

Mediating to Governments of National Unity – A conflict transformative approach

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In its simplest sense mediation can be defined as the act or process of mitigating the concerns of disputing parties by an intermediary who is not a party to the conflict, but who enjoys the trust of all parties and whose goal is to help forge settlements that are deemed acceptable.² The mediator therefore acts as both a bridge and a buffer between the parties in dispute. The key to any meaningful mediation therefore lies in understanding, managing and transforming the political, economic, social and psychological dynamics of conflict that make disputant parties resistant to negotiations.³

1 Dr Grace Maina is the Acting Manager of the Knowledge Production Department at ACCORD. Thanks to Beatrice Nzovu for the preliminary thinking on this paper and Denis Otim for his research contribution.

2 Nathan, Laurie, 2005. "Mediation and African Union's Panel of the Wise", Crisis State Research Centre, LSE, Discussion Paper No. 10.

3 Ibid.

Moore in his book, *The Mediation Process*, defines mediation as an extension and elaboration of the negotiation process that involves the intervention of an acceptable, impartial and neutral third party who has no authoritative decision-making power to assist contending parties in voluntarily reaching their own

Photo: (From L) Kenya's president Mwai Kibaki (seated) and opposition leader Raila Odinga (R, seated) are assisted in signing an agreement in Nairobi, February 28, 2008. The power-sharing agreement intended to end a post-election crisis that left at least 1,000 people dead. Witnessing the occasion are Tanzanian president Jakaya Kikwete (top L), Chief mediator Kofi Annan (C) and former Tanzanian president Benjamin Mkapa (top, 2nd R). Assisting Kibaki and Odinga are Attorney General Amos Wako (L) and James Orengo (R).

mutually acceptable and implementable settlement.⁴ Mediation is not a necessarily novel practice as it has been used for years in different forms in official or informal contexts and at high-profile or in low-key endeavours.

In the post-2000 era there have been a notable number of conflicts that have been ignited by grievances over bad governance and exclusionary political practices. In other instances, flawed or failed elections have triggered political disputes resulting in violent conflicts. Fomunyoh notes that election based disputes raise special concerns, especially around issues of reviving political will and recreating a neutral political space in which citizens can participate in the development of their country.⁵ Election based disputes also raise moral concerns over the engagement of the mediator and the international community, since the mediator in many instances has to walk a fine line between respecting the sovereignty of the state in question and also bears the responsibility of protecting the citizenry. Historically, regional actors and the African Union (AU) have been very reluctant to intervene in the affairs of a member state without formal request from the state. Such actions would often be referred to as interference in the affairs of a sovereign state. However, recently the AU, through a provision of the Constitutive Act, has the right to intervene to protect the local populations against war crimes, genocide and crimes against humanity.⁶

Following the recent cases of grievances over election results, mediation efforts have resulted in the formation of what we now refer to as Governments of National Unity (GNUs). GNUs are arrangements that seek to manage conflict by bringing opposing parties together with the aim of inclusive governance, quelling violence and establishing an acceptable solution to different disputing parties. These types of governments find expression currently in countries such as Zanzibar, Kenya and Zimbabwe. While the label 'Government of National Unity' is the politically correct reference to these governments, in reality these unions are characterised by general mistrust and constant tension such that the unity narrative can only be seen as a misnomer.⁷ GNUs are however a significant product of rigorous mediation initiatives by mediators of high calibre who can bring aggrieved parties together and form coalitions as a way to resolve conflict. While these solutions seem temporarily acceptable, the key question is whether such mediation outcomes can sustainably

transform conflict and address the root causes of violence. Another concern for GNUs is that more often the mediator has limited ability to enforce the implementation of agreements made by the parties involved. Ultimately, the reality is that GNUs are the lowest cost solution of a temporal nature which cursorily address the conflict.

