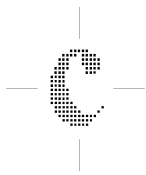


# **Governance Components in Peace Agreements: Fundamental Elements of State and Peace Building?**

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# 1. Introduction

## 1.1 Rationale

The main rationale behind the conceptualization of this study has to be found in the growing international engagement in post-conflict reconstruction and state building that has emerged during the last decade. The 2005 Paris Declaration on Aid Effectiveness<sup>1</sup> and the 2007 OECD/DAC Principles for Good International Engagement in Fragile States and Situations<sup>2</sup> are two of the most explicit signals of the international community's attempt to address problems of weak governance and conflict in a coordinated way. The Netherlands Ministry of Foreign Affairs has increasingly echoed such concerns, for instance through the release of the policy letter "Our Common Concern: Investing in development in a Changing World", in October 2007. The letter's main "purpose is to present the choices that the government has made in its effort to contribute to the achievement of the Millennium Development Goals"<sup>3</sup>, and to present the four main themes on which policy needs to be stepped up. One of these themes refers precisely to the nexus between security and development and emphasizes the urgency to engage with fragile states in a constructive way that will eventually assist them in their trajectory towards stable and democratic governance.

This study is based on the main assumption that peace agreements have the potential to provide timely and effective entry points for the international community to engage in state building processes in post-conflict situations. State building and fragile states are two concepts recently gaining the foreground of the international developmental discourse, and post-conflict countries can definitely be counted within the broad category of the fragile states.

The achievement of a peace agreement ushers in a new phase in the state building and reconstruction process, whereby the international community is offered a number of opportunities to engage and provide the involved parties with important inputs towards sustainable peace and democratization. The governance components included in any such agreement are certainly relevant in virtue of their declaration of principles, but even more so as they get gradually implemented. The attention of this study will be devoted to both the designing and the implementation phases of peace agreements, in an attempt to deduct whether certain governance components can be regarded as essential elements in the reconstruction of stable post-conflict societies, and thus in conducing to sustainable peace, or, on the contrary, whether they play a functional role in the resurgence of violent competition and conflict.

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<sup>1</sup> See: <http://www.oecd.org/dataoecd/11/41/34428351.pdf>

<sup>2</sup> See: <http://www.oecd.org/dataoecd/61/45/38368714.pdf>

<sup>3</sup> Dutch Ministry of Foreign Affairs. 'Our Common Concern: Investing in Development in a Changing World', 16 October 2007. p. 3.

### Defining peace agreements

The decision to concentrate on the design and implementation of peace agreements, rather than on their “nature”, has been motivated by the knowledge gap existing in the analysis of those designs that are “most appropriate for building functioning and legitimate states”<sup>4</sup>. Nevertheless, before further elaboration of these aspects, it is advisable to briefly touch upon the broad classification of peace agreements, and give some indications of the types of agreements that have been taken into consideration for this study. While peace agreements are generally considered as “contracts intended to end or significantly transform a violent conflict so that it may be addressed more constructively”<sup>5</sup>, there is much variation in their comprehensiveness and binding level. Before reaching the so-called “final settlement”, a whole range of in-between steps is often negotiated and agreed upon in order to establish a peace process that is structured around incremental steps and institutionalized checks. It is in this phase that truces, cessations of hostilities and ceasefires are agreed upon. While this study does not deny the importance of the overall peace process and of the negotiations that precede a final settlement, as demonstrated also by the choice to include the still unresolved case of Sri Lanka, it almost exclusively concentrates on the final agreement, that is, on a full Framework or Comprehensive Agreement. Such agreements typify the “successful” conclusion of a negotiating process in that they address the substance of the underlying issues of a dispute and seek common ground between the interests and needs of the parties to the conflict. Beside attempting to resolve the substantive issues in the dispute, they also provide the necessary arrangements for implementing the agreement.

However, as much as these agreements can rightly be considered as “comprehensive”, their eventual test is found in the implementation phase, which is that part of the peace process where most often agreements that were outstanding on paper end up collapsing. Therefore, wherever possible, this study will also pay attention to the presence of specific Implementation Agreements, which are supposed to elaborate on the details of comprehensive or framework agreements. In this context, it is important to realize the often informal nature of these agreements, as it can obviously bear relevant consequences on the level of commitment to the accords by the involved parties. Alternatively, in the absence of such an implementation agreement, the actual translation of the final peace settlement in a sustainable and stable peace and state-building process will occupy a central position in the analysis.

In terms of the substance of the peace agreements that will be included in the study, given to the declared objective of focusing on governance components, it logically follows that intra-state or civil wars will represent the kind of conflict taken into consideration, as they are usually caused by a failure of governance. Peace agreements that bring these conflicts to an end often focus, therefore, on rebuilding governance mechanisms. The manner or method by which a war is brought to an end, on the contrary, while also a decisive factor in determining the substance of an agreement, was not considered as an exclusive selective element in the choice of the agreements analyzed. Although it can be assumed that only Full Agreements (and a mediated peace building

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<sup>4</sup> Suhrke, Astri and Torunn Wimplemann. *Peace Processes and State Building: Economic and Institutional Provisions of Peace Agreements*, report prepared for the World Bank and the UNDP by the Chr. Michelsen Institute, 8 February 2007. p. 1.

<sup>5</sup> See: <http://peacemaker.unlb.org>

process<sup>6</sup>) provide the right basis for a comprehensive discussion and for addressing all the substantial issues that have determined the deflagration of a conflict, Terms of Surrender (deriving from a decisive victory) and Partial Agreements need also to be analyzed as they could provide useful indications about the chances of success of a transition. Moreover, it should be kept in mind that while full agreements represent the ideal conclusion to a negotiating process, due to their comprehensive nature, they do not necessarily give the best guarantees of a stable post-conflict transition. Ironically, agreements resulting from decisive victories, where one of the parties has clearly defeated the other(s) and has dictated the terms of the settlement (i.e. surrender), are normally regarded as stable agreements, though not necessarily sustainable and functional to a democratic state-building process.

### Defining governance components

With regard to the definition of the concept of **governance**, we could refer to Brinkerhoff, who states that “governance concerns the rules, institutions, and processes that form the nexus of state-society relations where government and citizens interact. This domain combines public administration and state structures, politics and the exercise of power and authority, and policy-making and implementation”<sup>7</sup>.

Elaborated further, governance can be regarded as a system that encompasses three core functions:

- i. Security governance, whereby the state’s legitimate monopoly of force is applied to the re-establishment of security and to the maintenance of the rule of law. In the case of peace agreements, several provisions could fall under this broad category, such as: SSR, DDR, civilian oversight mechanisms, transitional justice mechanisms, etc.;
- ii. Administrative-economic governance: concerning the broad re-establishment of effectiveness, this function finds its logical expression in provisions that address the proper functioning of state institutions, the delivery of basic services, and the equitable sharing of economic resources. Examples of this category could include: reorganization of administration, decentralization, transparency and corruption, and land reform provisions.
- iii. Political governance: this function is concerned with the restoration of legitimacy, mainly through the application of inclusive and consultative processes to the decision-making and implementation of state policies. Provisions that could be listed under this category would include: constitution (re-)drafting and elections provisions, and consultative mechanisms on the design and running of elections.<sup>8</sup>

Considering the fact that any exercise of clustering leaves the flank open to alternative criteria, and that due to the limited number of case studies taken into consideration it was not possible to give equal relevance to a whole range of governance components, we have opted to select those components that

<sup>6</sup> For more information see: Chr. Michelsen Institute. Research Paper *Governance Interventions in Post-War Situations: Lessons Learned*. Bergen Seminar Series, 5-7 May 2004.

<sup>7</sup> Brinkerhoff, Derick W. (2005), “Rebuilding Governance in Failed States and Post-Conflict Societies: Core Concepts and Cross-Cutting Themes”, *Public Administration and Development*, Vol. 25, No. 1, p. 2.

<sup>8</sup> For a more detailed overview of all the specific governance provisions/components considered by this study in the six case-studies, please refer to the schematic overview provided by Table 3.1.

emerged as the most important or problematic throughout the various cases. Such provisions may cut across the above-mentioned categories or, for that purpose, across other similar attempts of clustering.

In the final analysis, we have looked at those governance issues that have been particularly central to the negotiations leading to an agreement and to the subsequent implementation phase. Therefore, while many provisions may be regarded as key to the definition and operationalization of the concept of governance, in the specific context of this analysis it is expected that only a restricted group of such provisions will emerge as truly central to the six cases examined.

When analyzing the governance components of a peace agreement, it would also be important to consider that the main attention should not be directed towards those structures and institutions that are supposed to characterize a democratic governance framework, but rather towards the processes that eventually make those structures truly relevant and responsive to the various parties' expectations. Institutions are indeed necessary components in the establishment of a democratic environment, but they risk becoming empty shells if during the implementation phase they do not find their legitimacy and effectiveness through a process of inclusive negotiations. To begin with, the expectations and fears that accompany the former warring parties as they enter a political settlement process of their disputes should be channeled through consultative mechanisms that aim at creating a conducive environment for dialogue and negotiation, thereby neutralizing the risk of a possible relapse into violent confrontation.

