

## **Peacemaking and Power Sharing: Building on the South African Experience.**

The 'miracle' of South Africa's transition to democracy and peace in 1994 has had a profound impact on the prospects of settling conflicts through negotiations.

Sadly, that 'miracle' has not always been repeated in the years since. This is true even in instances where South Africa has been involved in peace making, particularly on the African continent.

The South African story continues to represent a beacon of hope for all who seek peaceful and lasting transition but we need to bear in mind the dangers of reducing peacemaking to mechanical formulas that produce outcomes with perhaps greater harmful 'unintended consequences'.

What then are the defining features of South Africa's negotiated transition?

### **The South African transition.**

Firstly, South Africans took ownership of the negotiating process. This was agreed on by the two principal parties to the conflict, namely, the South African government and the African National Congress (ANC).

This does not rule out external initiatives to bring about peace settlements and a negotiated transition. But such initiatives should be designed to ensure that those directly affected take ownership at the earliest opportunity. Taking ownership is not a one-off event and should remain a goal at all times.

The South African process was designed to be inclusive. The Convention for a Democratic South Africa (CODESA) and its successor the Multi-Party Negotiating Process (MPNP) had 19 to 21 parties participating.

Issues of ownership and inclusivity go to the heart of a sustained and legitimate settlement. This does not mean that every party must agree with every decision. The value of inclusivity is that everyone should feel that they have been heard and had a chance to influence the outcome.

The third feature was the creation of a new Constitution. Perhaps the greatest challenge in South Africa was to create a bridge to enable moving from the existing white minority controlled order to majority rule based on universal adult suffrage.

For this to be accepted all sorts of fears and concerns had to be addressed. Those who feared majority rule wanted the Constitution sealed at the negotiating table. Those who supported majority rule wanted the final constitution to be written later, with the broadest participation of the people.

Both sides eventually found reassurance in the agreed Bill of Rights and the 34 binding constitutional principles. Within this framework the concept of a government of national unity (GNU), which would have a life span of a maximum of five years, became an important element of the transition.

The principal features of the GNU in South Africa were: (1) an Executive President; (2) the stipulation that each party holding at least 80 seats in the National Assembly of 400 elected members shall be entitled to designate an Executive Deputy President, and that if no party or only one party gained 80 seats or more, the party holding the largest number of seats and the party holding the second largest number of seats shall be entitled to designate one Executive Deputy President from among the members of the National Assembly; and (3) the provision that each party holding at least 20 seats in the National Assembly and which decided to participate in the GNU shall be entitled to be allocated one or more Cabinet positions.

This type of formula has come to be the hallmark of power sharing. The key here was a strict five year tenure, at least two executive Deputy Presidents, and a structure that embraced the minority parties whose reward for winning 5% of the National Assembly seats would be a place in the Cabinet of 27 Ministers.

An often misunderstood feature of the South African transition is the issue of amnesty for past atrocities and the healing role of the Truth and Reconciliation Commission. These two aspects featured tangentially in the agreements. The TRC acquired form and content under the GNU led by the ANC.

These features have been summarised here in the hope that they better enable us to assess the manner in which power-sharing and mechanisms to address human rights violations are introduced into efforts to make peace and realise democracy in conflict situations.

## **Kenya.**

On 27 December 2007 Kenya held Presidential and Parliamentary elections. The Electoral Commission, chaired by Samuel Kivuitu, declared Kibaki the winner of the presidential elections on December 30, placing him ahead of Odinga by about 232,000 votes. Kivuitu said that while irregularities did occur, they were a matter for the courts, not the Electoral Commission.

Kibaki was sworn in as president on the day the results were announced. On January 2, the chairman of Electoral Commission said that he had been pressured into announcing the results without delay, declaring Kibaki the winner, and further claimed that he did not know who really won.<sup>1</sup>

Within minutes of the declaration of Kibaki's victory, tribe-based rioting and violence, primarily directed against Kikuyu, broke out across Kenya.<sup>2</sup> The unrest involved ethnic violence between members of different tribes, particularly between the Kikuyu and Luo<sup>3</sup>. The political split at the polls became an ethnic one. Kenya hovered on the brink of civil war. The violence claimed more than 1,500 lives and some 300,000 fled their homes.

