts to control them need to be entrenched in peace agreements. However in critically thinking about the spoiler issue vis a vis their interests in the implementation phase, one is left to ask why would anyone want to distort an arrangement that seems beneficial for the society at large. In answering this Mehler³⁵ notes two very important issues. First, spoilers are always portrayed as the 'bad guys', stepping out of something that is perceived as good regardless of what harm it does to particular group interests. Second, the spoilers of the peace process may have been supporters of the previous democratization and conversely, a rebel movement that is accommodated by a peace process and is apparently sticking to the provisions of the peace agreement may have been the spoiler during earlier reforms. Thus noting that, the spoiler perspective may hide more than it reveals. This can be the case for the Somalia peace process that collapsed as many groups claimed to have been excluded from the peace negotiations thus were not ready to support any outcomes. This analysis further leads us to interrogate the structure of the negotiations that led to the peace agreement in regard to the parties identified as stakeholders in the negotiation process.

³⁴ Stephen John Steadman, 'Implementing Peace Agreements in Civil Wars: Lessons and Recommendations for Policymakers', *IPA Policy Paper Series on Peace Implementation* May 2001, New York.

³⁵ Andreas Mehler, 'Peace and Power Sharing In Africa: A Not So Obvious Relationship', *African Affairs*, pp453-473.

In their case against power sharing, Tull and Mehler³⁶ have argued that the institutionalization of the practice of power sharing for the sake of 'peace' that providing rebels with a share of state power, has important demonstration effects across the continent by creating an incentive structure for would be leaders to seize power by embarking on the insurgency path. Irrespective of their effectiveness, power-sharing agreements therefore contribute to the reproduction of insurgent violence³⁷.

The argument Tull et al inject is the focus of the outcomes of negotiation based on a long term perspective. Though valid in their argument, it needs to be appreciated that a negotiator is often under pressure to conclude the conflict and long term effects of decisions may not be thought through well³⁸. This is the reason that Rothchild³⁹ argues that a peace agreement must be perceived as a framework for further negotiations during the implementation stage or the inevitable ambiguities in peace agreements will lead to new conflicts between the rival parties. It may then not be out of context to see their failure in light of the breakdown in the negotiation process where issues arising need to be subjected to fresh negotiation process. This is also supported by Mwangi⁴⁰ who sees negotiations as a continuum where the end of the negotiations process ushers into the beginning of another process until all issues arising are agreed upon by the conflicting parties.

Over recent decades majority of the peace agreements in the world have been arrived at through the process of negotiation. Therefore it is only logical to deduce that if the foundation was not right then the outcome will also not hold. This selection of perspectives thus begins to

³⁶ Denis M Tull and Andreas Mehler, 'The Hidden Costs of Power Sharing: Reproducing Insurgent violence in Africa', *African Affairs*, 104/416, p375-378

³⁷ Ibid

³⁸ C. R. Mitchell, *The Structure of International Conflict*, (Macmillan: London, 1981).

³⁹ Donald Rothchild, 'On Implementing Africa's Peace Accords: From Defection to Cooperation', *Africa Today*, Vol. 42, No. 1/2, *The Military and Democratic Transitions* (1st Qtr. - 2nd Qtr., 1995)

⁴⁰ Mwangi M. Conflict in Africa, *Theory, Processes and Institutions of Management*, (CCR Publications: Nairobi: 2006) p114.

build up arguments that indeed the foundation of negotiations is critical in determining the success of implementing power sharing agreements. The analysis also brings out the different ways scholars point towards various issues that relate to the process and structure of negotiation only that they do not outwardly point it as so. The following section will therefore bring out negotiations as the link to success or failure of peace agreements.

While accepting the arguments of the various scholars quoted above on different issues that affect power sharing implementation, I wish to take it a step further and argue that there is need to look at a broader context of negotiation, because as the founding process that yields to peace agreements it is very sensitive to a wide variety of factors in the implementing environment as identified in the previous chapter.

Daely⁴¹ notes that one of the fundamental errors made in the peace agreement process in African negotiations is getting the whole mediation process wrong. This implies that the outcomes of these processes are not be fully owned by the belligerents to elicit the required level of commitment necessary for proper implementation. This is further supported by Bercovitch et al who state that one of the major challenges in implementing negotiated agreements is the lack of precision and clarity of goals at the earlier stages of negotiations that contribute substantially to the collapse of agreements during the implementation phase⁴². Rothchild⁴³ takes it a step further by stating that In the 1970s and early 1980s, analysts focused their attention upon the negotiation of peace agreements between African states and insurgent movements and because

⁴¹ Patricia Daley, 'Challenges to Peace: Conflict Resolution in the Great Lakes Region of Africa', *Third World Quarterly*, Vol. 27, No. 2 (2006), p303.

⁴² Jacob Bercovitch and Leah Simpson, 'International Mediation and the Question of Failed Peace Agreements: Improving Conflict Management and Implementation', *Peace and Change* Vol.35, No 1, January 2010, p75.

⁴³ Donald Rothchild, 'On Implementing Africa's Peace Accords: From Defection to Cooperation', *Africa Today*, Vol. 42, No. 1/2, *The Military and Democratic Transitions* (1st Qtr. - 2nd Qtr., 1995).

they assumed that negotiated agreements would endure, they paid less attention to the pre-negotiation and post-agreement peace building stages.

Negotiation is a complex process that is shaped by the factors of conflict environments⁴⁴. Kleiboer discusses various elements that influence the success of the negotiation outcome and divides the factors into five areas: the nature of the dispute, characteristics of the disputants, nature of the mediator, international environment, and the strategies and processes implemented by the mediator⁴⁵. All these can trace back to the structure of the negotiation. Kleiboer further illustrates the complexity of the negotiation process itself without even taking into consideration the unique difficulties associated with the implementation environment. It is thus clear that the likelihood of the success of a mediated peace settlement is greatly shaped by the varying elements at play in the negotiation process.

Therefore based on the structure and process of negotiation we need to proceed from the ripeness of the moment at which a mutually hurting stalemate occurred where the parties considered negotiations as an alternative to hostilities in resolving their conflict; the pre negotiation process that seeks to identify the issues, interests, parties, define the agenda, and convince parties to engage in face to face dialogue; the face to face negotiation process and any mediation activity that may occur; and finally the outcomes of the agreement in relation to the parties issues and interests in the conflict, to determine the success or failure an agreement. For a critical analysis of this argument the following chapter will test and validate the arguments presented in this chapter using the Power Sharing Negotiations in Kenya in 2008 as case study.