Towards Governments of National Unity

It is important to note that while current examples of GNUs are a result of election differences this has not always been the case. The trend towards power sharing is a longstanding solution and has been utilised as a conflict resolution tactic or a preventive action solution in other instances. A good illustration of this is the Liberian example where an Interim Government of National Unity (IGNU) was established with the clear intention of bringing about political transition through democratic election in July 1997.

This interim government had the intention of bringing unity in Liberia so as to end hostilities and pave a way for a transitional government following an election. The IGNU success was however hindered by its inability to create a governing structure to end the violence by the different warring factions.

South Africa is another significant example of this form of governance with the formation of a coalition or interim government formed just before the end of apartheid, during the CODESA conferences. In 1978 Zimbabwe also had a similar arrangement known as Zimbabwe-Rhodesia which was a union of the Ian Smith regime and the so-called progressive nationalists led by Bishop Abel Muzorewa. While it did not last for long, this government did pave the way for the Lancaster House negotiations which culminated in Zimbabwe's independence.⁸ The Ivory Coast GNU between the then Government and the New Forces rebels under the Ouagadougou peace agreement of 2007 also merits mention as another example of the inclination towards the GNU form of government. In essence the trend to GNUs is therefore not necessarily a new trend in political practice, what is significant however is that it has recently become a popular option for mediators in resolving election disputes.

In 2007, following the elections in Kenya and the announcement of the winning presidential candidate, violence broke out in various parts of the country leading to 1220 deaths, 3600 injuries and 300 000 internally displaced people.⁹ A team of eminent personalities under the leadership of the former United Nations

4 Moore, Christopher, 2003. *The Mediation Process: Practical Strategies for Resolving Conflict*, San Francisco, Jossey-Bass.

5 Fomunyoh, Chris, 2009. *Mediating Election Related Conflicts*, Geneva, Centre for Humanitarian Dialogue.

6 Article 4(h) of the African Union Constitutive Act, 2002; Protocol relating to the establishment of the Peace and Security Council of the African Union, 10 July 2002

7 Wanyande, P. 2010. Interview with the author on 24 August. Nairobi.

8 Mutisi, M. 2010. Interview with the author on 20 September. Durban.

9 OHCHR Report. 2008. OHCHR Fact finding mission to Kenya, 6 – 28 February 2008. Geneva.

Secretary-General, Kofi Anan mediated this conflict under the auspices of what was coined 'rapid response diplomacy and peacemaking' by the African Union. This mediation managed to bring an end to the conflict through a political agreement. The result was the formation of a GNU with Mwai Kibaki of the *Party of National Unity (PNU)* as the President, and Raila Odinga of the *Orange Democratic Movement (ODM)* as the Prime Minister.

In 2008 a similar agreement was reached after election dispute in Zimbabwe. Through the Southern African Development Community (SADC) mandated mediation process, the former president of South Africa, Thabo Mbeki, managed to bring political opponents, the *Zimbabwe National African Union (ZANU PF)* and the *Movement for Democratic Change (MDC)*, to the negotiation table. The outcome was the Global Political Agreement (GPA) of 15 September 2008. The power-sharing agreement seemed to be the best option to addressing the deadlock and political tension in Zimbabwe given the crisis of legitimacy that followed the controversial June 2008 run-off election. The AU and SADC advocated for the creation of a GNU with a view promoting peace, stability, democracy and reconciliation. The GNU in Zimbabwe witnessed redistribution of power between contending parties. In the GPA, Robert Mugabe of ZANU-PF retained the position of President while Morgan Tsvangirai of the MDC became the Prime Minister. Observers have questioned the viability of this solution given the power imbalance between the MDC and ZANU PF, which are blamed for the exclusionary nature of the GNU politics in Zimbabwe. The efficacy of this arrangement still remains questionable as it has had minimal success in enhancing livelihoods and the general economic environment in the country. Although levels of violence in Zimbabwe have somewhat dissipated since 2008, sporadic incidences of political violence, land grabbing, delays in implementing democratic reforms, human rights violations and denial of individual rights and freedom continues to mar the success of the Zimbabwean GNU.