The holding of a national **election** is normally considered as one of the key turning points in a peace building process. Most of the governance-related agreements in a peace settlement find their natural expression and fulfillment in an electoral process. And the international community tends to view the organization of a free and fair election as the ultimate proof that the post-conflict society in question is steadily marching forward on the road to stable democratization. What is really relevant, however, in terms of long-term stability and democratization, is the nature and evolution of those processes that follow an agreement and that determine the balance of power among the previously conflicting parties and also with respect to the wider sectors of society. In other words, peace agreements can be considered as "starting points for another series of negotiations, bargaining and institutions building [...]". The interim period will represent a fluid period during which parties and leadership change, expectations are formed and re-formed, and the fears and interests that motivated the initial cease-fire agreement are transformed. The outcome of this period of continued bargaining and maneuvering for advantage provides the context for post-conflict elections..."<sup>9</sup> and sets the direction for the overall political reconstruction process.

Another issue that should be clarified at the onset of the paper concerns the **time-frame** maintained to measure the success or failure of a given peace agreement. The period of time following a settlement should not be too short, in order to allow the arrangements of the agreement to be felt and enforced on the ground, therefore contributing to a lasting termination of the fighting. And at the same time it should not be too long because in the eventuality of a collapse of the peace process originating from a settlement, other, more recent,

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<sup>9</sup> Lyons, Terrence (2004), "Post-Conflict Elections and the Process of Demilitarizing Politics: The Role of Electoral Administration," *Democratization*, Vol. 11, No. 3, pp. 57-58.

dynamics could be the cause of its derailment. To address these concerns, maintaining a time line of about 5 years could be proposed.

On the relevance of **decentralization** or local governance provisions in a peace agreement, there is a series of arguments that support the approach. “First, it can increase support for peace by transferring some degree of local autonomy, especially in settings of ethnic and inter-communal conflict. Second, it can place limits on the power of the centre by shifting resources and control to other levels of government. Third, by creating multiple governance arenas, it can diminish ‘winner-take-all’ dynamics that can lead to the re-emergence of conflict. Fourth, strengthening local governance allows low-intensity disagreements regarding service delivery, and demonstrates that these conflicts can be managed. Fifth, local governance sets up a learning laboratory for people to acquire political and conflict resolution skills that can be used in other settings”<sup>10</sup>. In spite of all the strong arguments listed above, which advocate for governance provisions geared towards decentralization, one should not take a dogmatic position, as several recent and past examples (i.e. Afghanistan) reveal for instance how processes of decentralization can further impinge upon democratic state-(re)building by putting the responsibility of service delivery right in the hands of local strongmen. These are often reckless actors that operate out of a self-interested position and whose main objective is to delegitimize the central state authority and possibly question the overall concept of territorial unity. It is clear that in such cases, instead of laying the foundations for a thorough reconciliation within society and for the reconstruction of a democratic unitary state, the available space is exploited, on the contrary, in the pursue of partisan interests and in an attempt to disempower and alienate the opposing party(-ies). In conclusion, whilst it can be agreed that decentralization as such is a governance component worthy of consideration and implementation in a reform process, it is equally important not to lose sight of the context in which it is expected to take place, to define well in advance its characteristics and objectives, and to keep monitoring its evolution.

Another risk involved with decentralization is that of the local elites hijacking power positions and benefits at the local level. Also in this case, the outcome would not be a stabilizing one, as the majority of the population impacted by such a turn of events would look at ways to escape or overturn the power structure and would definitely associate any foreign intervention that has supported decentralization efforts as partisan and hostile (see the Iraq’s experience with the creation of local councils).

## 1.2 Objectives

The main objectives of the study include:

- The identification of the kind of governance components that have been built in the selected peace agreements;
- The identification of possible relations between the inclusion or exclusion of certain governance components in the selected peace agreements, and the outcome of the medium and long-term democratization processes following those agreements;

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<sup>10</sup> Brinkerhoff, Derick W. 2005. p. 12.



- The identification of possible entry points for the international community/Netherlands Ministry of Foreign Affairs in processes of peace negotiation and agreement;
- The identification of possible entry points for the international community/Netherlands Ministry of Foreign Affairs in the political transition phase following a peace agreement.

### 1.3 Methodology

Due to the original idea to address the subject of governance components in peace agreements through a quick-scan of a selected number of case-studies, this report is the direct outcome of a desk study that needs to be considered as quite limited in its scope. Field work was not included in the work methodology. Its potential value, therefore, must not be sought in the comprehensiveness and exhaustiveness of its findings, but in the identification of potential issues for further policy consideration and follow-up research. The report is an analytical account that draws essentially on secondary material (reports, documents, etc.) and on a few interviews with experts and policy makers.

The case-studies were divided into two main groups:

1. One group including well studied past cases such as **Mozambique**, **Bosnia and Herzegovina**, and **Cambodia**, that could provide a comprehensive and detailed overview of possible best practices/lessons learned with regard to peace agreements and the transition periods afterwards.
2. A second group of more recent cases, such as **Sudan** and **Burundi**, that could be tested as to whether the above-mentioned best practices/lessons learned were eventually implemented and with what initial effect, or that could alternatively provide new insights on the subject.

A third exceptional category was included, through the analysis of the **Sri Lanka** case, in order to specifically deal with negotiations processes that have failed to reach the settlement phase. Such a complementary analysis could provide interesting insights in the relevance of governance issues and the possibility that they may represent important stumbling blocks during the negotiations phase. Interesting lessons could emerge for the international community on ways to engage and to improve the chances of success of negotiations processes.

The case studies were selected in accordance with indications of priority coming from the Netherlands Ministry of Foreign Affairs and taking into some consideration criteria of geographical spreading (although no case from Central or Latin America was included).

## 2. Main Findings

One key consideration concerns the need to go beyond the formal structure of peace agreements when trying to assess their effectiveness in terms of guaranteeing long-term stability and peace. Often equally important, if not more so, than the formal framework, are the informal processes that have played a fundamental yet not openly recognized role leading to the agreement in the first place. Non-completely transparent negotiations, characterized by bargaining, promise making, deal striking, all often based on personal or party's considerations and turnabouts, might be the real driving forces behind the conclusion of a peace agreement. This kind of unofficial accords have an obvious crucial bearing on the further evolution of the transition process and might as well be at the basis of renewed fighting or, alternatively, provide the right adhesive for longer-term stabilization. The importance here, regardless of how those informal factors might play in the overall process, is to become aware of their undeclared existence and, if possible, try to assess their actual impact on the agreement itself and on the subsequent transition process.

Following these considerations, and expanding them to the overall governance discourse, it is important to recognize “the complex interconnections between formal and informal, modern and traditional and *de facto* and *de jure* governance”<sup>11</sup>, as they certainly have a profound impact on the implementation of a peace agreement.

By comparing the five peace agreements included in this study in terms of the comprehensiveness of their **governance provisions**, there seems to be an upward tendency. Such a trend could be explained by different reasons. For example, it could be attributed to the changing nature of the conflicts, where governance grievances have been taking an increasingly central position. Another explanation can be found in the growing active role of the UN and the international community in all phases of the peace process, which has contributed to a rising legalization of it and to the tendency to apply more and more specific “lessons learned” from other peace processes and agreements.

This ascendant trend in governance provisions should not, however, be automatically considered as a positive outcome. First because an explicit preference for a legalistic approach instead of one that would try to address the core causes of the conflict through an incremental process of identifying and agreeing on common positions, could force the peace process into a sort of formal “straight jacket”. The detail and precision of the various provisions could, in other words, jeopardize a flexible and **consensus**-based implementation of the settlement. Secondly, because all the detailed provisions for designing post-conflict governance structures and processes could risk becoming empty shells, if not based on comprehensive needs assessments and consultative processes on the ground.

The need for an inclusive peace process, as indicated in this last point, highlights on the other hand the inherent dilemma to any agreement, where a choice needs to be made between a fast return to stability and security, and the

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<sup>11</sup> Brinkerhoff, Derick W. 2005. p. 9.

more long-term objective of guaranteeing a sustainable peace. Consultative mechanisms are essential in ensuring such a durable and peaceful trajectory, but in the short-term they may be obliged to bow to more urgent security concerns.

The **correlation** between the presence of governance components in peace agreements and the quality and stability of governance afterwards, on the basis of the cases analyzed and the existing literature, does not seem to be particularly strong. In that regard, the **implementation** phase (and possible implementation agreements), appears to play a greater role in determining the destiny of governance in a post-conflict situation. The attention of the international community should therefore extend beyond the negotiations and the signing of a comprehensive peace agreement, to cover also the following crucial period during which accords are to be implemented. There is need for a protracted and consistent engagement throughout the whole peace process.

**Power-sharing:** Whilst power-sharing is generally considered as a logical solution to conflicts over government and governance<sup>12</sup>, and one of the governance components that cannot be disregarded in those peace agreements that are expected to usher in a stable and sustainable peace process, it is interesting to note that only 15% of all the peace agreements concluded between 1989 and 2005, in governmental conflicts, “included explicit power-sharing provisions. Even when considering only the full agreements, power-sharing provisions are not typical: they are found in 29% of the agreements”<sup>13</sup>. Apparently power-sharing arrangements are mainly a feature of agreements concluding conflicts in ethnically divided societies.

