

HOW AND WHY AFRICAN MEDIATORS COMPROMISE DEMOCRACY

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Abstract

The African Union and the sub-regional organizations on the continent have a formal commitment to democracy. Yet when they undertake mediation in high intensity conflict they have often compromised democracy. They have condoned undemocratic power-sharing arrangements; endorsed undemocratic elections; annulled democratic elections; accepted the overthrow of elected governments; and legitimized coup leaders. A general explanation for this tendency is that the mediating bodies prioritize peace and stability above democracy. Their motivation is based on a collective interest in regional stability; humanitarian concerns about the destructive effects of violence and instability in the country in crisis; and the obstacles that fighting and volatility pose to restoring democracy through free and fair elections. Moreover, the logic of mediation encompasses inclusivity, consensual decision-making and concessions by the conflict parties, all of which may contribute to compromises of democracy in order to forge a negotiated settlement. While compromising democracy may seem necessary in a particular conflict, it also has serious drawbacks. It is usually unjust, favoring the ‘bad guys’ and prejudicing the ‘good guys’, it undermines the mediating bodies and their avowed commitment to democracy, and it sets a bad precedent that may reduce their leverage in future cases. Where democracy is in tension with peace and security in the course of conflict resolution, mediators consequently face a tough dilemma that has no straightforward solution.

Introduction

In the African context, mediated negotiations are the dominant form of ending high intensity conflicts such as coups, civil wars and major electoral disputes. In most instances the mediating body is either the African Union (AU) or one of the sub-regional organizations, which include the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC). While the details of the mediator's proposals and the agreements concluded by the conflict parties naturally differ from one case to another, the general goal of the mediating bodies is to attain peace, stability, constitutionality and democracy.¹

Given that the introduction or restoration of a democratic system is a primary goal of peacemaking on the continent, it may be surprising to learn that African mediators frequently compromise democracy in their efforts to resolve a conflict. The episodes where this occurs invariably attract domestic and international criticism. In the scholarly literature, however, there has been no systematic identification and analysis of this phenomenon. This paper seeks to fill that gap. It presents a typology of the ways in which mediators compromise democracy and explores the motivation for their decisions. The compromises are categorized as follows: mediators propose or endorse an undemocratic power-sharing arrangement; endorse an undemocratic election; annul a democratic election; accept the overthrow of an elected leader and government; and legitimize a coup leader. The paper does not cover the problem of mediated agreements that compromise justice, such as by granting amnesty for human rights abuses.

It appears that mediators compromise democracy for four reasons, relating respectively to the mediator's interests, the logic of mediation, pragmatism and the imperative of peace and stability. First, the controversial decisions made by the mediating organization may be driven by its political, ideological or strategic interests. Second, the logic of mediation encompasses negotiation, consensus and inclusivity, leading to compromises of various kinds in order to forge a settlement acceptable to the parties. Third, mediators might dilute or abandon a principled democratic position for the pragmatic reason that they lack the power to compel

¹ For example, AU, 2002, Protocol Relating to the Establishment of the Peace and Security Council of the African Union; AU, 2007, African Charter on Democracy, Elections and Governance; SADC, 2001, Protocol on Politics, Defence and Security Co-operation; and ECOWAS, 2001, Protocol on Democracy and Good Governance, Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.

intransigent parties to accept it. Fourth, in high intensity conflict mediators may prioritize the attainment of peace and stability above democracy. This is not a simple tension between principle and pragmatism or between democracy and stability. Rather, the dilemma may revolve around sacrificing democracy in the short-run in order to establish peace and stability as pre-requisites for the consolidation of democracy in the long-run. More broadly, though, compromising democracy in a particular case may set a bad precedent for future cases and it undermines the mediating organizations' policies on democracy, which aim to protect citizens and prevent conflict and instability.

The first part of the paper is organized around the different ways in which mediators compromise democracy, with each of them illustrated by at least one case. Nine cases are discussed: Central African Republic (2003); Zimbabwe (2008); Mauritania (2008); Madagascar (2009); Niger (2009); Guinea-Bissau (2012); Central African Republic (2013); Burkina Faso (2014); and Burkina Faso (2015). The second part of the paper examines what the cases tell us about the dynamics, limitations and challenges of mediation in high intensity conflict. We will see that in many instances the mediators' compromises stem from political and ethical dilemmas that defy straightforward solutions. The paper focuses on both the mediating organization (e.g. the AU and ECOWAS) and the lead mediator, usually a serving or retired head of state, who is appointed by that organization. The geographic focus is exclusively on Africa. A subsequent version of the paper could investigate whether mediation in other regions reveals similar or different patterns.