A significant illustration in this debate is the recent undertaking to constitutionalise a GNU in Zanzibar. This agreement was made with the intention of ending the long-term tension among Zanzibaris by creating an environment for peaceful elections and addressing the anticipated fallout between the major political powers. The outcome of the referendum, which was held on 31 July 2010, provided for the creation of a GNU in Zanzibar. Unlike other GNUs that have been formed as a result of mediated talks following conflict among opposition parties (with intentions to end violence or come to a balanced power relationship), the Zanzibar case is more pre-emptive.

This GNU providing that regardless of the results there will be

a symmetrical power relationship between the indigenous *Civil United Front (CUF)* party that for years has been side-lined from Zanzibar politics by the dominating *Chama Cha Mapinduzi (CCM)* revolutionary party from the Tanzanian mainland following the presidential elections in October 2010 a GNU was formed and Dr. Ali Mohamed Shein of CCM became the first leader of the GNU, whereas Maalim Seif Sharif Hamad, of the CUF, now serves as the vice president of this unity government.¹⁰

The Zanzibaris are hopeful that this inclusive form of leadership will serve to resolve decades of crippling political feuds, imbalances and conflict. While this resolve might sound noble we can only wait to see how this agreement plays out in the coming years of its application and whether it works to transform structures of conflict.

Do Governments of National Unity transform conflicts?

Following the notable trend towards GNUs as a strategy of addressing conflicts, it is imperative that we analyze the normative and substantive contributions of these forms of governments. This section analyses the strengths and opportunities that these governments provide and the weaknesses and challenges presented by these 'unions'. It is important that research into the intention, trend and outcomes of GNUs establish whether this is a useful approach to attaining strong peace, which is the ultimate status of the transformation of conflict.

Strengths and Opportunities of GNUs

GNUs have often been criticised for their application and operation, and most of the reservations against these forms of governments often tend to emanate from their history and reason for their formation. It is imperative however to emphasise that despite their challenges these forms of government do have some positive attributes and provisions to the discourse of peace. One attribute of GNUs is their contribution to the cessation of hostilities in instances of violent conflict. In the aforementioned cases, the formation of GNUs served to bring an end to violence by creating a platform of perceived stability which then allowed these states to address the real issues that plague a state. In the Kenya case experts remain convinced that this was the only way to stop the violence, the rising death toll and displacement of individuals. The confidence that the citizens had in the mediation process made the GNU not only attainable but also ideal. Consequently the mediator in Zimbabwe engaged this solution as a way to dispel the unrest.

¹⁰ Reuters. 2010. Zanzibar's losing candidate joins Island's coalition. Available from: <http://www.reuters.com/article/idUSTRE6A11E520101102>. 2nd November. Accessed 13th Jan 2011

Any formation of a GNU must be complemented with a plan to resolve the root causes of violence, without which this form of government will not have served any meaningful purpose. GNUs must be seen to be temporary in nature with the purpose to provide space and time for disputing factions to resolve historical injustices and their differences so as to pave a way for a better placed democratically elected government.

GNUs are also perceived to be politically representative as they bring together parties from across the divides in the executive, legislature and sometimes in the judiciary. GNUs also address the exclusionary nature of liberal democracy and its application in Africa. The “winner-takes-all” format of democracy represents a problem for societies divided along strong identity lines, such as ethnicity. The limitation of westminster democracy to consolidate plural societies raises intellectual questions about the validity of power-sharing arrangements as facilitating peaceful transitions in divided societies. GNUs therefore present a format of governance in which different groups are represented and there is a perceived equity of division in power.