As in the above discussed case of an abundance of governance provisions, the presence of power-sharing arrangements in a peace agreement is not necessarily a positive component. Everything depends on the process that lies at the origins of the settlement and on the level of legitimacy enjoyed by the parties that are included in any such arrangement. Power-sharing that has been negotiated by and benefits only a restricted group of elites cannot be regarded as a truly legitimate process and in the long-term will undoubtedly undermine democratic reforms and the overall sustainability of the political transition. In addition, power-sharing that aims at institutionalizing the rights of all the key groups involved in a conflict might end up enforcing those same differences that divided those groups in the first place and contributed to the start of the conflict.

As pointed out above, it is interesting to note that, based on the small sample of cases selected for this study, but with the corroboration of results originating in other research as well, there seems to be a tendency towards more comprehensive but less specific peace agreements. Recent agreements tend in fact to include more provisions covering different areas, but have fewer mechanisms to verify the progress of implementation. Such a trend could have been determined by greater international involvement in peace processes over time, which has apparently caused a general expansion of the agenda. Despite

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<sup>12</sup> For a detailed discussion of the differences between “conflicts of government” (which are driven by self interest and fought over government positions) and “conflicts of governance” (which are fuelled by contested policies and fought over conflicting collective interests), see: Emeric Rogier, 2004, *Rethinking Conflict Resolution in Africa Lessons from the Democratic Republic of Congo, Sierra Leone and Sudan*. Clingendael, Conflict Research Unit, July 2004.

<sup>13</sup> Harbom, Lotta, Stina Höglbladh and Peter Wallensteen. 2006. “Armed Conflict and Peace Agreements”, *Journal of Peace Research*, 43; p. 624.

the statement of principles contained in the 2005 Paris Declaration<sup>14</sup>, where harmonization among donors is considered as one of the guiding principles in maximizing the positive impact of international engagement, individual donors' approach to development, and to post-conflict reconstruction in particular, tend to reflect dynamics and political priorities that are often exclusively domestic in nature. Such policy preferences are subsequently reflected in the strategies that donor countries recommend for implementation at the partner country level. Considering the financial leverage that donors carry, it is easily understandable that their recommendations, at least formally, are taken seriously by the parties negotiating a peace agreement. The limitations of such a "donor-driven" approach tend to emerge, as we have noticed, during the implementation phase, when the local actors eventually get down to business and select those issues that are really at the heart of their concerns and interests.

The low level of specificity of the wide range of governance-related provisions that have been included in recent peace agreements, might also be regarded as being part of an overall strategy by the negotiating parties, to appease donors' demands and expectations, without necessarily being bound by them.

At the same time one should avoid to fall into the trap of an oversimplified and monocausal explanation of the observed tendency towards increased comprehensiveness of peace agreements. Various and equally important factors play a role in peace negotiations and their resulting agreements. The level of international involvement is one of them, but certainly not the only one. The relative strength of the parties involved, the inclusiveness of the negotiations, whereby the more parties are involved, the greater the chances of a multiplier effect in the number and depth of the provisions, and the length of the same negotiations, are all factors that can play an important role in defining the comprehensiveness of the agreement. While an initial attempt to draw some conclusions and identify causal relationships can be made within the limited scope of this study, a proper understanding of the real influence of each factor on the construction of an agreement and of the causal dynamics at work can only be captured through in-depth studies of individual cases.

Another trend that is worth mentioning, relates to the increase in attention to overall governance issues in peace agreements. In particular, security sector and civil service reform, administrative reorganization, and mechanisms for strengthening revenue collection have enjoyed particular emphasis by the international community. The tendency could be explained by the growing consensus emerging at the international level, that peace building needs to be closely linked to state-building. To that effect, the whole debate around "fragile states" seems to symbolize this need, as overcoming the underlying causes of weak governance is regarded as an effective means towards the achievement of political stability and at the same time the avoidance of violent conflict.

In terms of the nature of the conflict and of the ensuing negotiations, a distinction could be made based on the level of state capacity involved. On the one hand, conflicts could be listed where a strong state capacity was in place throughout the process leading to negotiations (see the Mozambique case) and where, therefore, calls for governance-related changes were mainly directed towards state reform rather than a structural overhaul of the state system. On

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<sup>14</sup> <http://www.oecd.org/dataoecd/11/41/34428351.pdf>

the other hand, there are cases where the presence of weak or completely failed states can be regarded as both the cause and the consequence of the violence. State and peace building efforts in these cases need to deal with the root causes of state failure and violent conflict and must embark on a trajectory that fundamentally tackles governance from its very foundations. A high degree of instability is also often a characteristic of such situations where a strong state is completely absent. Structural interventions need then to take place in urgency in order to prevent the situation from plunging into conflict again. As a consequence of this kind of approaches, as shown in the case of Burundi, so-called comprehensive agreements risk to become mere transitory pacts along a complex and very long-term process of peace building and state reconstruction.

### 3. Comparative analysis of governance components and the transition process

The first broad conclusion that can be drawn by comparing all the five peace agreements included in this study is that, throughout the years, there is a clear increase in the level of **comprehensiveness** of the settlements. Below reported table 3.1 shows in fact that while the 1991 Cambodia's Paris Peace Agreement (as the 1995 Dayton one) did not deal with 8 of the 17 key governance components selected for this analysis, both the 2000 Arusha Agreement and the 2005 Comprehensive Peace Agreement for Sudan reduced that number to just two components.

**Table 3.1 Schematic Overview of Governance Components in Peace Agreements**

<i>Country (year peace agreement)</i>						
<i>Component</i>	<b>Cambodia (1991)</b>	<b>Mozambique (1992)</b>	<b>Bosnia and Herzegovina (1995)</b>	<b>Burundi (2000)</b>	<b>Sri Lanka (2002)</b>	<b>Sudan (2005)</b>
<b>External intervention<sup>15</sup></b>	<b>Y (UNTAC)</b>	<b>Y (ONUMOZ)</b>	<b>Y (OSCE)</b>	<b>Y (AMIB/ONUB)</b>	<b>Y (SLMM)</b>	<b>Y (UNMIS)</b>
<b>(Multiparty) electoral commission</b>	N	Y	Y(PEC)	Y	N	Y
<b>Consultative mechanisms<sup>16</sup></b>	N	Y	N	Y	N	N
<b>Constitution (re- )drafting</b>	Y	Y <sup>17</sup>	Y	Y	N	Y (INC)
<b>Elections</b>	Y (1993)	Y (1994)	Y (1996)	Y (2005)	N	Y (planned)
<b>Interim administration (or Transitional Governance)</b>	Y (SNC <sup>18</sup> & UNTAC)	Y (CSC) <sup>19</sup>	N	Y	Y	Y
<b>Executive Authority</b>	Y (SNC)	N	Y (High Representatives for BiH)	Y (TGoB)	N	N
<b>Legislative Strengthening</b>	N	N	Y&N (mainly at the entity level)	Y	N	Y
<b>Development of political parties</b>	Y	Y	N	Y	N	Y
<b>Decentralization or autonomy provisions (or Local Governance)</b>	N	N <sup>20</sup>	Y	Y	N	Y (GoSS)
<b>Power sharing</b>	Y (SNC)	N	Y (Joint Institutions)	Y	N	Y (Protocol)
<b>Transparency &amp; Anti- Corruption</b>	N	N	N <sup>21</sup>	N	N	Y (FFAMC)
<b>Taxation</b>	N	N	N	N	N	Y
<b>Judicial reform</b>	N	N	N	Y	N	Y
<b>DDR</b>	Y	Y	Y	Y	N	Y (NDDRC)
<b>SSR</b>	N	Y	N <sup>22</sup>	Y	N	Y (NSS)
<b>Economic Rehabilitation</b>	Y <sup>23</sup>	Y (through DDR program)	N <sup>24</sup>	Y <sup>25</sup>	Y	Y <sup>26</sup>

<sup>15</sup> Non-military interventions concerning governance issues<sup>16</sup> Relating to electoral administration<sup>17</sup> Inclusion of provisions of GPA into Constitution<sup>18</sup> The Supreme National Council was formed in September 1990, one year before the actual agreement, and it included all four Cambodian parties (i.e. SOC, FUNCINPEC, PDK, and KPNLF).<sup>19</sup> CSC, CCF, and commissions dealing with reintegration of ex-combatants, reform of the Mozambican defense forces, and preparations for the elections.<sup>20</sup> Decentralization was however discussed in parliament right after the 1994 elections and became a contentious debated for years to come.<sup>21</sup> There are no specific provisions on this item except for Annex 9 “Agreement on Establishment of Bosnia and Herzegovina Public Corporations”, Article V “Ethics”, states that “Members of the Commission and Directors of the Transportation Corporation may not have an employment or financial relationship with any enterprise that has, or is seeking, a contract or agreement with the Commission or the Corporation, respectively, or otherwise has interests that can be directly affected by its actions or inactions.”<sup>22</sup> Reform (of the police) was implemented only in the years following the signing of the agreement.<sup>23</sup> Declaration on the Rehabilitation and Reconstruction of Cambodia, a rather non-specific document and Annex 4: Repatriation of Cambodian Refugees and Displaced Persons<sup>24</sup> Except for Annex 9: Agreement on Bosnia and Herzegovina Public Corporations of The General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement)<sup>25</sup> Protocol IV, especially Chapter 3: Economic and Social Development<sup>26</sup> See Agreement on Wealth Sharing under article 15: Reconstruction and Development Funds

The level of **specificity** of provisions<sup>27</sup>, on the other hand, seems “to decline over time”. This contrasting trend could suggest that eventually signatories and mediating parties have been converging towards a general compromise “between inclusion and specificity”<sup>28</sup>. That is, while settlements have been opened up in terms of the range of issues they are supposed to address, control over the available negotiating space has been conveyed to the level of details characterizing these issues and their implementations.