Mediator Proposes or Endorses an Undemocratic Power-Sharing Arrangement

Power-sharing arrangements take various forms in different circumstances and may be entirely consistent with democracy. In some cases, though, they are undemocratic. An example of this was the power-sharing arrangement proposed by the ECOWAS mediator in the Nigerien constitutional crisis of 2009. The crisis was provoked by the illegitimate efforts of President Mamadou Tandja to amend the constitution so that he could serve a third term in office. In the face of strong domestic opposition, he engineered a referendum to remove the limits on presidential terms. When the constitutional court ruled against him, he dissolved the

court and parliament, and assumed emergency powers.² Tens of thousands of people flocked to protest rallies. ECOWAS asserted its commitment to democracy, denouncing Tandja's actions, suspending the country on grounds of constitutional illegality and imposing sanctions on the regime.³

ECOWAS appointed former Nigerian President Abdulsalami Abubakar as the mediator, mandating him to 'convene immediately a meeting of Nigerien stakeholders in Abuja to re-establish political dialogue aimed at creating national consensus on the way forward'.⁴ This mandate reflected the logic of mediation rather than a principled adherence to democracy. Abubakar initially demanded that Tandja revert to the constitutional status quo ante.⁵ When this demand was rejected, he formulated a roadmap based on proposals he had solicited from the ruling party and opposition alliance.⁶ The roadmap envisaged a power sharing interim government that would prepare for elections on an unspecified date. Tandja would remain president, the opposition parties would select the prime minister and a mixed cabinet would be appointed by consensus.

This arrangement was unconstitutional and undemocratic but it captured the essence of mediation and its elements of inclusivity and consensus. As the US Embassy put it: 'Overall, the Mediator's proposed roadmap appears to pose a complex exercise designed to result in the protagonists' proposals meeting halfway'.⁷ The roadmap was a means to ensuring stability as a platform for democratic elections, as well as a pragmatic response to Tanja's hardline disposition. In any event, Tandja rejected the roadmap and the mediation stalled. The impasse was broken in early 2010 when he was ousted in a coup.

² For an overview of this crisis, see David Zounmenou & Reine Loua, 2011, 'Confronting complex political crises in West Africa: An analysis of ECOWAS responses to Niger and Côte d'Ivoire', *ISS Paper 230*, Institute for Security Studies, Pretoria.

³ ECOWAS, 2009, 'ECOWAS leaders call for suspension of legislative elections in Niger, want new transition authority in Guinea', press release 111/2009, 17 October; and ECOWAS, 2009, 'ECOWAS suspends Niger from membership of organisation', press release 113/2009, 21 October.

⁴ ECOWAS, 'ECOWAS leaders call for suspension'.

⁵ US Embassy, 2009, 'Tandja talks after Yar'Adua's intervention', embassy cable, 16 November, para 3, accessed at https://wikileaks.org/plusd/cables/09ABUJA2062_a.html.

⁶ US Embassy, 2010, 'Niger: ECOWAS mediator proposes road map for Niger; government and opposition respond', embassy cable, 19 January, accessed at <http://www.scoop.co.nz/stories/WL1001/S01247/cablegate-niger-ecowas-mediator-proposes-road-map-for-niger.htm>.

⁷ US Embassy, 'Niger'.

Other examples of mediators proposing or endorsing undemocratic power sharing arrangements after a coup include Madagascar (2009), Guinea-Bissau (2012) and Burkina Faso (2014). All three cases are discussed below. In Madagascar and Burkina Faso, the mediators accepted that the coup leader would retain power during a period of transition to constitutional rule. They were convinced that this was necessary for the sake of stability, they lacked the power to dislodge the junta and they were aware that the junta enjoyed considerable popular support as well as the backing of the army.

Mediator Endorses an Undemocratic Election

The previous section dealt with situations in which mediators accepted an undemocratic political arrangement as a short- to medium-term compromise prior to the advent of democratic elections. In the case of the SADC mediation for Zimbabwe in 2007-8, the mediator endorsed an undemocratic election, with long-term consequences for political power, governance and respect for human rights and the rule of law.

In 2007 the SADC Summit appointed President Thabo Mbeki of South Africa as the mediator for Zimbabwe, which was growing increasingly conflictual and repressive as its government cracked down on the opposition Movement for Democratic Change (MDC). Mbeki and SADC were widely perceived to be protective of President Robert Mugabe and tolerant of human rights abuses.⁸ When Mugabe lost the first round of the presidential election in 2008, the state intensified its violence to such an extent that the leading candidate, Morgan Tsvangirai, pulled out of the race. The UN Security Council condemned the violence and declared that it was impossible to hold a free and fair run-off poll.⁹ With Mbeki's blessing, the poll went ahead nonetheless and was won by Mugabe. There was no credible international ratification of this outcome. SADC's own electoral observer mission concluded that the vote did not conform to the organization's electoral code and did not represent the will of the Zimbabwean people.¹⁰ Nevertheless, the Summit continued to recognize Mugabe as Zimbabwe's head of state, effectively confirming his subversion of the democratic

⁸ Laurie Nathan, 2012, *Community of Insecurity: SADC's Struggle for Peace and Security in Southern Africa*, Farnham: Ashgate, pp. 70-6.

⁹ UN Security Council, 2008, 'Security Council condemns violent campaign against political opposition in Zimbabwe; regrets failure to hold free, fair election, in Presidential Statement', press release, UN Doc. SC/9369, 23 June.

¹⁰ SADC Electoral Observer Mission, 2008, 'Preliminary statement presented by the Hon. José Marcos Barrica on the Zimbabwe presidential runoff and House of Assembly by-elections held on 27 June 2008', Harare, 29 June.

process.¹¹ In 2008 Mbeki brokered an agreement that created a government of national unity, with Mugabe as president and Tsvangirai as prime minister.