The inclusivity of power sharing agreements varies with every agreement but every effort must be made to include all the relevant stakeholders so as to ensure the sustainability of the agreement. It is important to note however that inclusiveness does not necessarily equate to effectiveness. Another concern in regards to representativeness is the degree of sharing between the disputing parties. In Zimbabwe, for example, there have been concerns that the MDC has not received its fair share of control over the political system. Similar concerns were expressed in Kenya where the ODM party felt that the ministerial allocations were not fairly divided and that they had been allocated with what they referred to as soft ministries.¹¹ Despite these concerns over inclusiveness and the extent of sharing between the different parties, these forms of governments do create a perception of representation that is necessary to enable meaningful change and to restore calm by ending hostilities.

The resolve by mediation processes to create GNUs has also contributed to meaningful progress by these governments to build a strong foundation for future government. A good example of this is the outcome of the violence free referendum in Kenya which resulted in the enactment of a new constitution that better defines and provides for leadership and resource allocation in the country. It is important however to note that there have been concerns raised as to whether this outcome was the result of the efficacy of the GNU or social pressure from both the local and the international community. Despite these reservations,

the enactment of a new constitution in Kenya reinforces the popular thinking that GNUs are temporal and are not an end to a political problem. Furthermore, their mandate is only to provide a platform that enables political reforms and addresses some of the inherent root causes of conflict.

Drawbacks and challenges of GNUs

GNUs are often seen as a conflict management mechanism which finds its basis on elite cooperation to achieve immediate peace. This kind of arrangement to attain peace is only confined to a particular group of people, the political elites, at the exclusion of the masses. Peace achieved in this manner cannot be considered to be positive strong peace as it is not reflective of a general consensus but is only an agreement of a selected few. GNUs are arrangements characterised by power politics as incumbents are merely concerned with protecting their interests. From the Kenya and Zimbabwe cases, it is evident that in the conduct of politics and governance there are no permanent friends or enemies, as politicians will readily make alliances with those they oppose, there are only permanent interests.

A significant drawback of the resolution to form GNUs following election disputes is the tyranny of example.¹² Following the agreement reached in Kenya, other election disputes have seen those who have lost elections asking for the formation of these forms of government so as to ensure their continued inclusion in government. There is concern that the Kenyan example has set a precedent by which incumbents may refuse to leave office following an election or the losing party could refuse to accept election results. The agreement in Zimbabwe following their election dispute has been seen by many to be a protection of the incumbent president of Zimbabwe. The disputed 2010 elections in the Ivory Coast between presidential candidates Laurent Gbagbo and Alassane Ouattara is very indicative of this fact.

The Independent Electoral Commission of Côte d'Ivoire declared Mr Ouattara the winner of 28th November 2010 election. The Constitutional Court thereafter declared Mr Gbagbo the winner of the presidential elections. The international community as well as Ouattara's supporters have repeatedly called for Mr Gbagbo to cede the presidency to Mr Ouattara who is seen by the international community as the rightful winner. Any resolve in this instance to form a GNU would be seen only as an effort to maintain Gbagbo in the presidency.

It is also important to point out that the altering of a government's constitution following electoral disputes is concerning as constitutions are created to be succinct and unchangeable documents of governance and should only be altered after

11 Wanyande, P. 2010. Interview with the author on 24 August. Nairobi.

12 Wachira, G. 2010. Interview with the author on 20 August, Nairobi.

serious consideration, and not just to accommodate those who have lost elections. This forms a concerning trend attributed to GNUs. Democracy demands free and fair elections in which the winner is mandated by the people to be an authority representing the majority.

The formation of GNUs following election disputes, especially in instances where losers retain power, is a deterrent to democracy and a mockery of the choice made by voters. While the Kenyan case was seen as necessary to deal with a problem of violence, it was also a result of an election crisis in which there was no clear evidence of who had won the election. Many have argued that this was not the case in Zimbabwe and that this arrangement was only to protect the incumbent. There have been arguments that if leaders are able to come together and decide a system of government despite election results, what then becomes of the right of the voter. These concessions over leadership by forming GNUs could easily be seen as undermining the voice of the people and their universal suffrage. There is real concern that GNUs perpetuate the notion that politics is a game of the elite and once they are content then everyone else is forced to oblige. When mediation takes a top-down approach and focus is only on the top leadership, notions that elections are not taken seriously and the wishes of the masses are not considered become prevalent. With GNUs that are largely modelled along the line of power sharing, there is legitimate concern over lack of public ownership of the new system of government. In any mediation effort, it is important to communicate the mandate of the mediation process to the people, as this rallies public ownership of the process.¹³ Where the public is unaware of the mandate there is a risk of false expectations as to what mediation initiatives are actually able to achieve.¹⁴