⁴⁴ Jacob Bercovitch and Leah Simpson, 'International Mediation and the Question of Failed Peace Agreements: Improving Conflict Management and Implementation', *Peace and Change* Vol.35, No 1, January 2010, p75.

⁴⁵ Marieke Kleiboer, 'Ripeness of Conflict: A Fruitful Notion?', Reviewed work(s): *Conflicts Unending* by Richard N. Haass *Peacemaking in Civil War: International Mediation in Zimbabwe, 1974-1980* by Stephen J. Stedman *Ripe for Resolution: Conflict and Intervention in Africa* by I. William Zartman *Journal of Peace Research*, Vol. 31, No. 1 (Feb., 1994), p110.

CHAPTER FIVE

THE 2008 COALITION GOVERNMENT NEGOTIATIONS IN KENYA

Introduction

This study's problem set out to establish a linkage between the negotiation process as the primary determinant to the success or failure of power sharing agreements. It has endeavored to give insights into the relationship between the negotiation process and the success or failure of implementing negotiated power sharing agreements. The research problem was explored with an intention to portray the failure in implementing power sharing agreements as a result of a flawed negotiation process that did not yield mutually acceptable agreements. The previous chapter discussed this by trying to establish the relationship of negotiations to power sharing accords as the determinant to their success or failure during implementation.

Drawing from the ripe moment theory as it applies to the negotiation process, the study hypothesized that negotiated agreements are successful when the parties accept negotiations as a mutually acceptable solution, when decisions made are unanimous, and when new solutions have to be invented when new problems arise during implementation. It sort to challenge other perspective of why power sharing agreements fail like the dimensions of power sharing need to go beyond the political, specificity of the agreement, the presence of spoilers but to mention a few, and instead argued that unless the parties saw the need to negotiate, agreements would likely not be fully owned by the parties thus the lack of commitment to implement them.

To reach this conclusion the measure used has been a qualitative presentation derived mainly from secondary sources to determine the role of negotiations in implementing Kenya's National Accord that was as a result of the negotiations following the 2007 post election violence. This chapter seeks to present the critical examination of the issues that have emerged in

the previous chapters in relation to the negotiation process and test the hypothesis of the study by either proving or disapproving them.

An Overview of the Conflict

On December 27 2008, Kenyans went to a general election to vote in a president and parliamentary leaders who would govern them for the next five years. The announcement on December 30 2007 by the Electoral Commission of Kenya (ECK) that the incumbent President Mwai Kibaki was the winner of the presidential election plunged the country into an unprecedented political, security and humanitarian crisis¹. This was founded on claims that the president's political part PNU had rigged the election to deny presidential candidate Raila Odinga from the ODM party a "deserved victory". The parliamentary results confirmed the opposition's conviction that the presidential election had been rigged. PNU won only 43 seats slightly over 20 per cent of the total with eighteen being in Central Province and 25 in the rest of the country. ODM won 99 seats, seven short of an absolute majority. 23 cabinet ministers lost their seats, often to complete newcomers. In addition, the official ECK results named Raila the winner in six of the eight provinces.

Six weeks after this proclamation, protest riots, repression by security forces and revenge killings by supporters of both camps caused over 1,000 deaths and more than 300,000 internally displaced persons (IDPs)². The loss for the economy was over Ksh 100 billion by early February 2008³. The country's leadership in general had not anticipated that the conflict would spiral out of control as it had.

Local attempts to stop the conflict by various senior citizens like Amb. Bethuel Kiplagat, Gen. Opande, Gen. Sumbeiywo, and Hon. Kalonzo Musyoka, in trying to get the parties to

¹ International Crisis Group, Kenya In Crisis, Africa Report N°137 – 21 February 2008

² Official results released by the former Electoral Commission of Kenya

³ International Crisis Group, Kenya In Crisis, Africa Report N°137 – 21 February 2008

dialogue, were unsuccessful as the parties maintained that they would not yield to the other's demand. The parties maintained hard-lined positions with Raila Odinga saying that ODM would not negotiate with Kibaki unless he resigned because to do so would mean acknowledging Kibaki's legitimacy, and unless stopped, the "ruling clique" could rig the next election. He also on occasion asserted that he was not afraid of being arrested as he had already been jailed many times in the past⁴. For his part, Kibaki emphasized the importance of peace, stability, and tolerance in his 2008 New Year's message, speaking of the election as a concluded event and warning that law-breakers would be punished⁵. This was interpreted as a sign of not willing to let go of his position as the newly inaugurated president of Kenya.

The conflict escalated and its seriousness was evident when for one week in early January, Rwanda, Burundi, Uganda, South Sudan and eastern Congo were short of fuel and other essential commodities because the paralysis of the Mombasa highway which was their main supply route⁶. With the conflict no longer being internal, the international community reacted swiftly to join in the efforts to contain and manage the crisis by putting pressure on Kenyan leaders to find a solution that was workable.

It was clear from the onset⁷ that the best alternative to resolve the conflict was to have the parties dialogue and come up with some form of understanding or agreement that would resolve their issues. The international community also seemed to favor this option as the only way out of the conflict with the then US Secretary of State Condoleezza Rice telling the principals that they

⁴ "Raila's terms for talks with Kibaki on crisis", Daily Nation (Kenya), January 1, 2008.

⁵ Fred Mukinda and Samwel Kumba, "Kibaki warns law breakers of stern action", Daily Nation (Kenya), January 1, 2008.

⁶ International Crisis Group, Kenya In Crisis, Africa Report N°137 – 21 February 2008

⁷ Calls were made by various leaders and societal groupings for the principles to dialogue and end the crisis from the time the crisis began.

needed to have mediated talks as Kenya was a regional power and people were suffering⁸. The task then was how to get the parties to accept negotiations as a measure of resolution.

The Hurting Stalemate

To have ODM and PNU dialogue there was need that both parties agree to negotiate. This meant that they needed to reach a point where they could no longer see another possible outcome but only that which negotiations would bring. Reaching this point would mean that the parties were experiencing a hurting stalemate and if it is mutual to all then it eventually results to a ripe moment where negotiations can happen with high probabilities of acceptable outcomes⁹. However the challenge with identifying a stalemate that leads to a ripe moment is that not all stalemates can construe a ripe moment and Mwangi, Mitchell, Bercovitch and Zartman all observe that a ripe moment only happens when the stalemate is mutually hurting to all parties. Therefore without a mutually hurting stalemate the parties will still not consider negotiations let alone mutually acceptable outcomes.