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<sup>1</sup> The Standard, Online edition, "I acted under a pressure, says Kivuitu (<http://www.eastandard.net/news/?id=143979833>).

<sup>2</sup> Kibaki is a member of the traditionally dominant Kikuyu.

<sup>3</sup> Odinga is a member of the Luo tribe.

According to the figures released by the Electoral Commission Kibaki pipped Odinga by a mere 225,174 votes. On the other hand in the parliamentary elections Odinga's ODM won 99 seats, while Kibaki's PNU won 43 seats, out of a total of 222 parliamentary seats.

It was in this context that that peacemaking and mediation arose. Almost from the outset the thrust of these efforts centred on creating a coalition government.

There were calls for a recount but nothing came of this. Kibaki wanted acknowledgement of the legitimacy of his status as the elected president as the starting point of any discussions/negotiations.

On January 8 Kibaki announced the appointments of 17 ministers for his new cabinet and of the leader of ODM-K, Kalonzo Musyoka, to the position of Vice President. These appointments were announced on the day that the African Union chairman and President of Ghana, John Kufour was due to arrive.

Kibaki had effectively closed the door on any recount or fresh tallying of the votes. He had also forced his way into receiving de facto recognition of his position as President of Kenya. Henceforth whatever battles Odinga would win, the name of the game would be power-sharing.

Odinga strengthened his position when the Kenyan Parliament convened on 15 January, 2008. The ODM won the post of speaker in the assembly.

Kofi Annan arrived in Kenya on 22 January. He stayed full-time at the task and kept the parties engaged until agreement was reached and signed on 27 February. From the beginning he had the support of the African Union. He made sure he drew in the support of the UN Secretary General Ban Ki-moon, the US administration, the European Union and the international humanitarian agencies.

On 23 January Kofi Annan's position was that the crisis of "the stolen election" could not be resolved until "we establish the extent to which the votes were stolen".<sup>4</sup> But by 12 February he announced that both sides had agreed not to pursue the recount of the votes. He went on to suggest that a "grand coalition" government could lead to a lasting solution. Thus Kibaki's position as President was no longer in question.

Meanwhile, on February 2 Annan announced an agreed 4-point peace plan. The first three points of the plan he said would be completed within 15 days. These were the stopping of violence and restoring fundamental rights, taking measures to address the humanitarian crisis and promoting 'reconciliation, healing and restoration'. The fourth he said could take a year and this was the resolution of the political crisis.

The agreement to set up a Grand Coalition included a provision that within 15 days the deal would enjoy the force of law. With the backing of all political parties the Kenyan parliament convened on 11 March and passed the two bills that gave effect to this. All 23 parties represented in parliament were briefed and their support obtained. Annan had succeeded in meeting the requirements of inclusivity and passing ownership into Kenyan hands.

There is enough evidence for the view that Kofi Annan came into the mediation with the goal of a power sharing solution as a transitional mechanism and an initial target of ending the violence and "restoring fundamental rights". It was an externally determined goal and he mobilised every conceivable resource from the outside world to bring pressure to bear in order to achieve that result. He pushed this agenda until Kibaki and Odinga accepted that it was the only way forward. In short Kofi Annan called the shots and he had the power behind him to do so.

Kibaki was recognised as the President of Kenya. The post of executive Prime Minister was created for Raila Odinga. The agreement created two deputies Prime Ministers, one each from the PNU and ODM and the 40 cabinet posts were divided

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<sup>4</sup> Voice of America report by James Butty dated 23 January 2008.

20-20 between the PNU and ODM. Kibaki's party retained both the finance and internal security ministries.

On 13 April the President announced the formation of his cabinet which, according to African Press International, was made up of 41 cabinet ministers and 52 assistant ministers drawn from a parliament of 222 members.

What are the implications of the Kenyan power sharing arrangements? Apart from the phenomenal burden on the taxpayer, the reality is a parliament dominated by ministers and deputy ministers. So much so that parliament is in danger of becoming a mere extension of the executive. Furthermore what work would so many members of the executive be doing? Idle hands in such a situation become another embedded agency for corruption to become not only endemic but systemic. Kibaki had suffered a backlash earlier precisely because of the levels of corruption within government. Now another layer vulnerable to corruption has been added.