Mbeki's endorsement of the undemocratic election was due to a mixture of ideological and strategic concerns. He had little sympathy for the MDC, which he believed to be incapable of governing Zimbabwe; he had an affinity with the ruling party, Zanu-PF, as a former liberation movement, and he feared that the Zimbabwean army might stage a coup in the event of an MDC electoral victory.¹² Given these perceptions and the risk that instability in Zimbabwe would infect the entire region, Mbeki defined the goal of his mediation as stability rather than democracy, a goal that he thought could be attained through either a reformed Zanu-PF (without Mugabe) or a negotiated settlement that led to the formation of a coalition government.

Although the SADC member states were divided on how to deal with Zimbabwe, the dominant position was based on the norms of regime solidarity, anti-imperialism and respect for sovereignty. These norms had been forged in blood in the 1970s and 1980s as the Southern African liberation movements battled collectively against colonial rule, white minority regimes and the Western allies of those regimes. In the post-colonial period, the salience of anti-imperialist solidarity has been reinforced by the West's prescriptive policies in Africa, domination of the UN Security Council and selective stance on human rights. Ironically, Western sanctions against Mugabe contributed to the SADC states rallying around him.

Mediator Annuls a Democratic Election

Whereas in the Zimbabwe case the mediating organization validated an undemocratic election, in the Guinea-Bissau crisis the mediator was willing to cancel a democratic election. The crisis occurred in 2012 after President Malam Sanhá died of natural causes and the parliamentary speaker, Raimundo Pereira, was appointed as the interim president. The first

¹¹ See SADC, 2008, 'Final communiqué', 28th Summit of SADC Heads of State and Government, Sandton, 17 August.

¹² The assessment offered here is based on my discussions with colleagues in the South African Presidency and Department of Foreign Affairs, 2001-2007. See also International Crisis Group, 2007, 'Zimbabwe: A regional solution?', *Africa Report* 132; and Brian Raftopoulos, 2010, 'The Global Political Agreement as a "passive revolution": Notes on contemporary politics in Zimbabwe', *The Round Table* 99(411), pp. 705-718.

round of the ensuing presidential election was won by Prime Minister Gomes Júnior, representing the ruling Partido Africano da Independência da Guiné e Cabo Verde (PAIGC). The international community declared the election free and fair but the other candidates rejected the result. In the midst of this dispute, the military seized power and arrested Pereira and Gomes Júnior.

ECOWAS condemned the coup, imposed sanctions and embarked on mediation. After consulting the parties, it prepared a roadmap for the transition.¹³ The roadmap cancelled the election, dismantled the government, accepted that Pereira and Gomes Júnior would be replaced and envisaged a 12-month transition leading to new elections.¹⁴ The transition would be overseen by an undemocratic interim government that excluded the ruling party.¹⁵ The PAIGC was outraged, insisting that the disrupted election should be allowed to continue and accusing ECOWAS of capitulating to the junta and legitimizing the coup.¹⁶ The ECOWAS position was also diametrically opposed to that of the UN, the AU and the Community of Portuguese Speaking Countries, all of which pushed for the resumption of the election.¹⁷

The radical compromise of democracy by ECOWAS derived primarily from its political and strategic interests. The main cause of the coup was the army's antagonism toward the security sector reform program of Gomes Júnior and the presence in the country of MISSANG, an Angolan military mission that had served as a stabilization and protection force following a mutiny by Guinea-Bissau soldiers in 2010. The army viewed the alliance between Gomes Júnior and Angola as inimical to its interests. When the junta took power it demanded the withdrawal of MISSANG. ECOWAS was willing to accommodate this demand because many of its member states objected to Angola's political and military influence in a West African country.¹⁸ The mediators therefore struck a deal with the junta, the essence of which

¹³ ECOWAS, 2012, 'Final communiqué', Extraordinary Summit of ECOWAS Heads of State and Government, 3 May.

¹⁴ International Crisis Group, 2012, 'Beyond turf wars: Managing the post-coup transition in Guinea-Bissau', *Africa Report* 190; and ECOWAS, 'Final communiqué', 3 May.

¹⁵ International Crisis Group, 2012, 'Beyond turf wars', pp. 3-4.

¹⁶ PAIGC, 2012, 'PAIGC communiqué on ECOWAS coup in Guinea-Bissau', 11 May, accessed at <https://groups.yahoo.com/neo/groups/theafricanobserver/conversations/topics/12366>.

¹⁷ International Crisis Group, 'Beyond Turf Wars', pp. 11-12.

¹⁸ *Ibid.*, 12-13.

was that ECOWAS would replace the Angolan mission, the junta would stand down, Gomes Júnior would not return to power and fresh elections would be held.

Mediator Accepts Overthrow of Elected Leader and Government

In the majority of African coups since 2000, the mediators have sought to end the constitutional crisis through new elections rather than through the reinstatement of the president and government, treating the overthrow of the government as a *fait accompli*.¹⁹ In a number of cases this was acutely undemocratic since the deposed leader and government had been democratically elected. These cases include Guinea-Bissau, discussed above, and Central African Republic (2003), Mauritania (2008), Madagascar (2009) and Mali (2012), considered below.