In addition, the most recent of the five agreements considered in this study, the Sudan’s Comprehensive Peace Agreement (CPA), reveals a clear intention by the signatories to recognize the need for **inclusiveness** in its various provisions. Decentralization arrangements, and the related system to allocate seats according to a fair representation of all the political forces in the country, are certainly noteworthy attempts to achieve the objective of inclusiveness. However, about four years after the signing of the CPA, it appears increasingly clear that the commitment to inclusiveness remains mainly on paper. Important groups and stakeholders were underrepresented during the negotiation process and eventually felt excluded from the various governance arrangements that derived from it. Furthermore, the CPA did not provide sufficient clarity about the principle of *equitable representation* in the newly formed institutions. It rather left the debate wide open by allowing the parties to resort to unspecified relevant *considerations* to determine the contours and content of the representation principle. As confirmed by other cases as well, the lack of genuine inclusiveness poses serious questions concerning the longer-term legitimacy and sustainability of the peace process.

The Sudan experience demonstrates also that the plain inclusion of the term inclusiveness in a general declaration of principles<sup>29</sup> can trigger opposite reactions that are equally detrimental to the sustainability of the peace process, as the absence of any such reference. In this particular case, **ruling elites** within both the signatories to the agreement soon began to show their dislike of a principle that risked to threaten their exclusive access and control of power. Ironically, therefore, the potential spoilers to the CPA were not only to be found among those parties that had been left out of the process, but rather among the same signatories to the agreement.

The Sudan’s CPA has also been blamed for the lack of genuine **comprehensiveness**. Some analysts, however, believe that this shortcoming may have been a reflection of the “traffic” that the agreement could actually bear. In other words, the likely decision to leave many of the key issues unresolved might have been taken “in the interest of reaching a compromise to end the war. Seeking to obtain a comprehensive agreement in Sudan that would address the relationship between central authority and marginalized groups throughout the country arguably would have meant the end of the government and thus was unrealistic in the short term”<sup>30</sup>.

### 3.1 External Intervention

Concerning the individual governance components included in this study and listed in table 3.1, it becomes immediately apparent how central the role of

<sup>27</sup> The term specificity refers here to the level of detail by which a provision and its implementation are described in the settlement.

<sup>28</sup> Suhrke and Wimplemann 2007, pp. 24 and 28.

<sup>29</sup> As it was the case with the Protocol on power Sharing of the CPA.

<sup>30</sup> Suhrke, Astri and Torunn Wimplemann. 2007. p. 14.



**external actors** has been in the negotiation, design, and implementation phases of the peace agreements. All the five settlements, in fact, have witnessed a substantial degree of intervention by the international community<sup>31</sup>. Even in the case of Sri Lanka, an external actor, Norway, was heavily involved in the ceasefire negotiations and in the planned monitoring of its implementation. Whether the sheer involvement of the international community in a peace settlement can be regarded as a decisive factor in guaranteeing the success of a transition phase is probably debatable. What seems to emerge from the case studies taken into consideration is rather the importance that the involvement of such an external actor is accompanied by the capacity to rely and possibly deploy in a timely way all the necessary human resources and means. In the specific case of Bosnia and Herzegovina, the international community played a central role in the achievement of the settlement itself and in providing all the necessary assistance to its implementation. It even got heavily involved in the approval of legislation that was resisted by the two sub-national entities. In the long term, however, its presence and active involvement did not appear to represent a sufficient guarantee to the proper implementation of the original nature of the agreement. Rather, its “controlling” presence might have even played a role in the weakening of the central institutions, as the sub-national entities looked for the appropriate political space to avoid external intrusion in their affairs.

### 3.2 Electoral Commission

In terms of main governance components that were not included in the peace agreements and that could have had a relevant impact on the transition process, the lack of a provision within the Cambodia’s PPA to establish an **electoral commission** in representation of the fundamental rights of all the political parties involved, may undoubtedly have had a relation with the violent environment in which the elections took place and with the overall sense of impunity that characterized most of the parties’ reliance on intimidation and vote-rigging practices. Furthermore, the absence of such a multi-party commission might have also encouraged parties’ refusal to accept the results of the elections on the basis of alleged frauds, as demonstrated by the CPP’s stance with regard to its electoral defeat in May 1993. UNTAC was of course the appointed body to deal with this sort of complaints and to establish, “in consultation with the SNC, a system of laws, procedures and administrative measures necessary for the holding of a free and fair election in Cambodia”<sup>32</sup>. However, its very wide mandate and an often conflicting agenda of priorities, represented likely obstacles to the fulfillment of the very specific responsibilities attached to an electoral commission.

### 3.3 Consultative Mechanisms

**Consultative mechanisms** were not envisioned in the PPA, with the only partial exceptions of a Mixed Military Working Group<sup>33</sup> and of the SNC. This institutional body, which was to represent the highest form of authority in the transitional period, was, however, probably never conceived as a consultative caucus. The four political parties involved never seriously contemplated the

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<sup>31</sup> Primarily by the UN system, with the exception of Bosnia and Herzegovina, where the leading role was played by the OSCE.

<sup>32</sup> See: [http://www.usip.org/library/pa/cambodia/comppol\\_10231991\\_annex1.html#sectD](http://www.usip.org/library/pa/cambodia/comppol_10231991_annex1.html#sectD).

<sup>33</sup> A United Nations-run network to police the Cambodian peace accord.

possibility of using that institutional setting to solve their differences and develop a common government platform. They clearly opted for an open confrontational strategy, with the SNC performing a purely formal function of advice provision to UNTAC. The absence of genuine consultative mechanisms in the political transition process certainly did not help either in mitigating some of the existing conflicts or in identifying possible compromises.

### 3.4 Elections

To stay with the case of Cambodia, the organization of general **elections** was one of the central responsibilities laid upon UNTAC. Whilst the initial purpose was to prepare the way to a sustainable democratic process in the country, the elections of 1993, which were won by FUNCINPEC, eventually turned out to be a mere formal exercise, with little affinity with a democratization process. The lack of a secure and politically neutral environment severely impacted on the value of the elections and at the end they only confirmed the domination of the national political scene by the Cambodian People's Party of Hun Sen. Faced with a disappointing as much as unexpected result, the CPP tried in every possible way, including the recurrence to violence, to invalidate the outcome of the elections and claim more political representation than legally awarded by the electoral process. Fearing yet another escalation of political violence in the country, UNTAC chose to accommodate as much as possible the CPP's unreasonable requests and gave its approval to an amorphous power-sharing arrangement that foresaw the coexistence of two prime ministers and of other duplicated key ministers and high-level officials in state structures. UNTAC's strategic decision to promote the holding of elections to the highest place in its priorities list, regardless of a whole range of other equally important components of its original mandate<sup>34</sup>, greatly impacted on the general perception of elections as a proper tool towards open democracy and thus on the overall transition process afterwards. As a possible result, the 1998 elections, organized without UNTAC's supervision and assistance, unmistakably revealed the CPP's contempt for the rule of law and for truly democratic and open processes. The CPP continued in fact its pattern of control of the security arena, and of intimidation and use of political violence. In addition, plurality in the **media**, which had started to emerge under UNTAC administration, was severely curtailed and targeted by the CPP, leaving almost no media outlets to the opposition. This worrisome trend of an electoral process profoundly characterized by widespread violence and control of the media seemed to ease up slightly in the following elections of 2002 and 2003. However, the CPP appeared as committed as ever to retain control of elections and although its strategies might have changed, the final outcome remained a further consolidation of its political power. The close and delicate relation between control of the media and electoral processes is also confirmed by the case of the Mozambique's peace agreement, where the lack of provisions dealing specifically with the need to guarantee the impartiality of the media has been considered as an inner weakness.

Concerning the 1993 Cambodia's **elections**, it is further interesting to note that they brought into the political arena a formation that had not been included in the peace negotiations. Moulinaka, a Sihanouk-loyal resistance army, got enough votes to become part of the coalition government. The result

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<sup>34</sup> Such as: protection of human rights; disarmament and demobilization; administrative control during the transition; maintenance of law and order; repatriation and resettlement of refugees and displaced persons; and rehabilitation of Cambodian infrastructure.

represented an interesting signal of the relative fluidity of the political field, where forces previously unknown or ignored by the bigger parties or by the international community, all of a sudden revealed a substantial level of popular support. The reason for their unexpected success should be carefully analyzed in order to get a better understanding of the interface existing between state institutions (including political parties) and the society at large.

Moreover, the Cambodia's case shows once more the intense interest by the international community, that time under the guise of UNTAC, to pursue the **electoral** path without previously guaranteeing the surfacing of independent judicial and government institutions. It so happened that the narrow focus on the need to hold elections proved to be a severe limit to the development of the peace process following the end of the UN mandate.