Kofi Annan was faced with several challenges: to restore peace, get the parties to agree to share power in a Grand Coalition and ensure these transitional arrangements lead to new elections.

The promise was that a new Constitution would be negotiated within a year. However Kibaki and Odinga are being drawn together for survival. There are in-built factors tending to dilute the transitional nature of the arrangement.

Within days of arriving in Kenya Kofi Annan spoke out against the violence which has marred elections since 1991. By 4 February he was suggesting a South African type Truth and Reconciliation Commission.

On 23 May 2008 government set up a Commission of Inquiry into Post-Election Violence (CIPEV) with Mr Justice Philip Waki, a judge of Kenya's Court of Appeal, as its chairman. Kibaki and Odinga have accepted its report.

The Commission submitted a set of recommendations hoping these would "break the cycle of impunity which is at the heart of the post-election violence". It compiled a list

of suspects, whose names remain under wraps, pending a Special Tribunal for Kenya to investigate and prosecute such crimes. It has threatened to send the names to the International Criminal Court if the Special Tribunal is not convened.

Meanwhile, the people of Kenya are reliant on the stability of the negotiated Coalition and though there are positive signs, the omens for Annan's key objectives are not all good.

He has certainly done his best to ensure some accountability for the violence. He also seems to have settled the conflict around the presidential elections by a power sharing arrangement – but big question marks remain about the consequences of this arrangement.

Annan's third objective was to use the realisation of these two objectives as a bridge – a transitional arrangement – to fresh elections that would give expression to the will of the people of Kenya. The danger is that critical issues will remain unattended or compromised over the next election cycle.

The questions arise: What about the fire next time? Has Kenya bought peace in the context of the present violence at the cost of greater violence the next time round? And what are the consequences of the settlement for addressing poverty, corruption, for human rights and democracy in Kenya? Only time will disclose the answers.

## **Zimbabwe.**

Zimbabwe's crisis has built up inexorably over several decades. The economy is in meltdown, human rights violations are unchecked, the security establishment has become the power behind the throne, the humanitarian crisis has reached horrendous proportions and democracy has been reduced to a fig leaf for presidential rule.

The descent of Zimbabwe into its current state can be traced as far back as 1982-1985 when the Fifth Brigade was used to brutally crush any resistance in

Matabeleland. Thousands of civilians lost their lives and political opposition was neutered until Morgan Tsvangirai formed the MDC in 1999. No amount of state repression – notably violence and vote rigging in the 2002 elections – and even the emergence of a breakaway group from the MDC, now led by Mutambara, could quell the rise of the MDC as a credible opposition though Mugabe persisted in claiming that the MDC was a merely a creation of western imperialism.

The SADC meeting held in March 2007 mandated the then South African President, Thabo Mbeki, to mediate the political situation that had arisen.

Mbeki came into his task somewhat compromised. He had failed to raise the voice of his country in condemnation of the gross violations of human rights that had been occurring in Zimbabwe. He had accepted the outcome of the 2002 elections and opposed the imposition of any form of sanctions against Zimbabwe.

Now Mbeki had to persuade Mugabe to hold peaceful, unrigged elections while urging the parties to draft a new constitution. To a certain extent he succeeded. The parties signed and agreed to a draft constitution in Kariba on 30 September 2007. Mugabe agreed to the simultaneous holding of presidential, parliamentary and local elections on March 29, 2008. Most observer missions were of the view that, compared to previous elections, the March 2008 elections were “partly free” but that the electoral process was wanting in respect of fairness. The MDC won 99 seats, Zanu-PF 97 seats, the breakaway MDC Mutambara faction 10 seats. At bye elections held in June 2008 the MDC added one more seat and Zanu-PF two.

Mugabe had lost his grip on parliament. It looked briefly as if Zimbabwe was heading for a miracle and that he would yield peacefully. But the security chiefs urged him to hang on.

The ZEC held back on the results of the presidential elections. When the result was finally declared more than a month after the poll Tsvangirai had received 47, 9% and Mugabe 43, 2% of the votes cast. A winner needed a clear majority of 50% plus so a run off was set for June 27. The build up to this run off became the key to Mugabe’s fight back.



On 1 June the army chief of staff told his forces that they either support Mugabe or leave the army. The crackdown on the MDC intensified. The secretary general of the MDC, Tendai Biti, charged with high treason. The Mugabe government channelled international humanitarian aid towards its own supporters. On 15 June Mugabe stated he would go to war if he lost the run off.