In the Central Africa Republic (CAR) coup of 2003 Francois Bozizé, former army chief of staff, overthrew President Ange-Félix Patassé. Whereas the AU called for the reinstatement of the elected government,²⁰ the Economic and Monetary Community of Central Africa recognized Bozizé as head of state and this soon became the political reality.²¹ In the aftermath of the Mali coup in 2012, the mediation led by President Blaise Compaoré of Burkina Faso on behalf of ECOWAS entailed a series of negotiations between the mediators and the junta, excluding political parties and the ousted president, Amadou Touré.²² The mediator and the coup leader struck a deal that encompassed the formal resignation of Touré, the formation of a government of national unity and a transition to constitutional order and elections.

After President Sidi Mohamed Abdallahi of Mauritania was overthrown in August 2008, the AU suspended the country, imposed sanctions and called for the unconditional reinstatement of the president and ‘re-establishment, without further delay, of the institutions that were democratically chosen by the Mauritanian people’.²³ Six months later the AU mediator,

¹⁹ Laurie Nathan, 2016, ‘A survey of mediation in African coups’, Social Science Research Council, New York, forthcoming.

²⁰ AU, 2003, ‘Communiqué’, 90th Ordinary Session of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution at Ambassadorial Level, 17 March.

²¹ International Crisis Group, 2007, ‘Central African Republic: Anatomy of a phantom state’, *Africa Report* 136, pp. 15-17.

²² International Crisis Group, 2012, ‘Mali: Avoiding escalation’, *Africa Report* 189, pp. 24-5.

²³ AU, 2008, ‘Communiqué’, 144th Meeting of the Peace and Security Council, 7 August; and AU, 2008, ‘Communiqué’, 151st Meeting of the Peace and Security Council, 22 September.

President Muammar Gaddafi of Libya, publicly opposed the AU sanctions and dismissed the call for the reinstatement of Abdallahi.²⁴ As he put it in an interview, ‘the military will not permit [Abdallahi] from regaining his post? So he must accept a fait accompli’.²⁵ The opposition parties rejected Gaddafi as the mediator and the AU replaced him with President Abdoulaye Wade of Senegal. But when the junta remained intransigent, the AU relented. It dropped its demand for the restoration of the status quo ante and adopted the typical posture of a mediator, seeking to ‘assist the Mauritanian parties to reach a consensual and inclusive solution to the crisis’.²⁶ The agreement brokered by Wade enabled the coup leader, General Mohamed Ould Aziz, to contest and win the presidential election, a victory described by opposition leaders as an ‘electoral coup d’état’.²⁷

In March 2009 Madagascar was plunged into crisis when Andry Rajoelina toppled President Marc Ravalomanana, who fled the country. The SADC Summit called for the immediate restoration of the status quo ante, including the unconditional reinstatement of Ravalomanana, and threatened to use force if this was not done.²⁸ Three months later, having made no headway, SADC shifted from a militarist posture to a mediatory one.²⁹ The first major compromise of democracy arose when the SADC mediator, former President Joaquim Chissano of Mozambique, facilitated negotiations that resulted in a power-sharing accord.³⁰ Under the accord, Ravalomanana would not be reinstated. Instead, an interim inclusive government, led by Rajoelina, would be set up to oversee a 15-month transitional period and elections. At this stage, Chissano’s deviation from the principled position of the Summit derived from mediation’s characteristics of inclusivity, consensus and compromise.³¹

The accord failed to resolve the crisis and Chissano persevered with the mediation. In January 2011 he produced a roadmap that entailed another major compromise of

²⁴ ‘Abdallahi “Must Accept Deal”’, *News 24*, 15 March 2009, accessed at <http://www.news24.com/Africa/News/Abdallahi-must-accept-deal-20090315>.

²⁵ *Ibid.*

²⁶ AU, 2009, ‘Communiqué’, 186th Meeting of the Peace and Security Council, 6 May.

²⁷ ‘All is rather easily forgiven: A coup-maker becomes a civilian president’, *The Economist*, 23 July 2009.

²⁸ SADC, 2009, ‘Communiqué’, Extraordinary Summit of Heads of State and Government, 30 March.

²⁹ SADC, 2009, ‘Madagascar’, communiqué of Extraordinary Summit of Heads of State and Government, 20 June.

³⁰ *Accord Politique de Maputo*, 8 August 2009, Maputo.

³¹ For a detailed discussion of the Madagascar mediation, see Laurie Nathan, 2013, ‘A clash of norms and strategies in Madagascar: Mediation and the AU policy on unconstitutional change of government’, *Mediation Arguments* 4, Centre for Mediation in Africa, University of Pretoria.

democracy.³² The roadmap allowed the coup perpetrators to contest elections and denied this opportunity to Ravalomanana, who was barred from returning to Madagascar until the new government decided that a favorable political and security climate existed. Local diplomats concluded that Chissano had capitulated to the junta.³³ SADC ditched him as the mediator and insisted that Ravalomanana be free to contest the poll. Over the next eighteen months the SADC mediators were unable to secure the compliance of the regime. In 2012 the Summit backed down and adopted the ‘ni-ni’ solution, under which neither Ravalomanana nor Rajoelina would run for president.³⁴ The two politicians eventually agreed to this.