The same priority focus on the **electoral** process created in Cambodia a situation that could be defined as stable and promising in the short term, while in the medium term it started to show its threatening potential for political disruption and a revival of violent conflict. In fact, after the 1993 election produced a coalition government that seemed to agree on a power-sharing formula, as the next date of parliamentary elections came closer, old feuds among parties of the coalition government began to emerge and with them also a recrudescence of factional violence. The situation was further compounded by the fact that power balances between the two main opposing factions were not equal, whereby the dominant of them (Hun Sen's CPP) regularly resorting to the threat and actual use of violence to obtain better political bargains. The CPP's dominant position in this uneven balance of power and violence was further confirmed by its successful coup in July 1997.

**Electoral provisions** were equally central to the Mozambique's GPA. Procedures as well as basic indications were formulated with regard to the establishment of a **National Elections Commission**. The unrealistic time frame, however, caused substantial delays in the implementation of the provisions. Moreover, the control of the political arena by Frelimo, due to its dominant position in the government, contributed to an uneven representation of the various political parties in those bodies, such as the election commission, that were supposed to oversee the electoral process with impartiality.

**Electoral provisions** were also comprehensively addressed in the Dayton Peace Agreement, but they eventually failed to materialize during the implementation phase. As in the case of Cambodia, the lack of a secure environment and the ambiguous position taken by those international organizations responsible for the preparation and the holding of elections, contributed to a disappointing implementation of the electoral process. In spite of the fact that structures and rules had been carefully spelled out in the DPA, including the establishment of a Provisional Election Commission (PEC), widespread intimidation of vulnerable sections of the electorate<sup>35</sup> heavily influenced voters' behavior and eventually the results of the elections. At the same time, controversial decisions by the OSCE in terms of voters' eligibility, further strengthened the existing pattern of institutionalization of ethnic divisions in the two entities.

In the case of Burundi, ethnic considerations and concerns about losing political power hampered and delayed another core element of the transition

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<sup>35</sup> Such as internally displaced persons.

period, which had been outlined by the Arusha Agreement. Commune, national and presidential **elections** were supposed to provide the transitional institutions and processes with the necessary legitimacy, but their organization took much longer than originally expected. They all took place, together with the referendum that endorsed the new constitution, almost four years after the inauguration of the transitional government and five years after the signing of the peace agreement. An Independent National **Electoral Commission** was eventually also established, slightly prior to the electoral period. The donor community is believed to have been the main force behind this electoral drive.

Similarly to what happened in Cambodia and Mozambique, however, the institutionalization of **electoral processes** did not automatically lead to a democratic system founded on the rule of law. The practice of jockeying for political positions, which had been rampant during the transition period, emerged with even more strength at the end of it. The newly elected CNDD-FDD president, Pierre Nkurunziza, did not refrain from using its institutional position to bend laws and regulations to the advantage of his party. Whilst the Constitution allowed him to nominate governors, judges, directors of state companies and top administrative officials, he made full and unbridled use of this prerogative by relying on the fact that its party's majority in the Senate (the only institution supposed to control the legitimacy of the President's decisions), guaranteed him complete freedom in decision-making. Such a - in principle - legal exploitation of the governance system in place, should serve as a warning signal that the establishment of formal institutions and processes is, by itself, not a sufficient guarantee that the fundamental principles of a democratic system will be respected. Clear and agreed upon power-sharing arrangements should always be part of any attempt to governance rebuilding in a country emerging from internal conflict. In addition, the President's violations of the Arusha Agreement and of communal administration laws, to support his unilateral policy of assignment of ministerial and local administration positions, provided another proof of the extreme vulnerability of post-conflict governance arrangements, in the absence of powerful enough monitoring institutions.

### 3.5 Transitional Governance

In terms of **transitional governance** provisions, the Supreme National Council (SNC) was created as Cambodia's transitional national authority. The arrangements for a **transitional administration**, however, went further than the establishment of this domestic and temporary power-sharing instrument, and involved setting up the well-known United Nations Transitional Authority in Cambodia (UNTAC). The two formal bodies were supposed to reach a very high level of integration, with transitional governance decisions being taken as part of a consultative process between them. In practice, the arrangement entailed an almost absolute transfer of administrative authority from the power-sharing outfit (i.e. the SNC), to UNTAC, which was expected by the international community to take over all the main governance functions of the country. The SNC, quite remarkably, maintained solely an advisory function and the obligation to cooperate with the UN authority whenever solicited to do so. The operational and under-staffing problems that plagued the mission from its very beginning, however, had a great impact on the overall transitional process and while the UN mission in Cambodia was perceived as a peace keeping success, it was definitely not so in terms of its peace building efforts. UNTAC was never able to respond satisfactorily to the initial expectations concerning its role in public administration and broad governance, the lack of personnel being one of the most constraining factors. Another conclusion that

can be drawn from the UN direct involvement in transitional authority arrangements, is that it became automatically involved in domestic politics and soon lost credibility with regard to its claim of political impartiality, mainly because of its overt dependency on cooperation with ex-SOC officials in state structures. A widespread inclination, within the donor community with an interest in Cambodia, to isolate the Khmer Rouges, definitely did not help UNTAC in defending its impartiality assertions.

**Transitional authority** arrangements in the case of Mozambique have been generally defined as successful, mainly because the country did not relapse into civil war. However, their scope can be regarded as very limited, as they never really ushered in a process of genuine reconciliation and cooperation between the main conflicting parties. Frelimo made sure that the balance of power would lean constantly towards its side, maintaining control of a centralized political and administrative system. In addition, there are strong reasons to believe that the transitional governance arrangements did not collapse due to the heavy financial support that was provided to both parties by the international community.

The Arusha Agreement that was signed on 28 August 2000 is the clear expression of a process of renegotiation of the power relations between the two main ethnic groups in Burundi. The **transitional arrangements**, for example, clearly show the consistent attempt by the Tutsi minority to hold on their institutionalized power. The Agreement itself was characterized by a substantial scope, but the absence of a ceasefire, delaying tactics by the Tutsi representatives, and the presence of armed groups external to the Agreement, caused the implementation process to require five years to be completed.

With respect to the Sudan's CPA, it is interesting to note the evident contradiction in its first protocol between the strategic choice to prioritize the country's unity and the intention to grant some degree of autonomy to the population of South Sudan. Although it is quite clear that the signatories did not want to follow the problematic path of Bosnia and Herzegovina, which allowed for the establishment of two parallel government systems in the same country, a central one and a state- (or entity-) based one, the substantial ambiguity contained in the first passages of the protocol<sup>36</sup> eventually led to the "institutionalization" of two governance systems (i.e. the GoS and the GoSS) within the long-term vision of a unitary nation. On the one hand, provisions were included for the creation and strengthening of **country-wide institutions**, while on the other, the Government of South Sudan (GoSS) was established in order to grant the population of the South some degree of autonomous decision-making. The long-term plan was to have their interests converge towards the political center of the country, namely towards the newly created Government of National Unity (GNU). But eventually the GoSS provided the institutional pin for the SPLM/A to resist what they perceived as the risk of a total absorption by the Northern-controlled central government. The GoSS ended up by representing a sort of parallel government system to the GNU.

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<sup>36</sup> Machakos protocol, PART A, (AGREED PRINCIPLES): 1.1 That the unity of the Sudan, based on the free will of its people democratic governance, accountability, equality, respect, and justice for all citizens of the Sudan is and shall be the priority of the parties and that it is possible to redress the grievances of the people of South Sudan and to meet their aspirations within such a framework. 1.2 That the people of South Sudan have the right to control and govern affairs in their region and participate equitably in the National Government. 1.3 That the people of South Sudan have the right to self-determination, inter alia, through a referendum to determine their future status. ([http://www.usip.org/library/pa/sudan/sudan\\_machakos\\_07202002.html](http://www.usip.org/library/pa/sudan/sudan_machakos_07202002.html)).

### 3.6 Legislative Strengthening

Overall, and definitely so in the older peace agreements (i.e. up to the 1995 Bosnia and Herzegovina one), the **legislative strengthening** component of a settlement seems to have been greatly overlooked. Whilst the institutional role of the parliament was generally accepted as a *condicio sine qua non* a multiparty democracy could hardly get off the ground, little (if at all) attention was paid to the human capital within such a legislative body. Members of the parliament were left to fulfill their tasks on the general assumption that the legitimacy of their mandate, obtained through internationally monitored elections, would represent a sufficient guarantee to their proper behavior. Unfortunately, however, as the case of Mozambique clearly shows, their widespread lack of education, experience in legislative matters, and the absence of any capacity building program, tend to sensibly increase the likelihood of poor and disruptive behavior, and in the end also to have a negative impact on the overall quality of governance.

### 3.7 Development of Political Parties

Concerning the presence in peace agreements of provisions aiming to stimulate the development of **political parties**, the case of Cambodia shows the sensitivity of external parties' interventions in the delicate balance of power among the signatory factions. The Paris Peace Agreement in fact decided that the CGDK (i.e. the main political opponent to the SOC/PPP) would not be recognized "as a single entity"<sup>37</sup>. By dividing that front into three separate parties, and by forcing them to compete individually at elections, the Peace Agreement ultimately weakened their political cohesion and offered the opposing party, the SOC/PPP, a competitive advantage.