There were immense efforts to have ODM and PNU dialogue but on several occasions the initiatives failed probably because there was no mutually hurting stalemate. In some instances one could observe a party hit a stalemate, offer themselves to dialogue but with demands that the other party would reject resulting to an aborted negotiation process. A case in point was when the PNU leaders headed by President Kibaki were calling for an end to the conflict and dialogue¹⁰. Kibaki said that his government was willing to engage in dialogue once the country was calm describing the continuing violence as senseless¹¹. He urged the leaders to

⁸ Interview with Nana Effah-Apenteng, Chief-of-Staff, Coordination and Liaison Office, African Union, Panel of Eminent African Personalities, Kenya on October 29 2010 at 11:00 am

⁹ Makumi Mwangi, 'The Water's Edge: Mediation of Violent Conflict in Kenya', (Nairobi: Institute of Diplomacy and International Studies 2008) p 87

¹⁰ Interview with Gitobu Imanyara, MP of South Imenti on Nov 16 2010.

¹¹ "Opposition plans rally in Nairobi", CNN.com, January 3, 2008.

calm their supports as violence was no option. Amos Kimunya a PNU MP on the other hand also pointed out that if ODM did not allege fraud, it would make it easier for the two sides to talk through mediated efforts by Kenyan elders as the government did not want international mediation. Uhuru Kenyatta a KANU MP allied to PNU also said that it might be possible for the two sides to work together, but ODM's position on the resignation of Kibaki was unacceptable, because there would be "no government"¹². These statements could be interpreted as signals that the government was suffering because it could not carry out its functions without the legitimacy of the entire country and thus needed to end to the crisis.

However ODM was not keen on dialogue at this moment as the legitimacy on their demands was growing¹³ by the day, especially with the violence that erupted amongst its supports. Therefore to them obliging to PNU's demands in order to dialogue ultimately meant conceding defeat something they were not ready to do. Therefore instead of hurting it was still reeling in the support of its constituents. ODM rejected this offer by PNU and its allies and instead went on calling for new presidential elections as it still saw it as a way out of the conflict despite the government spokesman Alfred Mutua still maintaining that this would only be possible only if it was decided by the courts¹⁴ a position that ODM refuted.

The second time can be seen when the US government sent Assistant Secretary of State Jendayi Frazer, to intervene. On 5 January she met with Kibaki and Raila and after the meeting Kibaki said that he was willing to form a national unity government, but Raila, rejected this, saying that Kibaki should not come to the negotiating table as the president and called for the creation of a transitional government to lead to a new election in three to six months¹⁵. However

¹² Barney Jopson, "Kenyan police try to block opposition rally", Reuters (*Financial Times*), January 3, 2008.

¹³ Interview with Gitobu Imanyara, MP of South Imenti on Nov 16 2010.

¹⁴ "Kenya opposition demands new vote", Associated Press (*Globe and Mail*, Canada), January 4, 2008.

¹⁵ C Bryson Hull and Barry Moody, "Opposition brushes aside Kibaki offer", Reuters (IOL), January 5, 2008.

Raila met with Frazer for a second time and shortly after the ODM spokesman said that the party would not demand that Kibaki resign or admit defeat if he accepted an international mediator. ODM said that though it had ruled out a government of national unity, it could discuss a coalition government with genuine power sharing or establishing an interim government to hold a new election¹⁶.

This action brought into light three important issues in the pre-negotiation process. Firstly ODM and PNU were not ready to dialogue was because of their divergent interests and the lack of wanting to compromise on them. PNU was not willing to have Kibaki step down as president while ODM could hear nothing short of a re-run. There was then a change in position where Kibaki offered to form a government of national unity and Raila said that they would only accept a transitional government that will pave way for a fresh presidential election. However after the meeting with Ms. Jendayi their demands started to look similar when Raila said that he would not demand that Kibaki resign or admit defeat if he accepted an international mediator but ruled out a government of national unity, and instead could discuss a coalition government with genuine power sharing or establishing an interim government to hold a new election. This was important because it enabled create an area of possible compromise in the negotiation phase which was important if agreements were to be reached.

Secondly we cannot ignore the role of the international community played in its efforts to create a desire to negotiate. Nana¹⁷ observed that the international community was largely responsible in catalyzing the hostilities between the parties and directing them to see negotiations as a possible option. This was evident when Raila changed his position after meeting with Ms.

¹⁶ "Kenyan opposition leader willing to discuss power sharing, calls mass rallies", Associated Press (International Herald Tribune), January 6, 2008.

¹⁷ Interview with Nana Effah-Apenteng, Chief-of-Staff, Coordination and Liaison Office, African Union, Panel of Eminent African Personalities, Kenya on October 29 2010 at 11:00 am

Jendayi a second time where his issues started to become closer to what Kibaki had suggested earlier. However their involvement raised a lot of speculations that it bordered on interference and almost dictatorship. In particular they seemed to lean towards ODM more. Mr. Muite¹⁸ observed that probably such allegations came from the way they reacted towards the PNU party because it had more leverage being the government of the day and also because its hardliners were more difficult to penetrate than those of ODM.

The third most interesting issue was how the agenda of a coalition government was crafted into the process and resulted into a negotiation agreement. To begin with none of the parties seemed to demand for power sharing. The idea only began to immerge when Raila met with Ms. Jendayi for the second time and from then it became manifest. Nana¹⁹ observed what many scholars have always speculated that power sharing is an imposed solution when he said that indeed the international community felt it was the best option for Kenya. This was because it was difficult to determine who the winner of the election was and more so a re-election was not a good idea in the prevailing political climate. To them such a solution would provide the best ground for compromise. In their first retreat at Kilanguni they got the German Envoy to explain the merits and demerits of a coalition government to them and the best way in moving forward with such an agreement. He then said after this the idea was accepted by the international community and the parties with the hurdle being how to actualize it.

These factors are what then probably led analysts in thinking that the moment was ripe and that resolution of the conflict was promising when the parties agreed to Kufuor's

¹⁸ Interview with Hon. Paul Muite on Nov 16 2010.