A week later, in this atmosphere of tension, harassment and unchecked violence, Tsvangirai withdrew from the run off. The ZEC announced that his name would remain on the ballot paper and that Mugabe would retain power if there was no run off.

Mugabe won. He set out to do a Kibaki. On 29 June he was sworn in as president. To all observers he had stolen the elections. The African Union (AU) observer mission condemned the vote. Three African monitoring groups labelled the presidential election as “inadequate, not credible and not reflective of the will of the people”. Despite this Mugabe was allowed to occupy the seat of Zimbabwe’s president.

Mbeki now stepped back into the crisis, his mandate renewed with a power sharing solution in mind. The Global Political Agreement (GPA) signed on 15 September, 2008 was hailed as the magic fix that would resolve the conflict and set Zimbabwe on the much-needed road to economic recovery.

The core of the agreement revolved around the structure and composition of the government, with Mugabe remaining as the President and Tsvangirai becoming the Prime Minister and a careful parcelling of seats in the cabinet and the senate.

The agreement created three arms of governance – the cabinet, a Council of Ministers and the National Security Council – stating significantly that the “Executive Authority of the Inclusive Government shall vest in, and be shared among the President, the Prime Minister and the Cabinet, as provided for in this Constitution and legislation” and that cabinet “shall take decisions by consensus”.

In order to better grasp the disputes that have arisen since then, it should be noted that the agreement states that the president “shall, pursuant to this Agreement, appoint the Prime Minister pending the enactment of the Constitution of Zimbabwe Amendment no. 19 as agreed by the parties”.

Neither of these steps has been taken and Parliament has been dormant since it was sworn at the end of August 2008.

In the meantime Mugabe appointed his two Vice Presidents, a task which was his exclusive prerogative and appointed several governors, which is not his exclusive prerogative.

An emergency Extraordinary Summit of the SADC Organ Troika in October heard Tsvangirai complain of the lengthening delay in implementing that miracle cure, the GPA. There was dispute over the allocation of ministries and Mugabe’s unilateral appointments. Tsvangirai was pressing for Constitutional Amendment 19 as the key to inclusive government. While the Troika noted “the progress made so far regarding allocation on ministries” the MDC’s statement afterwards said that “the Troika could not narrow the gaps” between the parties and urged that the SADC summit be urgently convened to address the allocation of “portfolio ministries”, the appointment of ten provincial governors, the composition, functions and constitution of the National Security Council, the appointment of Permanent Secretaries and Ambassadors, and the Constitutional Amendment No. 19 “which is the legal document that is necessary and conditional in bringing the GPA into life”.

The same disjuncture surfaces when the decisions of the SADC summit held on 9 November 2008 are set against the press release of the MDC after the meeting. Firstly, SADC decided that the inclusive government be formed forthwith; secondly the Ministry of Home Affairs be co-managed between Zanu-PF and the MDC-T; thirdly, the Parties must, without further delay, introduce the Constitution of Zimbabwe Amendment Number 19.

In a press statement the MDC said Amendment 19 was just one of several contentious issues the summit failed to address. The SADC’s rulings effectively gave

Mugabe the mandate to form a supposedly inclusive government in his capacity as the President of Zimbabwe while Tsvangirai and Mutambara are out in the cold, lacking the warm coat of inclusion that Amendment 19 is supposed to give them – a situation which gives Mugabe significant advantage to decide and act, in disregard of specific provisions of the GPA.

The Kenya Grand Coalition and the Zimbabwean Inclusive Government have the common feature that they were pre-determined concepts brought in by the mediators. However, the Kenyan solution emphasised the primacy of the Constitutional amendment, specifically overseen by the mediator Kofi Annan. In Zimbabwe the order was reversed and the MDC-T has found itself in a situation in which it has decided not to join a government that Mugabe seeks to create on the basis of the SADC summit decision. In short the crisis has deepened.

What next? If the MDC-T holds out then Mugabe's efforts to form a government will be unworkable. But the MDC-T cannot just sit on its hands –it is the largest party in parliament - has to come up with proposals and actions that underline its majority status and the responsibilities that go with this status.