Moreover, the PPA included provisions on the establishment of **political parties** and on basic principles to guarantee their internal democratic governance. A Code of Conduct was developed, which was supposed to ensure that political parties would respect reciprocal freedom of speech, assembly and movement, fair access to the media, and secrecy of balloting. The formal endorsement of a multi-party system, however, did not eventually lead to the expected results. As previously seen, the CPP succeeded, through violence, intimidation and other unorthodox methods, in holding a firm grip on the country's political scene. In addition, its illegitimate but effective methods seemed to set an example for the few other competing parties too, to the obvious detriment of overall democratic governance.

In the case of Mozambique, the GPA was very detailed about nature, rights and duties of **political parties**. Special attention was paid to the process of transformation of Renamo into a political party, while Frelimo was regarded as already fit to take part to a multiparty system. However, although the principles and rules of the transformation of Renamo were well in place, contextual constraints severely hampered that process at the beginning. The party lacked an educated and urban based membership that could lead the transformation process to be inserted at the center of the country's political power. In addition, at least initially, funds were scarcely available to all the opposition parties.

In Burundi, the complex interweaving of ethnic with political factors is also clearly visible in all the provisions relating to **political parties**. While ethnicity

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<sup>37</sup> Peou 2002, p. 506.

definitely plays a major role in the definition of party membership and in the connected distribution of voting and seats rights, political concerns are equally central to the quest for power. In this context, it is interesting to note how both the Tutsis as well as the Hutus regarded ethnic affiliation as not being a total guarantee against maneuvers to erode the power basis of the opposing ethnic group. Party affiliation was often seen as the needed additional factor to reinforce existing (ethnic-related) power blocks. And in principle, political parties, according to the spirit of the Arusha Agreement, had to reject ethnic or geographical origin as being the exclusive base of their constituencies. The Burundi approach to ethnic politics, however, was not to institutionalize a state of denial (as enforced in neighboring Rwanda), but on the contrary it recognized the necessity to openly deal with this issue and attempted to do so by aiming at a multi-ethnic political parties system. In other words, the post-transition **Constitution** established rules for the composition of party lists that had to guarantee a proportionate representation of candidates of the other ethnic group. This constitutional requirement provoked fierce resistance mainly by the Tutsi parties, because of fears that members of their ethnic group would be co-opted by Hutu parties. And in the end, the laudable principle of multi-ethnicity representation within political parties went through a process of actual interpretation and implementation that was characterized by outright obstruction and creative ways to play around with those rules. The transition period highlighted therefore the profound limitations of attempts to legal engineering in contexts where strong societal division (in this case ethnic-based) are still heavily present. Ironically, the party that eventually turned out to be the most “multi-ethnic” was the latest addition to the Arusha Agreement peace process. In the 2005 elections, the Hutu-oriented CNDD-FDD enjoyed increased popularity perhaps also due to the fact that 30% of the Tutsi members of the parliament had been chosen through its electoral lists. More skeptical views tend to look at the CNDD-FDD likely endorsement of multi-ethnicity as a tactical choice to quickly regain some of the political ground lost in the previous years to institutional parties such as FRODEBU and UPRONA.

### 3.8 Decentralization

The lack of a clear vision of **strengthening government institutions** and the **judicial system** added to the overall weak development of Cambodian domestic institutions. UNTAC (and the SNC) was probably expected to take care of the broad institutional development framework, but failed to do so. Political power remained firmly in the hands of the governing parties, which did not refrain from using it in an arbitrary way.

In parallel, the absence of a **decentralization process** allowed for the concentration of such power not only in the hands of the usual actors, but also at the political center of the country. Outside the capital there was no functioning legal framework or civil administration, and such a situation definitely contributed to the prominence of informal and illegal governance practices in the periphery of the country. It is furthermore interesting to note that this happened in spite of the fact that decentralization reform in post-conflict Cambodia was certainly high on the international community’s agenda for that country and that, according to Brinkherhoff, “since the mid 1990s, donor reconstruction programmes have sought to increase popular participation and promote increased decentralization”. The same author argues that the reasons for the limited success of the decentralization drive can be found in “Cambodia’s cultural context [which is] at odds with the attitudes and values that support decentralization”, and in the highly centralized existing

administrative systems and decision-making. An interesting conclusion of the same author is that “while the limited decentralization pursued has contributed to the maintenance of peace and stability, its contribution to effective, devolved governance has been negligible”<sup>38</sup>. Such a conclusion reignites the debate about prioritizing effective post-conflict reconstruction (i.e. focusing on peace and stability, service delivery, rule of law, etc.) or rather democratic post-conflict reconstruction, whereby the emphasis is laid on the need to guarantee a legitimate and accountable government and administrative apparatus. The debate about the pros and cons of decentralization in post-conflict settings could be herewith expanded to a more general level, but eventually, the key principle is no doubt to reject *a priori* positions, and rather assume a context-specific approach that evaluates the importance and appropriateness of such provisions on a case-to-case basis.

**Decentralization** provisions were neither included in the Mozambique’s GPA, but they soon emerged as a missing component in the overall process of strengthening of the state from below. At least that seemed the intention of both parties at the beginning of a legislative process in 1994. Eventually, the initiative stranded on the usual problem of Frelimo not wanting to weaken its control on national politics and on the administrative system. Provisions for administrative, financial and patrimonial autonomy were resisted by Frelimo, or made ineffective by parallel mechanisms that kept the lines of control well centralized<sup>39</sup>.

### 3.9 Power-sharing

While in Cambodia some sort of **power-sharing** did eventually take place through the establishment of the SNC<sup>40</sup>, in Mozambique such arrangements were systematically and consistently resisted by Frelimo. The party that had emerged as the symbol of the independence movement revealed a nearly obsession with any alleged attempt to impinge on its dominance of the country’s political arena. That preoccupation was for instance confirmed by Frelimo’s open displeasure with the UN intervention in Mozambique. The absence of any such power-sharing provision in the GPA led Renamo to a constant strategy of political obstructionism whereby, for example, it contested electoral results and repeatedly requested extra-electoral accommodation of its demands for political power. Frelimo, in this case, was obviously not obliged to make any power sharing concession to the opposing party and had indeed the right to move the struggle to the ballot boxes. However, the evolution of the events somehow emphasized the limits of formal democracy in a post-conflict context, where reconciliation and the quest for a middle ground that can satisfy as much as possible all the main parties involved in the conflict, are equally important as the respect of formal democratic rules. Interestingly, the lack of agreement about power-sharing was subsequently exploited by Renamo to its own benefit. As soon as it believed an electoral victory was finally within reach (in the elections of 1999), Renamo suddenly opposed, among others, a power-sharing agreement that would have put strong limitations to the political power accruing from an electoral victory.

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<sup>38</sup> Brinkerhoff, Derick W. 2005. p. 9.

<sup>39</sup> Such as, for example the President’s prerogative to nominate provincial deputies.

<sup>40</sup> The effectiveness of the SNC as a power sharing mechanism has often been questioned mainly because of its temporary character (with an envisioned transfer of responsibilities to UNTAC) and the dominant role played by one of the four parties (i.e. SOC).



The case of Bosnia and Herzegovina, as that of Burundi, represents another problematic attempt to appease ethnic tensions through a sort of institutional engineering process. Recognizing the fundamental ethnic nature of the conflict, the Dayton Peace Agreement (DPA) tried very hard to envision an institutional set-up that could meet the demands of the three main ethnic groups of the country: Bosnians, Croats and Serbs. The most essential ingredients in terms of governance provisions were definitely present in the DPA, with **power-sharing** arrangements at the center of the overall effort to achieve a multi-ethnic country where the rule of law, a constitution and democratic electoral mechanisms, would form the basis of legitimate political authority. For example, a **new constitution** was immediately conceived to establish the needed institutional framework for power-sharing.

What became soon evident, however, were three main features of the power-sharing arrangements that could eventually undermine the longer-term sustainability of the transition process:

1. The structural tensions between a central state and an entity level;
2. The failure to include all national ethnic groups in the institution building process;
3. The active involvement of the international community.

While the DPA was supposed to create a single Bosnian state, which would receive its legitimacy from two political entities at its core<sup>41</sup>, at the end the central state became hostage of its parts. The failure to actually implement the Joint Institutions envisioned in the DPA, the introduction of institutional procedures that eventually compounded existing ethnic divisions<sup>42</sup>, and the absence of effective enforcement mechanisms at the state level, led to a situation where ethnic divisions got actually institutionalized in the political system. The Dayton Accords were highly specific with regard to institutional design and were careful to guarantee political influence and veto capabilities to the three parties. The extensive mutual veto powers ended up by paralysing policy making and undermining long-term state effectiveness. Since 1995, it has thus become clear that this design and its corresponding bureaucracy is one of the most important impediments to development and has been an obstacle to the transformation of the difficult relationships between the three parties.

In addition, the new Constitution bluntly excluded about 8% of the population from its legal framework, thereby planting the seeds for future conflicts and problems in the transition phase. Provisions on power-sharing and voting rights were formulated only on behalf of the three main ethnic groups of the country. The remaining share of the population was referred to by the general term of “citizens” and was in fact excluded from basic political rights. The legitimacy of the domestic signatories was therefore in doubt (posing problems of implementation), and their role in shaping the peace agreement eventually froze “conflictual political structures in the form of questionable power-sharing agreements”<sup>43</sup>.