¹⁹ Interview with Nana Effah-Apenteng, Chief-of-Staff, Coordination and Liaison Office, African Union, Panel of Eminent African Personalities, Kenya on October 29 2010 at 11:00 am

intervention. However it proved not to be the case especially by the rejection of an agreement²⁰ that had supposedly been drafted ODM and PNU representatives under Collin Bruce the then World Bank Country Representative dubbed the 'World Bank agreement'. The rejection of this agreement by President Kibaki was a sign that PNU was not getting weary and was still adamant that it was the legitimate government elected by the people. Thus PNU still saw no zone of a possible agreement thus continued to engage in hostilities.

The commencement of the hurting stalemate amongst the parties was evident when the third parties especially the international community started playing tough by issuing threats of withdrawing monetary support to the progress of the Kenyan economy. PNU issued a statement to the press urging those it addressed including diplomatic missions and the United Nations, to provide evidence that could stand scrutiny in court that the presidential elections were irregular. This as Mwangi²¹ observes resembled a panic measure to solidify their claims as being legitimately in power. At the same time president Kibaki also named a team to spearhead national political dialogue and reconciliation. Its mandate was to spearhead national political dialogue, national reconciliation, and to promote international understanding and good relations on the political problems facing the country following the elections²².

On its side, ODM was equally adamant that they won the election and asked Kibaki to stop pretending that he was elected as the president of Kenya. They called for country wide mass action and maintained that they would pursue with it even after calls to abandon such moves. However as the death toll rose, they changed strategy by calling off the protests and instead engaging in economic boycotts of companies whose directors were perceived to be allies of

²⁰ Makumi Mwangi, *The Water's Edge: Mediation of Violent Conflict in Kenya*, (Nairobi: Institute of Diplomacy and International Studies 2008) p 91

²¹ Ibid: 71

²² Ibid: 72

President Kibaki. It was evident that the change in strategy was necessitated by their concern on the increasing casualties of the violence and needed to reduce these costs as it was becoming costly to them. Both parties were now realizing that they could not achieve a clear victory in which they could attain all their goals whatever their expenditure in effort and resources was.

However there may have seemed to be a stalemate but the parties still had not reached a mutually hurting stalemate. Both parties though willing to talk still maintained their original positions on the issues and on the day Anan arrived the government further hardened its position when Hon. Kalonzo Musyoka, stated that it ruled out any negotiations with ODM, the upcoming talks constituted a way to bring down the political tension, PNU dismissed any possibility of sharing power because Kenya's constitution did not allow losers to share power with winners and thus would not sit down with members of ODM who were pursuing a different agenda²³. It became clear that even with the presence of Anan the parties were yet to reach a mutually hurting stalemate and to get the parties to this point was what preoccupied the pre-negotiation stage that started to take place when Anan arrived.

A willingness to negotiate

By the time Anan was arriving in the country, the parties were still not ready to dialogue as was evidenced by violence that broke out in Nakuru and Molo on the evening of the proverbial handshake, perhaps to show that there were still those keen to use political violence as a strategy²⁴. This was despite the fact that the principles seemed to embrace dialogue as an option. It thus became clear that the principals were at the mercy of their extremist supporters and even though they may have wanted to negotiate the problem of re-entry was very real to them in case they undertook commitments that were rejected by the hardliners. Mr. John

²³ Ibid:91

²⁴ Ibid: 92

Githongo asserted this by observing that the hardliners were holding Mr. Kibaki and Mr. Raila hostage and were the ones shouting out loud²⁵.

In efforts to fully ripen the moment and make the parties embrace negotiations, president Museveni joined in the pre-negotiation efforts that were already taking place. Having arrived on the same day as Anan, he met separately with Kibaki and Raila and according to his press secretary an agreement²⁶ was reached in principle to establish a judicial commission that would investigate the accusations of vote rigging; however, the two sides disagreed as to whether the government alone should appoint the members of the commission. Museveni was also said to have proposed a power-sharing deal, which was rejected by the government on the grounds that it was unwilling to share power with the ODM due to the latter's alleged responsibility for the killing of innocent people. However ODM later rejected the proposal on a judicial commission saying that it was the same as filing an election petition in the high court which was controlled by the government they dispute. Museveni's strategy was to give multiple offers that would appeal to both parties but their rejection was evident of a strong influence by the hardliners resulting to a lacking mutually hurting stalemate between the parties.

It was in no doubt that the moment had not yet ripened for negotiations. It was clear that a strategy which would draw in the moderates and collaborators in order to outweigh the might of the hardliners needed to be employed. This strategy would be in response to the events happening when it became evident that the principles were operating based on the interests of their hardliner constituents. This drove the international community to further its threats on

²⁵ "Talks the only option, states Githongo", Daily Nation, 24 January, p6

²⁶ "Kenya: Museveni Proposes Power Sharing Deal to Raila, Kibaki", The Monitor (allAfrica.com), January 24, 2008.

Kenya if it failed to find a lasting solution. Nana²⁷ attributed the ripening of the moment to the western countries that pressurized the parties to accept dialogue. He noted that there was a lot of behind the scene shuttle diplomacy happening and this is what led the parties to eventually accept to negotiate. Therefore according to him when Kibaki and Raila agreed to meet and shake hands the next crucial step was to set up a framework that would guide the negotiations that would take place. At this point he noted that though in the public eye it seemed as though negotiations were still an option in consideration, as members of the mediation panel secretariat they were certain it would happen.

Even though the parties seemed to yet publically reach a point where they fully accepted negotiations, they however started making demands on how they wanted the negotiations conducted. This was a clear sign that public acceptance of negotiations was just a matter of protocol and it was now up to the mediating team to pick it up and consolidate these demands and sell the pre-negotiation agreement to the parties. ODM's demand were that a neutral location for the negotiations be identified, immediate halt of police killing of demonstrators, a commitment by both sides that the negotiation would be witnessed by several people and a commitment by the president the or his representatives would attend the negotiations²⁸, it was clear that ODM was ready to meet at the table. The government too had no option but to engage in the process as it had more to loose if the negotiations collapsed.