The Summit’s decision to back down was motivated by a mixture of pragmatic and ethical considerations. The junta was implacably opposed to Ravalomanana’s homecoming and SADC lacked the power to change its mind. The Summit was deeply concerned, moreover, by the army’s warning that Ravalomanana’s return would provoke violence. This concern was reinforced by a UN report that observed that ‘the potential for violence [during the elections] would probably be highest if the two principal political actors, Presidents Rajoelina and Ravalomanana, were both candidates’.³⁵ In these circumstances, the mediators’ priority was to prevent a slide into civil war and craft a smooth passage to constitutional normalcy. The compromise of democracy can thus be interpreted as the ‘price of peace’.

Legitimize a Coup Leader

The AU has a longstanding policy rejection of coups and other unconstitutional changes of government.³⁶ In 2007 this policy was reinforced through the introduction of the African Charter on Democracy, Elections and Governance, which includes a ban on coup legitimization.³⁷ The ban prohibits the perpetrators of unconstitutional action from contesting elections held to restore democracy and from holding any position of responsibility in the political institutions of their state. In several cases African mediators have defied this ban,

³² SADC Mediation Team, 2011, ‘*Feuille de Route pour la Sortie de Crise à Madagascar*’, 20 January.

³³ Charlotte Larbuisson, 2011, ‘Madagascar: From crisis to transition’, 16 May, note 15, accessed at <http://www.crisisgroup.org/en/regions/africa/southern-africa/madagascar/op-eds/madagascar-from-crisis-to-transition.aspx>.

³⁴ SADC, 2012, ‘Communiqué’, Extraordinary Summit of Heads of State and Government, 8 December, para 8.4.

³⁵ ‘Madagascar: Rajoelina slows down the train’, *Africa Confidential* 53 (14), 2012, pg. 6.

³⁶ The policy originated with Organisation of African Unity, 2000, Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government.

³⁷ AU, African Charter, art 25(4).

either by permitting the coup leader to contest presidential elections (e.g. Mauritania 2008 and Madagascar 2009) or by recognizing coup perpetrators as leaders of an interim government (e.g. CAR 2013 and Burkina Faso 2014). The CAR and Burkina Faso cases are discussed below.

In late 2012 the rebel coalition known as Séléka tried to overthrow President Bozizé in CAR. ECCAS mediated a short lived peace agreement. In 2013 the rebellion, led by Michel Djotodia, resumed and toppled Bozizé. Djotodia suspended the constitution and proclaimed himself the president. The AU suspended CAR, called for the ‘complete isolation’ of the perpetrators of the unconstitutional action and imposed a travel ban on them.³⁸ The ECCAS Summit initially refused to recognize Djotodia, pressing instead for the formation of a transitional national council that would designate a transitional president. Djotodia promptly set up the council, which elected him president. Flouting the AU position, ECCAS decided to recognize Djotodia, albeit as ‘head of state of the transition’ and not as ‘president of the republic’.³⁹ Displeased AU officials viewed this as a transgression of the organization’s policy.⁴⁰ The ECCAS states also ignored the AU travel ban, welcoming Djotodia in their capitals.⁴¹

The ECCAS position appears to have derived from a range of regional interests that supported the coup. Indeed, it seems that ECCAS peacekeeping troops stood aside to allow Séléka to capture the capital, Bangui.⁴² The ECCAS heads of state had lost confidence in Bozizé, whose governance failures had reached epic proportions and generated acute insecurity, especially in rural areas abutting the other central African countries.⁴³ In particular, President Idriss Déby of Chad, CAR’s northern neighbor, sought to drive his security agenda through the regional organization because all the Chadian rebel groups that

³⁸ AU, 2013, ‘Communiqué’, 363rd Meeting of the Peace and Security Council, 25 March.

³⁹ ‘Regional leaders recognise C. African rebel chief’, Reuters, 18 April 2013, accessed at <http://www.reuters.com/article/2013/04/18/centralafrican-chad-idUSL5N0D54S320130418>.

⁴⁰ Martin Welz, 2014, ‘Briefing: Crisis in the Central African Republic and the international response’, *African Affairs* 113 (453), pg. 606.

⁴¹ Solomon Dersso, 2013, ‘The best option to settle the CAR crisis?’, Al Jazeera, 5 December, accessed at <http://www.aljazeera.com/indepth/opinion/2013/12/best-option-settle-car-crisis-20131246152625650.html>.

⁴² Ibid.

⁴³ International Crisis Group, 2013, ‘Central African Republic: Priorities of the transition’, *Africa Report* 203, pp. 8-12.

had challenged him historically had been formed in CAR.⁴⁴ In addition, ECCAS believed that the AU stance of ‘complete isolation’ was a cul de sac, offering no way out of the crisis; on the other hand, recognizing Djotodia, to whom CAR’s army chiefs had pledged allegiance, was the only viable basis for enabling a transition to constitutional rule.