**Power-sharing** was probably the most thorny issue in the implementation phase of the Arusha Peace Agreement, with the Tutsis resisting any attempt to erode their traditional hegemony over governance institutions (especially the army), and the most radical Hutus’ factions (such as the FDD) not wanting to

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<sup>41</sup> That is, the *Republika Srpska* and the Bosniac-Croat Federation.

<sup>42</sup> Such as the strongly ethnic based voting procedures for central state institutions.

<sup>43</sup> Suhrke, Astri and Torunn Wimplemann. 2007. p. 12.

submit to the original terms of the Agreement. The whole transition was therefore characterized by a constant process of renegotiation of power balances within the most important governance institutions. And in fact, the whole transitional trajectory envisioned by the Agreement seems to have been built around an incremental process of elections that was meant to formalize power relations and to end with a constitution-endorsing referendum.

### 3.10 Judicial Reform

Burundi and Sudan are the only two cases where judicial reform provisions were included in the settlement. However, what is probably more interesting to analyze in terms of its consequences on the long-term peace building process, is the absence of such a component from the Dayton Agreement. That non-event has been regarded as a missed opportunity to promote judicial independence across the country. Although inclusion of such provisions is by itself not sufficient to guarantee proper implementation, the establishment of a more independent judiciary system would have probably contributed to counterbalancing the confrontational rhetoric and actions of the three “constituent peoples” of Bosnia and Herzegovina.

### 3.11 Security

Concerning **security**-related aspects of peace agreements, the case of Cambodia is interesting because it highlights the importance of effective control over the use of violent means by actors that have been endorsed by all the signatories. Security provisions are doomed to fail if the monopoly of violence is not kept under strict and impartial control. In the case of Cambodia, the UN Transitional Authority (UNTAC) was mandated to supervise and control local police forces and the overall process of disarmament, demobilization and reintegration (**DDR**). Its blatant incapacity (or unwillingness) to fulfill that responsibility, created an environment where the strongest party (i.e. SOC) heavily relied on the use of violence to intimidate and get rid of political opponents and civil society representatives. That worrisome trend further worsened as the May 1993 election approached, and due to the fact that UNTAC’s security concerns were completely absorbed by the announced Khmer Rouge’s threat to spoil the electoral process.

A series of reasons have been identified for that partial failure. To begin with, operational delays in the deployment of the military component, and various deficiencies in the civilian police force created a situation where the conflicting parties saw enough opportunities to exploit those areas left unattended in the security structure. As a consequence, the ceasefire was never fully respected and the four competing parties maintained the capacity to resort to violence, as amply demonstrated by the CPP’s strategy of intimidation and elimination of political opponents in the period leading to the 1993 elections. The CPP’s unrestrained reliance on political violence provided subsequently the perfect reason for the other three parties not to abide by the agreement’s obligation to fully demobilize and disarm. Furthermore, geo-strategic and domestic considerations about balancing power relations added to UNTAC’s incapacity or unwillingness to give full implementation to the security provisions it had been charged with. In the period leading to and following the May 1993 elections, a general tendency emerged among the members of the

Core Group<sup>44</sup> to side against Vietnam and the State of Cambodia they had contributed to establish. The increasing spoiling posture of the CPP induced those same foreign actors to avoid direct confrontation with the Khmer Rouge, in spite of their resistance to the process of demobilization and disarmament. The UN Special Representative of the Secretary General and the international community feared in fact that a crackdown on the PDK would further shift the balance of power in favor of the CPP. The Khmer Rouge party, together with the FUNCINPEC and the KPNLF, was the only countervailing force to the dominant power of the CPP. Moreover, the head of UNTAC thought to be unwise to pursue militarily the PDK, because of the fear of a military debacle. And finally, the already mentioned UNTAC's strategic choice to give absolute priority to the electoral process, relegated other governance-related provisions of the agreement to a subordinate position. The case of Cambodia therefore demonstrates that the inclusion of security components in a peace agreement does not necessarily guarantee a violence-free transition period. The bodies or authorities in charge of enforcing those security provisions must be capable of doing that and must be put in a position where they can effectively exercise full control over the process and surrounding environment. UNTAC's incapacity to fulfill its security enforcement responsibility translated in the suspension of the process and in the subsequent escalation of violence, which, among others, led to the death of 82 of its staff.

In particular, one crucial factor in dealing with security issues related to a peace settlement seems to be the timely deployment of a military contingent in addition to the civilian component of an international mission. In the case of Cambodia, the late deployment of such a component (10 months after the signing of the peace agreement) is broadly believed to have affected the overall sense of insecurity among most of the parties involved in the DDR process.

In Mozambique, ONUMOZ troops arrived only six months after the initial request, delaying implementation of the General Peace Agreement and triggering new rounds of negotiations. Moreover, the inadequate time frame for the implementation of the agreement, combined with a lack of human resources at UNOHAC, had a deep impact on the completion of the **security components**. Disarmament and demobilization of the fighting factions took about two years to complete, which explains also the delay in holding the first post-conflict elections. One of the main reasons for the delay in the implementation of the security provisions is also linked to the non-specificity of the GPA that, in the opinion of some analysts, gave both parties too much space to interpret the plans according to their own interests. From a donor perspective, it is relevant to note that all the accumulated delays eventually induced the international community to bypass those commissions that had been established by the GPA, and the UNOHAC, on the ground of alleged inefficiency.

On the contrary, **security-related provisions** are generally considered as the successful part of the Dayton Peace Agreement. Peace-keeping forces maintained order in the country and facilitated the implementation of territorial and other military issues. DDR activities were also carried out to a large extent, and some SSR initiatives were undertaken. The only evident exception to this state of affairs was the existence, years after the signing of the agreement, of civilian armed groups, which escaped regulations in place for military actors

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<sup>44</sup> Which included the five permanent members of the Security Council and interested regional states.

and which therefore represented a constant threat to peace and stability in the country.

In Burundi, governance provisions regarding the **security sector** followed the known principles of fair representation of the two ethnic groups in the various security forces. A process of reform had also to take into consideration political, regional and gender criteria. Its implementation, together with that of DDR components, was however delayed by the continuing violence, which on its turn was the direct consequence of the exclusion of some of the parties from the Arusha negotiations and the eventual signing of the peace agreement. Overall, however, both the SSR and DDR processes can be regarded as quite successful in their implementation phase. With the exception of the already mentioned delays, most of the original objectives were eventually achieved, and only the police force revealed an excessive representation of former CNDD-FDD combatants. Another component of the governance of the security sector that is worth mentioning, concerns the role that the Joint Ceasefire Commission eventually turned out to play in the overall transition process. Established as a technical monitoring body, the Commission emerged as a venue for the discussion and settlement of political disputes. This widening of its “core” competencies provides an interesting lesson in the necessity to approach institutions with the right degree of flexibility and with the political willingness to allow them to take up different roles than those originally planned. In other words, peace processes can be perfectly institutionalized on paper, but eventually it is the reality of things that determine their actual relevance and evolution.

**Security-related governance components** of the Sudan’s CPA highlight probably one of the main problematic aspects in the correct and sustainable implementation of the spirit of the agreement. SSR provisions in the CPA endorsed in fact the existence and legality of two separate armies: one at the service of the GoS and the other under the GoSS. This decision has to be seen as a compromise, necessary to fare through the transitional phase of the stabilization process, without creating additional tensions among the armed forces of the two former conflicting parties. The final vision remained the same; that is, the realization of a united country with a united army, pending the outcome of the 2011 referendum. Such a “dual” approach, however, is proving to be quite a gamble in terms of long-term stability. Delays in the redeployment of forces and operational problems in absorbing substantial number of troops from “other armed groups”, together with a persistent reciprocal mistrust, have led to an evident jam in the incremental process of creation of a national army.

### 3.12 Economic Rehabilitation

In terms of **economic** components of a peace agreement, the Cambodian case shows a rather non-specific declaration that placed short-term responsibility for rehabilitation and reconstruction of the country on UNTAC, while leaving responsibility for the long-term restructuring of the economy to a non-better defined post-transition Cambodia.

UNTAC was namely entrusted with the rehabilitation and restructuring of the economy, but a series of constraints prevented it, also in this case, to fully accomplish its mandate. The limited duration of its mandate was probably the foremost reason that UNTAC was not the right body to provide Cambodia with a long-term development trajectory. Its focus was rather directed towards those basic short-term measures needed to save the country from complete

bankruptcy and to provide it with the technical assistance and aid coordination necessary to initiate a process of economic rehabilitation. At the same time, however, the UNTAC machinery caused some essential disruptions to the same economic system it was supposed to support. Its economic footprint on Cambodian society was mainly felt in the capital, where a sudden surge in the demand for all sorts of services emerged, bringing about negative consequences such as inflation, income inequality, urban-rural divide, internal brain drain, and increased dependence on imported goods. Other reasons that prevented UNTAC from delivering on its responsibility for economic rehabilitation, included the already discussed lack of a secure environment and of a country-wide administrative control.