The final framework for the negotiations was arrived at reflecting three sets of interests, the government's, ODM's and Anan's²⁹. The agenda³⁰ for the negotiations comprised of finding

²⁷ Interview with Nana Effah-Apenteng, Chief-of-Staff, Coordination and Liaison Office, African Union, Panel of Eminent African Personalities, Kenya on October 29 2010 at 11:00 am

²⁸ Makumi Mwangi, 'The Water's Edge: Mediation of Violent Conflict in Kenya', (Nairobi: Institute of Diplomacy and International Studies 2008)p107

²⁹ Ibid: 106

³⁰ Ibid: 107

a lasting solution to the disputed presidential elections, long term solutions to the social and economical problems facing Kenya. These were divided into four constituting the famous Agenda 1,2,3, and 4 items during the actual negotiation process. It also included the recognition of the Anan team as the official mediators in the conflict, the commitment of the two sides in the negotiations and their outcomes and that each team appoint three negotiators and a liaison. This agreement was acknowledged by a second face to face meeting between the two principles and the negotiators of the parties were named and inaugurated and the official recognition of Anan and his team as the mediators was done. The proposed venue of the negotiations was the Serena Hotel in Nairobi.

Negotiations

The acceptance of the pre-negotiation agreement by the parties was a positive sign as it meant that on the table negotiations were going to happen. The approval of the mediators, the venue, and the representatives was an indication to this. Finally ODM and PNU were to dialogue. They appointed a team of four from each side as their representatives under the leadership of Mwai Kibaki for PNU, and Raila Odinga for ODM. It was mediated by Mr. Anan and his team of Graca Machel and Benjamin Mkapa.

The actual negotiations began with the second face to face meeting on January 29 with an address from the two principles at the County hall. There was a clear show of tension when the negotiations were delayed by 90 minutes due to disputed seating arrangements. This was normal as contentious behavior is usually an observed disputant behavior³¹ that is used as a defense mechanism and intimidation strategy. However this dispute could not hold any ground as it was evident that by now the parties had lacked alternatives to a negotiated agreement. To PNU as the

³¹ See Josephine M. Zubek, Dean G. Pruitt, Robert S. Peirce, Neil B. McGillicuddy, Helena Syna, 'Disputant and Mediator Behaviors Affecting Short-Term Success in Mediation', *The Journal of Conflict Resolution*, Vol. 36, No. 3 (Sep., 1992), pp. 546-572

government in place the violence that was happening was a building pressure point for them as they could not transact legitimately as the Government of Kenya, while for ODM the rising death toll and displacements affected its credibility and image and needed to avoid looking like rebels in the eyes of the international community³². Therefore negotiations were a hook line that they would want to pursue.

The negotiation process was designed to take place over four stages: stopping the violence and the restoration of fundamental rights and liberties, tackling the humanitarian crisis, settling internally displaced people, promoting national healing and reconciliation, overcoming the political crisis related to the disputed presidential election results and dealing with the long term issues and solutions³³. This break down of issues was an important step as it acknowledged that despite the conflict being triggered by political factors it had now acquired other dynamics necessitating for more broadening of issues to avert such a conflict again.

The resolution of the political crisis was regarded as a short-term issue and its negotiation was estimated to occur in four weeks, with the other issues considered as longer talks continuing for a year³⁴. It was this short term issue that saw the agreement of a power sharing accord between ODM and PNU actualize. The hammering out of the power sharing accord was marred by a turbulent period primarily because none of the parties was to have their original demands met but instead had to make a lot of tradeoffs. This was often fueled by the various interests that each party had and how they perceived their BANTA after the process.

³² Interview with Hon. Paul Muite on Nov 16 2010.

³³ Makumi Mwangi, *The Water's Edge: Mediation of Violent Conflict in Kenya*, (Nairobi: Institute of Diplomacy and International Studies 2008) p110

³⁴ "Annan leads Kenya crisis talks", BBC News, January 29, 2008.

Secondly it was not in any doubt that PNU and ODM had previous political relationships³⁵ and this affected how they brought out their grievances during the negotiations. In the infamous second liberation of Kenya in 2002 where the second president Daniel Moi was voted out by NARC, the leaders at the fore front were the current leaders that constituted ODM and PNU. Following the collapse of an agreement that was meant to bind their relationship under NARC in 2003, a split emerged and the two NARC factions faced off during the 2005 constitutional referendum in Kenya. Those that supported the constitution were later to be known as PNU and those that broke away and rejected the constitution were to be known as ODM. The two parties went on to later become the major contenders during the 2007 general elections.

This historical linkage brought into perspective the deep division that mistrust created and was an area of confrontation because the parties harbored a lot of suspicion for each other during the negotiation. Nonetheless though the two sides remained deeply divided they agreed that a recount and re-election under the prevailing political climate was not an option and this was a one area of compromise that was capitalized on by the mediators. In the pre-negotiation stage both parties had an agreement on an inclusive government with the contention now being a government of national unity or a coalition government based on a power sharing deal.

The proposal to have an inclusive government was one that was cleverly built into the agenda of the negotiations. It was also clear that this outcome was what the third parties preferred and Anan was suspected of having come with a predetermined mind set on how the final outcomes would look like³⁶. Museveni³⁷, had also suggested a power sharing deal at the

³⁵ See Michael Wahman, 'Policy Blind Coalitions -Ethnicity and political coalitions in Kenya under multipartyism' Department of Political Science Lund University, Paper prepared for delivery at the 4th European Conference on Africa Studies, Uppsala 15-18 June 2011.

³⁶ Makumi Mwangi, 'The Water's Edge: Mediation of Violent Conflict in Kenya', (Nairobi: Institute of Diplomacy and International Studies 2008) p61

³⁷ "Kenya: Museveni Proposes Power Sharing Deal to Raila, Kibaki", The Monitor (allAfrica.com), January 24, 2008.

pre-negotiation stage, meaning there had already been some level of consultations on what could be best suited for Kenya. When the mediator hinted of a transitional government in the offing at the parliamentary Kamkunji, way into the negotiation stage, before the parties had come to an agreement, it seemed like intense lobbying had already begun to have it accepted as a solution. Therefore the mediators were left with the task of basing the negotiations on an integrative approach where the parties' interests would be integrated in a way that would create joint value for them.

As negotiations progressed on the technicalities of the inclusive government there was a creeping deadlock. This was because the parties had differing political interests and differing constituents that they were answerable to. It was also evident that both parties were garnering for political power and their expectation in the final outcome was that this would be achieved. Also the mediator Annan's impartiality was questioned when during a debrief he gave to members of parliament he hinted of a transitional government with Martha Karua saying that he was misrepresenting the views of the negotiators³⁸. This acts prompted the international community to react to deter the threat of the looming stalemate. The United Nations Security Council called for peaceful resolution of the dispute through negotiations, the United States imposed a travel ban on ten unnamed Kenyans and the EU saying that it could sever trade and bilateral links with Kenya³⁹.