Meanwhile, SADC has status problems of its own – it has issued rulings that face rejection: a severe knock to its authority and a poor reflection on its leadership. The harder it tries to enforce its rulings the more fragile the 'imposed' solution will become.

### **Some concluding observations.**

We began this investigation inspired by the South African 'miracle', which raises the hope that it is possible to resolve even the most intractable conflicts plaguing the world through effective dialogue and negotiation. It is the parties at the centre of a conflict who have to make and sustain the peace.

At the heart of peacemaking is the need to address the interests, fears and concerns of all those involved. The aim must be to improve the lives and human rights of the citizens of the country.

To ensure that there is a balancing of these legitimate and competing, contradictory and complementary needs we noted that the processes created in South Africa sought to be inclusive, that ownership of the process was taken up by the main protagonists, that transitional mechanisms were established to carry society from the past that generated the conflicts to a future where a system of government and governance was derived from the mandate of the citizens and accountable to them.

Finally we took note that atrocities and gross violations were committed during the conflict and that these need to be addressed in a manner that facilitates the transition and the consolidation of the new order.

By extending our investigation to Kenya and Zimbabwe we have managed to deepen our understanding of these attributes, to modify and expand on them and better appreciate what we need to avoid when seeking to turn armouries into granaries.

Kofi Annan succeeded in winning the confidence of the two principal parties to the conflict, kept them at the table and got them to recognise that there was a win-win for each. The difficult part was the distribution of powers between the President (Kibaki) and the Prime Minister (Odinga) - the results of the parliamentary elections had to be taken into account and any solution that ignored them would be less sustainable. When agreement was reached all the other parties were brought on board so that Parliamentary sanction legitimised the settlement and created an inclusivity that went beyond the bounds of a two party agreement.

In the case of Zimbabwe, the inclusivity is there both in the dialogue process and the GPA. But the win-win element is absent. The fact that the MDC-M is wary of joining a government in which the MDC-T is not present underlines the concern that the settlement is not likely to enjoy the support of the Zimbabwe citizens and the fear that such a government will not enjoy legitimacy. Until the distribution of powers

acknowledges the results of the parliamentary elections of March 29 stability and sustainability will always be questionable.

The transitional nature of the Kenyan settlement is underscored by the expectation that there will be fresh elections at the end of two years. We have noted that developments within both parties seem to be driving Kibaki and Odinga towards prolonging the power sharing arrangement, notwithstanding the serious consequences for the future of democracy in Kenya.

The GPA in Zimbabwe is silent about the transitional nature of the settlement. The implications for democracy and accountability are even more serious when a three-way power sharing government will command the votes of 209 out of the 210 elected parliamentarians.

While the SA experience points to the major advantage if the process and the solutions emerge from within and among the antagonists, the Kenya experience also shows that externally driven solutions can endure if critical outside players underwrite the agreement. In the case of Kenya, in addition to the backing of the AU, it was the support of the US and the UN that played an important part in lending a measure of sustainability to the agreement.

The electorate in Zimbabwe voted for a change in government. Given the continuation of violence against opponents of Zanu-PF and Mugabe both the MDC and its breakaway faction cannot but look nervously over their shoulders for fear of how the electorate will see them.

The experiences of the campaign of the Fifth Brigade in Matabeleland in 1982-1985 and the end of Zapu as a result of the merger in 1988 must weigh heavily on the MDC as it is driven towards a power sharing with Mugabe, whose grip on the security and intelligence services remains as firm as ever. In fact Mugabe survives only because the security chiefs still support him.

Without the MDC any move forward in Zimbabwe would lack credibility and legitimacy. From the point of view of peacemaking some elementary don't- do's have

been committed. The impartiality of the mediator has come into question on several occasions. Peacemaking is about the parties to the conflict coming to an understanding and mediators must know when to step aside. Kofi Annan called in the services of Cyril Ramaphosa from South Africa. Shortly after his arrival in Kenya the Kibaki side questioned Ramaphosa's impartiality. Although he had an explanation for the issues raised Ramaphosa realised that perception is important and he withdrew. He understood that the name of the game was to bring about peace.

If the Kenyan settlement has significant question marks around it, the position reached in Zimbabwe is disastrous. Does this mean the case of Zimbabwe is hopeless? We cannot will away what has happened, but there has to be a way forward.

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