Another concern with GNUs is the lack of strong opposition that would act as a check to the activities of government to ensure good and proper governance. In Kenya for example there was concern that the GNU was ineffective due to continued political tension, violence and corruption. The opposition was made up of parliamentarians who did not get government appointments and this group struggled to act as a check on the government to ensure the needed balance to propel good governance. Democracy finds strength in a system of checks and balances and when this is found wanting or non-existent then this form of government can only be considered weak.

Another legitimate concern with GNUs is the question of sustainability. The costs of maintaining a highly detailed and representative government is expensive and the costs are borne

by the tax payers. Furthermore the sheer size does not always translate to better or more effective representation. In these forms of government the need to achieve representativeness is the driving force behind every ministerial creation and provisioning. The costs of perceived representation are high and in the long run unsustainable. It also creates a situation in which the focus is more on the sharing of power and less on the process of rebuilding the country. Every political discussion becomes about how to be fairer in sharing the national cake and without international pressure and sanctions these patterns can be self destructive. One would therefore question whether these formats of government are internally motivated to do good and to set right historical injustices or do they need the constant external probing to ensure that they stay true to governing their citizenry. This continues to propagate the thinking that GNUs only work to serve the elites and have very little to do with the masses. GNUs are intended to resolve issues of competing interests but they are unlikely to resolve these issues when the focus is about sharing of the political pact and not on the social transformation of the state structure that is prone to crisis.

Recommendations

There must be recognition that GNUs, as seen in different post conflict countries and even in the illustration of Kenya and Zimbabwe, are not permanent resolves and must always be regarded as interim measures. This policy and practice brief makes the following recommendations to the growing trend of GNUs:

1. GNUs are short term vehicles for reconciliation, political transition and social change, and as such they must be time bound.

The constitutive document of the Kenyan GNU articulates the structural problems that continue to plague the Kenyan society and suggest possible resolves to these issues. While the recommendation is to ensure the temporal nature of these governments the Zanzibar example presents a unique case where such government has been created to pre-empt possible conflict. Even in this situation the agreement must be constantly evaluated to ensure its reflection and representation of the realistic view of the public.

2. GNUs must address structural causes of the conflict, work towards democratic reform.

These agreements must put in place some measures to promote the conduct of credible elections in the future. Attempts should be made to deal, or to set the scene for dealing, with issues of representation, marginalization and equitable distribution of power and resources.¹⁵

13 Sachane, J. 2010. Interview with the author on 9th September. Durban

14 Ibid

15 Lynch, G. 2010. Interview with the author on 18 July. Leeds.

3. GNUs must be formed only when there is a real need and only when all other avenues of resolving the conflict have been explored. Not every election dispute should result in the formation of a GNU since this would in fact be counterproductive and delay already fragile democratic gains. More innovative thinking and research needs to go into thinking of possible alternatives to this solution. The current situation in the Ivory Coast begs for innovative thinking and practice that sanctions incumbents who insist on maintaining power and disregarding the will of the political masses.

4. Changing of constitutions so as to accommodate differential needs of parties to a political conflict must be avoided at all costs. Where a precedent such as this one has been set there is a tendency to abuse it. On the other hand it is important to note here that constitutions in most African states stem from colonial history and subsequent independence, and very few African states, even after 50 years of independence, have adopted new constitutions. A constitution of any state is meant to be custodian of the social contract that exists between the citizenry and its leadership. Ironically the masses in many African states have not been party to the creation of this social contract as they have had no hand in the provisions of the constitutions that govern them. GNUs could therefore provide the opportunity for the citizenry in any one country to participate in drawing the terms of the social contract through constitutional reform.