The U.S. Secretary of State Condoleezza Rice also arrived in Kenya to support the talks on February 18. She met with Kibaki, Raila, and Annan, and emphasized the importance of reaching a settlement, saying that one should have already been in place; however, she also said

³⁸ Makumi Mwangi, *The Water's Edge: Mediation of Violent Conflict in Kenya*, (Nairobi: Institute of Diplomacy and International Studies 2008) p131

³⁹ Ibid: 131

that the U.S. was not trying to "dictate a solution to Kenyans"⁴⁰. The day after Kibaki said that he was willing to share power in the government, but an agreement needed to be made in the context of the existing constitution. However an impasse was reached as both parties disagreed about the powers the newly created post should have⁴¹.

Annan declared the talks suspended but gave assurances that they had not broken down but rather it was time to engage the principles directly at this stage. This was an important strategy as it was clear that the impasse was created by the constituents and their refusal to find a ground of compromise. At this point also Jakaya Kikwete, the President of Tanzania and Chairman of the African Union and backed by the US Britain and EU, arrived in Kenya on February 27 to assist in breaking the deadlock⁴², and on 28 February, Kibaki and Odinga signed the agreement meant to end the crisis at a ceremony in Nairobi and was to be known as the National Accord and Reconciliation Act.

The Outcomes of the Negotiation

The outcome of the negotiations called the National Accord contained various elements which were intended to form the basis of peaceful relations between the parties in the post negotiation phase. The final agreement signed by Mwai Kibaki and Raila Odinga was a short document, which contained the essentials of the power-sharing deal, the PNU and the ODM would form a government of national unity namely a grand coalition. The Cabinet was to consist of the president, vice-president, prime minister, two deputy prime ministers, and other appointed ministers. The Prime Minister, while being appointed by the President without the need for prior consultation, would coordinate the reform agenda and supervise ministries. The PM was also

⁴⁰ "Rice calls for Kenya power-sharing", Al Jazeera, February 18, 2008.

⁴¹ "Annan frustrated by Kenya talks", BBC News, February 25, 2008.

⁴² Makumi Mwangi, *The Water's Edge: Mediation of Violent Conflict in Kenya*, (Nairobi: Institute of Diplomacy and International Studies 2008) p 144

accountable to the President and would be immune from civil or criminal prosecution. The National and Reconciliation Act was to be dissolved if or when: the 10th Kenyan Parliament is dissolved, or the coalition members agree in writing, or one coalition member withdraws from the coalition by resolution of the member's party's decision-making body a new constitution is enacted⁴³.

Implementing the Power Sharing Agreement

As earlier noted in this study, a review of cases on implementation of peace agreements studied by various scholars⁴⁴, shows that there is a gap between the promises made in the peace agreement and the steps needed to realize those agreements. Also given that many agreements in the continent seem to be prone to failure; it was in no doubt that the Kenya power sharing accord was going to get a lot of attention to ensure its success and more so because its success ensured the stability of the region.

The outcome of the negotiation was welcomed by most of the constituents to the parties in the conflict. The country and the international community went into celebration after the signing of the agreement a clear sign of the reprieve the agreement brought. The implementation was to be done by the parties identified in the signed agreement; this is the principals with support from the parliament. Mr. Anan and his team still bore the responsibility of ensuring that the parties were honoring their commitments and that the process he presided over was successful⁴⁵.

It was evident that the power sharing accord was not totally accepted by the parties as evidenced by the sabotaging tactics in various stages during the process. This constituted the first

⁴³ The National Accord and Reconciliation Act 2008

⁴⁴ See Dorina A. Bekoe, 'Toward a Theory of Peace Agreement Implementation: The Case of Liberia', *Journal of Asian and African Studies* 2003; 38; 256 p 258

⁴⁵ Interview with Nana Effah-Apenteng, Chief-of-Staff, Coordination and Liaison Office, African Union, Panel of Eminent African Personalities, Kenya on October 29 2010 at 11:00 am

major challenge of re-entry because the parties' hardliners, leaders and influential individuals who supported the principles saw it as a sellout. One such tact was seen when violence broke out in Molo and Nakuru perhaps in a bid to show that political violence was still a viable strategy⁴⁶. PNU also engaged in verbal rhetoric with ODM to undermine the executive functions of the newly created prime minister position by saying that president Kibaki was still an executive president and all were subordinate to him. However most of their other constituents seemed to be exhausted with the crisis especially for *mwananchi* supporters who to them the agreement was a relief to their desperate situation.

It was also evident that the international third party allies and guarantors' were at large content with the outcome and seemed to be keen that its success is achieved. The hardliners support base was therefore not solid enough to sustain sabotaging tactics leaving them with no option but to cooperate in implementing the agreement. The passing of bills within a week required to institute the necessary changes to accommodate the position of a prime minister by their own party members of parliament was also a sign of this eroding base. The problem of re-entry was also semi-managed in the negotiation phase by allowing the party negotiators to constantly consult within the party on any steps and progress made.

As Mitchell⁴⁷ observes when negotiators are engaged in long face to face discussions they may not build a stable and trusting relationship with their constituents thus the constituents end up feeling sold out in the process and outcome of the negotiations and hence make it impossible or difficult for the parties to re-enter the environment. In the negotiation phase the parties on a couple of occasions suspended the dialogue to consult with their principles. Mr. Anan also

⁴⁶ Makumi Mwangi, 'The Water's Edge: Mediation of Violent Conflict in Kenya', (Nairobi: Institute of Diplomacy and International Studies 2008)

⁴⁷ C. R. Mitchell, *The Structure of International Conflict*, (Macmillan: London, 1981), p246

convened a *kamkunji*⁴⁸ with members of parliament perhaps in a bid to prepare them of what could be possible outcomes hence not be caught by surprise. Therefore it was difficult for the constituents to claim of being blacked out and short changed in the agreement when taking into account the various levels in which they were kept abreast during the negation progress.