When Burkina Faso experienced a coup in 2014, the AU demanded that the army step aside and hand power to a civilian authority within two weeks, failing which suspension and sanctions would come into effect.⁴⁵ A team of ECOWAS presidents led by Macky Sall of Senegal conducted a mediation that resulted in the adoption of a charter for a civilian-led transition and the selection of Michel Kafando, a retired diplomat, as interim president. The AU decided that its demands had been met and that suspension and sanctions would not apply.⁴⁶ Immediately thereafter, Kafando appointed one of the coup leaders, Lt Col Isaac Yacouba Zida, as interim prime minister, and he in turn appointed other army officers to the cabinet.⁴⁷ Contrary to the AU’s determination, the military had not transferred power to a civilian authority; rather, it had done a power-sharing deal with civilians.⁴⁸ Behind the scenes, the ECOWAS presidents supported this arrangement in the interests of stabilizing civil-military relations and the wider political arena.⁴⁹

Analysis

The cases discussed above indicate patterns and tell us a number of interesting things about mediation. The analysis that follows is grouped in four categories: pragmatism due to weakness; the logic of mediation; the mediator as an interested actor; and the imperative of peace and stability.

Pragmatism due to weakness

The cases highlight the weakness of African mediating organizations when they take a principled democratic stand in crisis situations. Even when the organizations resort to suspension and sanctions, these coercive measures patently do not constitute compelling

⁴⁴ Welz, ‘Briefing’, pp. 607-8.

⁴⁵ AU, 2014, ‘Communiqué’, 465th Meeting of the Peace and Security Council, 3 November.

⁴⁶ AU, ‘Communiqué’, 468th Meeting of the Peace and Security Council, 18 November.

⁴⁷ Institute for Security Studies, 2014, ‘Burkina Faso: Where does it leave the AU norm on unconstitutional changes of government?’, *ISS Peace and Security Council Report*, 1 December.

⁴⁸ *Ibid.*

⁴⁹ Author’s interviews with AU and ECOWAS officials, Addis Ababa, January 2015.

pressure on the targeted party. The weakness attributable to the limited power of the organizations is heightened when the AU and a sub-regional body take different approaches to a particular conflict (e.g. CAR 2003, Madagascar 2009, Guinea Bissau 2012 and CAR 2012). The weakness is further exacerbated when the member states of the mediating organization are divided on the best way to address a conflict. Divisions and tensions within and between the relevant African organizations are common phenomena.⁵⁰ They diminish the leverage, reduce the cohesion and impair the decision-making of the mediating entity.

The weakness of the mediators helps to explain why they have sometimes responded to a coup by initially demanding the restoration of the status quo ante and then dropping that demand because they lacked the leverage to enforce it (e.g. CAR 2003, Mauritania 2008, Niger 2009 and Madagascar 2009). The AU's response to the Mauritania coup exemplifies the mediator's impotence. In the months following the overthrow of the government, the AU incrementally stepped up pressure on the junta: on 7 August 2008, the day after the coup, it condemned the seizure of power and called for the re-establishment of the democratic institutions; in September it threatened the coup perpetrators with sanctions and isolation; in November it set a deadline for the imposition of sanctions and warned that it would seek endorsement from the UN Security Council; and in February 2009 it decided that the envisaged sanctions would enter into force.⁵¹ But in May, having failed to budge the junta, the AU backed down, replacing its tough and principled stance with a mediating strategy that would end up compromising democracy.⁵²

In the Mauritania coup as elsewhere, the outcome of a conflict depends not only on the moves of the mediator but also on the power and strategies of a range of other actors. At the domestic level these actors include the government, rebels, political parties, the army and civil society movements. The international actors include neighboring states, foreign powers, the regional body, the UN and other multilateral agencies. The power held and exercised by these various actors determines the trajectory of the conflict, the timing of its termination and the nature and content of its resolution. The mediating organization may be a comparatively

⁵⁰ Laurie Nathan, 2016, 'Will the lowest be first? Subsidiarity in peacemaking in Africa', in Pamela Aall & Chester Crocker (eds.), *Minding the Gap: African Conflict Management in a Time of Change* (Waterloo: Centre for International Governance Innovation, forthcoming).

⁵¹ AU, 2008, 'Communiqué', 144th Meeting; AU, 2008, 'Communiqué', 151st Meeting; AU, 2008, 'Communiqué', 163rd Meeting of the Peace and Security Council, 22 December; and AU, 2009, 'Communiqué', 168th Meeting of the Peace and Security Council, 5 February.

⁵² AU, 2009, 'Communiqué', 186th Meeting.

weak entity in this configuration. From this perspective, mediation can be understood as a manifestation of the maxim ‘politics as the art of the possible’.

The logic of mediation

International mediation is a form of conflict resolution with a distinct logic and set of dynamics. It can be defined as a process whereby an intermediary actor helps disputant parties to negotiate agreements to their collective satisfaction.⁵³ The purpose is not to enable one of the disputants to win but rather to broker a settlement endorsed by all sides; to this end, mediation must be made acceptable to the adversaries, who must in turn cooperate with the mediator.⁵⁴ The essence of mediation is that it is a consensual process intended to lead to consensual agreements that the protagonists are willing to implement. If this imperative is not met, there will be no sustainable settlement. Inclusiveness is a further imperative in seeking a lasting settlement – ideally, every substantial domestic party should participate in the mediated negotiations because it represents a constituency and because excluded parties have an interest in disrupting the peace process and rejecting the outcome.⁵⁵