5. The mandate of the GNU must be specific and clear so as to ensure its utility in transforming systems of governance and inclusivity for all. With current GNUs being the product of rigorous mediation initiatives it is critical to the sustainability of these governments that mediators play a role in monitoring the implementation of GNUs and holding parties accountable for their promises. This role must be factored into the mandate of any given mediator who facilitates the formation of such governments. Such a role must not be perceived to be so dominant that the public loses confidence in their own governments' ability to rule, but there should be a perceived responsibility of mediators to resolutions they facilitate. Mediators must go beyond 'getting to yes' if their role is to achieve any conflict transformative resolve. There has been concern for example over the GNU in Zimbabwe which is now perceived to be in a state of limbo. With a limited mandate it seems the mediation over the election dispute in Zimbabwe was geared more to securing a signed peace agreement but failed to address the specific challenges and differences that arose beyond the agreement to forming a GNU.

6. Shift in political practice. As African states grow into a democratic practice, politics should be based on issues and not personalities. The politics of personality continue to plague the practice of African politics and these issues must be revealed. The violence that ensues following elections often tends to be the result of incitement of the electorate by particular politicians. Politicians who incite violence must be held accountable for their actions so as to deter future instigation. When asked about the activities of the International Criminal Court in Kenya, many were of the view that the ICC served a critical function of deterring politicians from hate speech and ensuring that they remain accountable for their actions. The fact that some politicians might be held responsible for their role in the post-election violence is a welcomed endeavour and will serve to inform better campaigning language and mobilization in future.

7. More integrative research into the implications of GNUs in the country of application and on the local populations. This research is fundamental in establishing better practices to ensure that where GNUs are formed they are set up to address the important issues in transitioning the state to delving into and dealing with the root causes of conflict thus resulting in positive or strong peace.

8. Enhancement of Civil Society commitment. In the quest to create healthy, just and accountable states there is a need to ensure that civil society remains committed to enabling a transparent and strong state. Civil society has the critical role of demanding that the needs and the reality of the citizens are well represented and consequently well attended to. Civil society must continue to advocate for more representative, effective and accountable structures to ensure that these structures are responsive to the needs of the people.

Conclusion

With upcoming elections in Zimbabwe and Kenya in 2011 and 2012 respectively, now is an opportune time to take stock of the role played by GNUs in those nations. It is imperative to ask whether there has been less political tension because of these GNUs and if there has been better representation of the needs of the political mass as a result. This paper establishes that there have been positive developments resulting from GNUs but there have also been serious drawbacks and challenges to administering this form of government. The success of any GNU over another resonates in why it was enacted, the motivations of the different parties involved, and the mandate of not only the mediator who facilitates its formation but also the mandate of the GNU in and of itself. All these factors have a bearing on how we measure the success of any one GNU, and how we maximise

its sustainability and utility for the benefit of the governed. While this policy and practice brief makes an assessment of some of the results of GNUs, there is need for a more in-depth study into the efficacy and successes of GNUs so as to establish their value in the practice of democracy in Africa. GNUs are arrangements that seek to manage conflict by bringing opposite parties together with an aim of quelling violence and establishing an acceptable solution to disputing parties. While these

GNUs may in the interim quell conflict they do not necessarily address the root causes of crisis. Nonetheless, in the contemporary era of new forms of political disputes, these arrangements have been found to provide the necessary platform to at least facilitate the process of conflict transformation. It is important to note that while elections are an essential mark of democracy they are not the only element that contributes to strong peace. Therefore it is imperative that governments in Africa do not over-invest in elections but that they recognize elections as a single limited tool contributing to the multifaceted environment of peace.¹⁶ In our quest to transform the nature of conflict following elections on the continent, structural issues must be dealt with to ensure that the African condition is characterized by peace.

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