The second most critical element during this phase was that of commitment⁴⁹. by the parties to be faithful enough to fulfill promises made. To date there is still evident commitment by the coalition partners in executing the accord whether or not it is what they desired. This commitment has been sustained by two things, the ripeness of the conflict which saw the parties desire to make peace and the international nurturance which has played a shepherd role in the whole phase. The hurting stalemate created a situation in which neither side could win by continuing the conflict as it would be very harmful to the other. This contributed to the parties seeking an alternative way out. Though the Parties could not be able to identify a specific solution they seemed to have a sense that a negotiated solution was possible and that the other party shared that sense and the willingness to search for a solution too. The parties still had and continue to have differing interests on how to approach the outcomes but the sense that a negotiated settlement is still better has created the commitment to follow through in the implementation process.

Secondly international nurturance cannot be ignored in the case of Kenya. The international community positioned itself right from the onset as a party to the conflict with interest and issues and has continued to do so till date. With the amount of resources available to it, it has strategically manipulated the implementing environment to favor the success of the

⁴⁸ 'Your role is vital and we can't afford to fail, Annan tells MPs', Daily Nation, February 13 2008, p14

⁴⁹ Anna Jarstad & Ralph Sundberg, 'The Theory and Data on Peace Agreement Implementation', *Conflict and Development Research, Uppsala*, 6-8 November 2006, p1-2

power sharing accord. The most notable strategy it used is the effective coordination of the third party actors in all the stages of the negotiations thus helping the transition from conflict to peace possible to hold. The international community made use of strength in unity right from the pre-negotiation stage through to the promulgation of a new constitutional order in Kenya. It was very difficult to see them acting from different slates as they knew such a perception would only create a loophole for the extremists to advance their demands. Their coercive actions also helped reduce the difficulty levels in the implementing environment.

Negotiation has also been a tool that the international community has continued employed whenever a deadlock or stale mate is arrived at during implementation. It was very difficult to see implementation proceed without addressing any grievances that arose. Whether or not a desirable outcome was achieved the fact that there was consultation ongoing over the issues arising, made the parties own the process by feeling involved.

Conclusion

The clamor for political power in a number of African nations has often left them in a state of conflict where the parties involved are often encouraged to dialogue and find a lasting solution to their crisis. Often this talks end up in agreements on how to move forward and most of the time there is some form of power sharing deal. The focus is generally on doing away with centralized political structures which are often seen as the main source of the conflict so as to create new impartial ones determined by the lines of polarization.

However these agreements still seem to face the challenge of holding together and often collapse. This study sought to investigate why this was the case as it is the parties that talked and agreed to resolve their issues in a certain way. A number of issues arose to try and answer why they fail but the one that stood out was how did they talk and agree to something they are not committed to, and this led to the research problem of trying to link the talks to the success or

failure of the agreements by assessing the conditions that determine success or failure. It was guided by the theory of the ripe moment that emphasized unless the parties all saw negotiations as a way out of their conflict, the shared sense that a negotiated solution is possible will not be achieved resulting to lack of commitment during implementation of the agreements. This study then came up with three hypotheses which it sought to test.

The central hypothesis of this study was that power sharing agreements are successful when the parties accept negotiations as a mutually acceptable solution. This hypothesis derived from the notion of the ripeness of the moment and argued that unless the parties reach a moment known as the hurting stalemate where negotiation is the only way out, the power sharing agreement would be difficult to implement. In the case of Kenya, the parties never quite attained a mutually hurting stalemate at the same time (if they did), but the fact they sensed that a negotiated solution was possible and that the other party shared that sense and the willingness to search for a solution, helped to make the moment ripe for resolution. Both parties, at one point or another expressed their willingness to negotiate though we saw them try to harden their positions but would after a while concede and move forward. Another issue was that the ripe moment was may not have been a natural one but one that seemed to be catalyzed by the third parties especially by coercive measures from the international community.

The second hypothesis premised that power sharing agreements were successful when the outcome of the negotiation process is able to create an acceptable balance of the parties' issues and interests in the conflict. This hypothesis derived from the notion that there needs to be a consensus on the final outcomes and any differing opinions needs to be sorted out before the ink is put on the final agreement. For instance with PNU whose representatives were lawyers, decisions were often made after laborious consultation and thought processes. This is evident as

there was a lot of middle ground achieved in the final outcome, which was a sign of compromise to an acceptable level for both parties.

The third hypothesis asserted that power sharing agreements are successful when new solutions have to be invented to new problems arising during implementation. This hypothesis draws from the notion that negotiations are a never ending process and a new crisis signifies the need to start the process all over again over the issue. This helps deal with problems arising on hands on basis, thereby always avoiding simmering issues which have the potential to lead to hostilities.

This study has therefore successfully accomplished its tasks based on the objectives it set out to achieve. It has indeed highlighted the importance of establishing a proper negotiation process with the right conditions as a prerequisite for successful implementation of power sharing accords.

CHAPTER SIX

CONCLUSIONS

Prologue

Despite the complex and intractable nature of internal or civil conflict originating from political contests, many negotiation efforts have produced peace agreements. These peace agreements have sought to protect and assure the parties in the conflict of their legitimacy in the post conflict phase by providing power sharing agreements within the main agreement like in the case of Kenya, Chad, Sudan, and Angola amongst others. Thus the peace agreement naturally appears to indicate an end to the violence and the success of the negotiation effort.

Internationally a growing number of states have continued to established power sharing measures as part of negotiated peace agreements to end civil conflicts, and in Africa it indeed is a “catching” on phenomenon. African societies have openly embraced the use of power sharing agreements especially due to the reason that many civil conflicts have been caused by high-stakes politics that have dominated the continents civil wars, where the winner-takes-all. Thus as a means to resolve the governance crisis its option is unrivalled.

However the success of power sharing agreements in Africa has no doubt elicited sharp debate on whether it is a useful model for the continent in regard to conflict management. This is because power sharing agreements have seemed to collapse more than succeed and in some cases have resulted to worse off conflicts than those they were addressing and this has made Africa be regarded as the graveyard of consociationalism¹. This consistent occurrence in the trend it has set during its implementation and has led scholars like Tull and Mehler amongst others, to nullify

¹ René Lemarchand, 'Consociationalism and Power Sharing In Africa: Rwanda, Burundi, and The Democratic Republic Of The Congo', *African Affairs*, 106/422, p

the advocacy of the use of power sharing to resolve African civil conflicts arguing they are the cause of the increasing insurgency in the continent.