These characteristics of mediation are not merely idealistic or abstract considerations. They are evident in the mediation mandates issued by regional organizations. As quoted earlier, for example, the ECOWAS mandate to its mediator in the Niger coup was to ‘convene immediately a meeting of Nigerien stakeholders... to re-establish political dialogue aimed at creating national consensus on the way forward’.⁵⁶ When the AU undertook mediation in Mauritania, it aimed to help the parties ‘reach a consensual and inclusive solution to the crisis’.⁵⁷ Similarly, the SADC communiqué announcing the initiation of mediation in Madagascar called for an ‘inclusive dialogue among the Malagasy political actors’ and ‘urged the Malagasy people to take active ownership’ of this dialogue.⁵⁸ By contrast, the principled position taken by the SADC Summit prior to embarking on mediation was peremptory and

⁵³ See, for example, UN, 2012, *United Nations Guidance for Effective Mediation*, New York; Jacob Bercovitch, 2009, ‘Mediation and conflict resolution’, in Jacob Bercovitch, Victor Kremenyuk & I. William Zartman (eds.), *The SAGE Handbook of Conflict Resolution* (London: SAGE, pp. 343–46; and Ronald J. Fisher, 2001, ‘Methods of third party intervention’, *Berghof Handbook for Conflict Transformation*, pg. 4, accessed at http://edoc.vifapol.de/opus/volltexte/2011/2579/pdf/fisher_hb.pdf.

⁵⁴ I. William Zartman & Saadia Touval, 2007, ‘International mediation’, in Chester Crocker, Fen Hampson & Pamela Aall (eds.), *Leashing the Dogs of War: Conflict Management in a Divided World* (Washington, DC: US Institute for Peace, pp. 437–38.

⁵⁵ UN, *United Nations Guidance*, pp. 11–13.

⁵⁶ ECOWAS, ‘ECOWAS leaders call for suspension’.

⁵⁷ AU, ‘Communiqué’, 186th Meeting.

⁵⁸ SADC, ‘Madagascar’, 20 June 2009.

coercive, demanding the immediate and unconditional reinstatement of the ousted president and threatening to use force if this demand was not met.⁵⁹

In high intensity conflict, the logic of mediation might induce compromises of democracy. There are several reasons for this. First, at least some of the protagonists, whether the government, political parties, rebels or the army, are likely to have little commitment to democracy. Yet they have to be included in the mediated negotiations in order to achieve a sustainable settlement. Second, a settlement cannot be reached if the adversaries treat the negotiations as a zero-sum game. It necessarily requires concessions and compromises by all the parties. The nature and extent of any compromises of democracy depend, among other things, on the strength and political character of the main parties. Third, mediators are not enforcers but facilitators. They may promote democratic norms in accordance with their charters but the content of the negotiated agreement must be determined principally by the parties if it is to be owned by them.

The mediator as an interested actor

In many countries professional mediators who work on family, labor, commercial and other types of domestic dispute have no personal interest in the disputes. The African mediating organizations, on the other hand, are far from being disinterested peacemakers. They incorporate the maintenance of peace and security into their mandates, and undertake mediation and other forms of conflict resolution in practice, because they and their member states have collective and national interests in neighborhood conflicts and their resolution.

Although the details differ from case to case, the primary collective motivation for peacemaking is regional stability. Major intra-state conflicts have negative repercussions for adjacent countries, including the flow of violence, weapons, rebels and refugees across borders. Regional bodies have a political and economic interest in containing and ending such destabilization. They also have a political and organizational interest in subsidiarity, meaning that they want to lead peacemaking endeavors within their respective geographical jurisdictions rather than leave this responsibility to the UN or some other agency.⁶⁰ The regional organizations on the continent consequently assert the notion of ‘African solutions to African problems’.

⁵⁹ SADC, ‘Communiqué’, 30 March 2009.

⁶⁰ Nathan, ‘Will the lowest be first?’.

These organizations do not have an equally strong collective interest in democracy. Although their founding charters and other legal instruments include respect for democratic principles, this orientation is not shared by all member states, some of which are decidedly undemocratic. In terms of interests, then, stability is much more important than democracy. Neighboring states are bound to be more concerned about unstable countries (whether democratic nor not) than about undemocratic countries (for as long as they are stable). In some instances it is also relevant that the lead mediator is a president who has scant enthusiasm for democracy. Lead mediators in African conflicts have included, for example, President Compaoré of Burkina Faso, President Gaddafi of Libya, President Sassou-Nguesso of the Republic of the Congo and President Tandja of Niger, all of whom came to power via a coup.⁶¹

Imperative of peace and stability

When mediators enter a high intensity conflict, they are concerned not only with the goal of establishing or restoring democracy. They are also confronted with the urgent challenge of stabilizing the situation so as to prevent violence or an escalation of violence. In these circumstances, as we have seen, it is not uncommon for mediators to prioritize stabilization, even at the expense of democratic principles. Motivated instead by humanitarian principles, this approach is also predicated on the fact that fighting and chronic instability make it impossible to return to constitutional and democratic rule through free and fair elections.

The Madagascar coup provides a good illustration of the mediator's imperative of peace and stability. While SADC initially stipulated that the ousted president must be reinstated immediately and unconditionally, it came to accept that its ultimatum was not only unfeasible, given the intransigence of the junta, but also likely to provoke violence and prolong the crisis. The AU and the UN shared this perspective.⁶² SADC consequently adopted the 'ni-ni' solution in the hope that this would forestall violence before and during elections. In response to accusations that SADC had betrayed its democratic mandate,⁶³ Seychelles President James Michel, who had hosted some of the mediated talks, maintained

⁶¹ Nathan, 'A survey of mediation in African coups'.

⁶² Nathan, 'A clash of norms and strategies'.

⁶³ For example, *Mouvance Ravalomanana*, 2011, 'Report to the SADC Extraordinary Summit on Madagascar', 19 May; and 'Coups can still pay', *The Economist*, 15 October 2009.

that the Summit had ‘recognized the risk of violence and instability in relation to the eventual return of former President Ravalomanana’ and was convinced that the ‘ni-ni’ option offered ‘the best route towards ensuring peaceful elections’.⁶⁴ Michel added that SADC had a duty to protect not only democratic principles but also the lives of the people of member states.⁶⁵

A similar reasoning prevailed in the mediator’s response to the Burkina Faso coup in 2015. At the outset, the AU condemned the actions of the coup perpetrators, which included the killing of protestors, and insisted that those responsible should be held accountable.⁶⁶ Nevertheless, the ECOWAS mediation team led by President Macky Sall of Senegal produced a draft agreement that granted amnesty to the perpetrators. The proposed deal was denounced by the deposed president, civil society and political parties.⁶⁷ Sall defended the deal by asserting that ‘our role is to put an end to the escalation of things in order to prevent the country from descending into violence’.⁶⁸ The amnesty and other compromises stemmed from ‘concerns for the stability of the transition regime’ and were required for national reconciliation, without which ‘co-habitation would remain impossible within one indivisible Nation’.⁶⁹ Although the compromises in this case related more to justice than democracy, they capture well the primacy that mediators afford to peace and stability. The bottom line, as Sall put it, was that a descent into violence would shift the conversation from elections and the number of voting polls and ballots to weapons and the number of dead and injured persons.

Conclusion

This paper has investigated the ways in which African mediators compromise democracy when they are trying to resolve a major conflict. These ways include proposing or endorsing an undemocratic power-sharing arrangement; endorsing an undemocratic election; annulling

⁶⁴ ‘SADC Summit of Heads of State: President’s hopes high for Madagascar’s future’, *Seychelles Nation*, 21 August 2012, accessed at www.nation.sc/index.php?art=28544.

⁶⁵ ‘President Michel addresses SADC Summit of Heads of State and Government’, *Seychelles Nation*, 20 August 2012, accessed at www.nation.sc/index.php?art=28528.

⁶⁶ AU, 2015, ‘Communiqué’, 544th Meeting of the Peace and Security Council, 18 September.

⁶⁷ ‘Growing opposition in Burkina Faso to regional peace deal’, Agence France-Presse, 21 September 2015, accessed at <http://news.yahoo.com/growing-opposition-burkina-faso-regional-peace-deal-133455672.html>; and ‘Burkina president voices reservations about proposed post-coup deal’, Agence France-Presse, 21 September 2015, accessed at <https://www.enca.com/africa/burkina-president-voices-reservations-about-proposed-post-coup-deal>.

⁶⁸ ECOWAS, 2015, ‘Final Communiqué’, Extraordinary Session of the Authority of Heads of State and Government on the Political Crisis in Burkina Faso, 22 September.

⁶⁹ *Ibid.*

a democratic election; accepting the overthrow of an elected government and leader; and legitimizing a coup leader. A general explanation for this tendency is that the mediating organizations prioritize peace and stability above democracy. Their motivation is based on a collective political and economic interest in regional stability, humanitarian concerns about the destructive effects of violence and volatility in the country in crisis, and the obstacles that fighting and instability pose to restoring democracy through free and fair elections. Moreover, the logic of mediation embraces inclusivity, consensual decision-making and concessions by the parties, all of which may contribute to compromises of democracy in order to attain a negotiated settlement. The final motivation is pragmatic, most notable when mediators initially take a principled democratic stand and then back down because of their relative weakness and the intransigence of powerful parties.

Where democracy is in tension with peace and security in the course of conflict resolution, mediators face a tough dilemma. On the one hand, as discussed above, there may be compelling reasons to concentrate on peace and stability. On the other hand, compromising democracy is usually unjust, favoring the ‘bad guys’, prejudicing the ‘good guys’ and frustrating the aspirations of pro-democracy civil society groups. It also has negative repercussions that go beyond the particular case, setting a bad precedent and potentially reducing the organizations’ leverage in future cases.⁷⁰ In addition, the compromises undermine the mediating bodies and their policies on democracy, which aim both to promote the well-being of citizens and to prevent violent conflict.⁷¹ There is thus no simple trade-off between democracy and stability or between short-term and long-term considerations. Instead, mediators are confronted with a complex array of political and ethical calculations and are unable to predict the long term consequences of their decisions.

⁷⁰ During the negotiations after the Madagascar coup, for example, the leader of the junta argued that the mediators should follow the precedent set by the AU when it allowed the coup leader in Mauritania to stand for election (author’s interview with UN official, 2012).

⁷¹ For example, AU, African Charter.