However with caution not to quickly disband an ideology that has also been tried and succeeded, scholars like Harzell, Zartman, Hoddie, Bercovitch, Fortna et al, have embarked on a relentless effort to build a case as to why its failure is more than its success and why even though its experiments in Africa has generally failed, it does not nullify the case for its use but rather an effort to perfect it as a tool. This justification is what has led many other interested students of conflict management including myself to interrogate the area by continuing the research to bring to light the obstacles involved in the implementation of the idea. Based on the success cases of Burundi and South Africa, it seems that if properly implemented using the right conditions, it could provide the best chances for successful conflict management. In my research I have therefore stumbled upon various insights to further this field and it is my conviction that they will help to enlarge the body of knowledge I seek to be part of.

An Old Phenomenon

One of the most interesting things I realized is that power sharing in Africa is not a new phenomenon. It indeed existed in the era before colonialisation and it was successful in bringing harmony to the communities. However with the quick erosion of the African communal set up to embrace the new western set up, the governance structure changed to reflect bigger, better and more lucrative political positions. Today the clamor for these positions has seen an influx of politicians willing to go an extra mile to sit on the throne and it is unfortunate that the citizens who support their endeavors often fall victims to the costs of their race to power.

To resolve this menace the re-introduction of power sharing has seen itself feature dominantly in the agenda to finding a lasting solution. Through the age old method of

negotiations, belligerents have been brought to the table to size the pie and see the best way possible to share it. Unfortunately once this pie has been divided and all are required to begin enjoying the spoils, no sooner do we begin to see disgruntled recipients instead of happy partakers. This then makes observers like me wonder what the problem could be and shortly do I also begin my journey to unravel the mystery of the pie.

In my not so humble but sufficiently so finding, I have realized that the answer to successful implementation of a power sharing agreement lies in the actions that inform the outcome of the conflict. To be precise, the actions that constitute and inform the process of negotiations. Just like any other process, the process of negotiations has also been designed to bring forth outcomes that are based on inputs of a process. Scholars have endeavored to create and refine this process and it has been shaped and perfected by various experiences world over. To this end they have sufficiently concluded that for negotiations to be successful certain issues must be in place to ensure that the outcomes are implementable. Therefore it is only logical that the users of negotiations pay attention to the gurus that have shaped the field.

However in a well intentioned hurry to bring an end to the devastating conflicts that have befallen nations, conflict managers have often resorted to use negotiations as a measure to resolve the disputes and in the process have overlooked its 'user manual' and the results have been evident in the rating they post during implementation of the outcomes. Therefore it is necessary to acknowledge that there is a procedure that needs to be observed so that in the production of the outcomes the required inputs in the required measures and at the required time all bring to bear an outcome that will have a greater chance of survival.

Conditioning for Success

The first and most critical user guide is the issue of the ripe moment which cannot be overstated. Taking the cue from Sir Isaac Newton an apple can only fall when it defies gravity. But in a better show of words Kleiboer² says that “When thinking about ripeness, the obvious comparison is with fruits. Apples need to be ripe in order to be 'good' for consumption”. The logic presented is simple but very complex to implement in the case of negotiations. To perhaps be more dramatic in its explanation I seek to use an analogy informed by African women in their endeavors to feed the nations. During the harvest of sweet bananas or mangoes, those that are ripe or seem ripe get plucked. However the pickers may not realize that some of the fruit was not ripe for the harvest after they have plucked it. They therefore cover it up in banana leaves put it in woven baskets and into the granaries awaiting a moment in time that it will ripen and present forth a wonderful bite just like the rest. I know this better because as a child in my quick grasp to partake of such a fruit, a sharp pain often accompanied my hand out of the basket in the granary with a caution that my tummy would ache upon such an action.

Are the parties in the negotiations therefore willing to sit at the table or would they rather pursue more beneficial options. This is the question that should first embody the mind of anyone attempting to use negotiations as a mechanism. If they are willing the next question for them would therefore preoccupy itself with what will inform the discussions at the table. But if they are not ready there is need to create such a desire if one is still adamant in using negotiations. Carrots and sticks have often worked well in this undertaking and the Kenya case just studied has brought it out well enough. However there is caution that needs to be taken. Remember you may force a donkey to the river but it will not mean that the donkey will drink of the water. So in endeavors to make the moment ripe, actions to create a thirst in the parties to embrace the

² Marieke Kleiboer, 'Ripeness of Conflict: A Fruitful Notion?' Reviewed works, *Journal of Peace Research*, Vol. 31, No. 1 (Feb., 1994), p 110

outcomes of the negotiations are necessary. In Kenya for example the international donors were categorical that business as usual would only resume when there was proper implementation of the agreement. Therefore no party was willing to have a dysfunctional economy and they quickly partook of the outcomes by ensuring implementation achieved at least by the basic minimum approval rate.

Another interesting thing that I appreciated was that if the pie was to be the right size, the right taste and the right flavor with the right amount of moisture and shape and all that accompanies the desired type of pies that the feast needs, the identification of the ingredients, and the recipe of baking all need to suite the pie that must come out of the oven. If at the serving table the flavor irritates ones taste buds, or it's too dry to swallow or too hollow with nothing to savor then you will expect disgruntled eaters. So why then not also do the same for the negotiation process, make a proper diagnosis of the structure and observe the basic rules in the phases of negotiations. This definitely will be able to sift the chuff and ensure at the very least an outcome that has a better survival rate. A rushed baking process will only bring forth a rushed pie, a rushed feast and loads of constipation. Like the saying goes to cut a tree spend most of the time sharpening the axe and you will get maximum returns with minimum efforts when the chopping begins.

In one of the many days that I masqueraded in a braggadocio fashion, proclaiming of my inquiry that was to deliver me a scholar very soon, a young man challenged me as to whether the belligerents actually wanted to share power and if this was not the actual cause of their failure in Africa. For the first time I gave this a consideration and though I did not have an answer for him at the time, I hope he gets to stumble upon this work and find his reply. It really does not matter what the belligerents want. What matters is how to make them want what is on the table, eat it

and get satisfied and eventually feel that they had a good meal. That is where the art of spicing and flavoring comes in and only one endeavors to walk in the footsteps of the creators of this field will they learn the art of enticement to the unwanted served meal. A contradiction perhaps to my earlier observations, well.

In my final submission, indeed, much more work needs to be done in this important area, and I hope that this exploratory piece will bring these matters to the attention of both academics and practitioners.

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