In the case of Mozambique, rather, one of the governance provisions strikingly absent from the General Peace Agreement (GPA), regarded precisely **economic rehabilitation**. In spite of the abysmal state of Mozambique's economy at the end of the civil war, of the huge displacement of refugees caused by the conflict, of the systematic destruction by Renamo of the country's physical infrastructure, of the fact that one of the main drivers of the conflict had been Frelimo's contested (and failed) economic policy, and of the agreement reached between the two conflicting parties, during the negotiations phase, to create economic conditions for a lasting peace, no specific Protocol on economic issues was ever formulated. The only economic components of the GPA are found in the Protocol dealing with military questions, and they address demobilization and reintegration issues of former combatants. This absence, however, does not seem to have negatively impacted on the peace process following the GPA. Through substantial injections of foreign aid and loans, Mozambique has been able to achieve constant economic growth and has realized structural reforms of its economy. When these figures are broken down according to per capita income and geographical distribution of wealth, however, it appears clear that Mozambican society is still affected by potentially explosive inequalities. Development in the country has followed a division of the territory according to the original zones of influence of the two opposing parties, with the Southern provinces clearly enjoying the support of Frelimo and therefore more opportunities. At the same time, the majority of the population remains under the poverty line and subsistence agriculture continues to employ the vast majority of the work force.

What makes the Sudan's CPA very interesting in comparison to the other cases analyzed in this study, is the centrality of its **socio-economic arrangements**. One of the accords that were reached during the negotiation process leading to the settlement, is the Agreement on Wealth Sharing. This agreement represents an attempt by the conflicting parties to arrive at an acceptable solution about the division and redistribution of the wealth generated by the exploitation of natural resources. While in some of the other peace agreements taken into consideration, components of economic governance were mainly limited to the rehabilitation of infrastructures (for ex. Cambodia), or the assignment of positions of control with regard to the running of economic activities (Burundi), the CPA is unique in that it clearly puts the issue of access and exploitation of natural resources at the center of its attention. That is obviously hardly surprising, given that especially oil, and the wealth it could generate, represented one of the main bones of contention in the conflict. The protocol on Wealth Sharing further confirms the centripetal drive of the overall agreement, as, for example, a Natural Petroleum Commission was established to oversee the territorial division of oil resources. The implementation phase, however, proved once again to be the weak link of the peace building process. Provisions that on paper should have guaranteed a fair

redistribution of revenues and decision making power between the GoS and the GoSS, were eventually not implemented, causing financial constraints to the GoSS and inducing it to mistrust the capacity and political willingness of the central government to implement the CPA to the letter.

### 3.13 Sri Lanka

The Sri Lanka case is obviously different from the other five included in this study. A peace settlement has never been achieved and the conflict has currently entered what it seems to be a final show-down between the government forces and the LTTE. Its relevance for this analysis, however, can be justified by the opportunity it offers to observe from close by a process of negotiations that it was hoped it could lead to a stable and comprehensive peace agreement. The Cease Fire Agreement (CFA) of 2002 provided the beginning of this process, where governance issues could be analyzed at an early stage of development and with regard to their impact on the evolution of the negotiations.

To start with, in Sri Lanka it is possible to recognize some of the same broad features that characterized other conflicts included in the study. Although with varying levels of emphasis and recognition, the Sri Lanka conflict presents a strong **ethnic nature**, as in Bosnia, Burundi and Sudan. Quite similarly to the what emerged from the Comprehensive Peace Agreement (CPA) of Sudan, the negotiation process that followed the CFA, addressed the issues of an **interim administration**. And as in the case of Sudan, it became soon evident that both parties were giving their own interpretation to the concept of “interim administration”. For the ethnic majority, and at the same time the group controlling central government institutions, the consideration of a possible devolution arrangement for the LTTE controlled areas represented a conciliatory gesture, but was certainly not meant to provide a direction for a future political system. While for the LTTE, the acceptance of that idea was the first step towards a *de facto* recognition of the rebel movement’s administrative and political control over part of the country. And as in the case of Sudan, these conflicting views over the same governance arrangement eventually played a fundamental role in the radicalization of the reciprocal positions and in reigniting violent conflict (in Sri Lanka), or in an impasse in the political transition (of Sudan).

A potential way out of the “institutional” deadlock in Sri Lanka was offered by the attempt to establish a joint government-LTTE mechanism for the administration of tsunami aid in the North and East (the P-TOMS). At least on paper, this **joint institution** could have provided the first bridge between the central government and the LTTE in terms of shared administrative responsibilities, and could have therefore opened a window of opportunity for the Tamils’ claims of fair representation in central institutions. Unfortunately, reciprocal mistrust brought this initiative to an early end.

A final consideration concerning ethnicity and the need to insure proper **inclusiveness** in any peace building process can also be shared with the other cases of Sudan, Bosnia and Burundi. The failure, in Sri Lanka, to recognize and involve in the negotiation process the relevant Muslim community of the Eastern province has certainly represented one of the main stumbling blocks in the progress of the process. Leaving out of consideration a group that represents about one third of the population of the province is equal to priming a drifting mine.

## 4. Some general considerations about governance components in peace agreements

As already pointed out in the previous section, it is important to look carefully at two broad characteristics of peace agreements: their level of **comprehensiveness and specificity**. They both have implications on the way the resulting peace process is likely to proceed. As illustrated by the case of Mozambique, the non-specificity of the security-related provisions determined a situation where the signatories saw and made use of the space left available to interpret such wide provision to their own advantage.

Another important aspect of any international engagement with peace building processes, as the case of Cambodia shows, is that the international community is often confronted with the problematic choice between the promotion of a long-term **democratic peace** and the fast enforcement of **stability** and a secure environment. While stability and a minimum level of security are preconditions for ushering in a phase of post-conflict political transition, coercive strategies have often showed their painful limitations. Ultimately, it is up to the society in which the settlement is taking place, to define its own terms and trajectories towards a sustainable peace. The international community can provide the necessary support in showing the way by means of institutional advice and financial back-up, but should refrain from the temptation of forcing a certain developmental model.

Moreover, when the international community gets involved in the negotiation and, more important, in the early implementation of a peace settlement, the question of its **impartiality** is soon due to arise. This risk is particularly present when international actors play a prominent role in interim administration or transitional governance arrangements. The cases of Cambodia, Mozambique and Bosnia and Herzegovina emphasize this delicate aspect of external intervention into a peace process. In those situations, by becoming a central player in the reconstruction of governance institutions and in the oversight of balances of power, UNTAC, ONUMOZ and the OSCE automatically entered the same arena of political struggle where the parties in the conflict were facing each other. Although the UN authorities and the other involved international organizations could formally claim a position of impartiality, by simply becoming part of the overall balance of power, exposed them to all sorts of attacks and critiques to this alleged impartiality of theirs. Any decision or initiative they would take towards the implementation of a peace agreement was subject to close scrutiny and likely critique.

The inclusion of an “**electoral** clause” in a comprehensive peace agreement can lead to different outcomes concerning the peace building process. In the short term elections hold in fact the dangerous potential of triggering a sudden revival of the original struggle opposing the various parties involved in the conflict. At the same time, as the case of Cambodia shows, they

can also catalyze a (temporary) cessation of the hostilities and even some form of power-sharing. In the long term, however, tensions are doomed to rise again, if the underlying causes of disagreement and distrust are not properly addressed, and if the electoral competition is not adequately controlled and kept within a rule-of-law framework. The Cambodia case also emphasizes the importance of control over media outlets in order to influence the results of electoral processes.

**Power-sharing** arrangements are a very delicate component in peace agreements. Their degree of sustainability in the medium and long-term is strongly dependent on the balance of power that has been reached by the warring parties in advance of the settlement, and on its prospects of being maintained as such throughout the transition phase following the settlement. While it is true that the maintenance of such a balance of power can also be conducive to a perpetuation of the original causes of the conflict, any foreign intervention aiming at upsetting this equilibrium should be carefully considered, as it might alter those conditions that brought to a stalemate among the parties in the first place, and eventually to an acceptance of the settlement itself and of the need to reach a power-sharing compromise.

On the other hand, as the case of Mozambique shows, the presence of a power-sharing arrangement is still preferable to a situation of political dominance by one or just a few of the parties originally involved in the conflict. Although the Mozambique's peace process is generally regarded as a success story, during the initial phases of the peace agreement's implementation, many of the obstacles that emerged were due to a fundamental struggle for power between Frelimo, the dominating party, and Renamo, which was trying with every possible means to counter its opponent's dominant position in institutional terms.

Further, the intrinsic relevance of power-sharing arrangements should be carefully considered when it involves the formal creation of a **coalition government**. Often in fact, these political formula risk to reproduce and legitimize the same power balances that locked the country in a conflict situation in the first place. The creation of sufficient space for political and social change should be regarded as a key priority by the international community, in spite of the potential destabilizing effects in the short-term.<sup>45</sup>

At the same time, it is important to realize that **power-sharing** negotiations and arrangements can also often take place within an informal setting and that they can eventually undermine the efficacy of the democratic institutions envisioned by the peace agreement. Formal **institution building** processes, namely, can be made irrelevant by the parallel existence of **elite bargains** and pacts that operate as an informal strategy to circumvent democratic obligations.

International actors might do their best to concentrate on the governance aspects of a peace agreement, among others in order to devise the best possible institutional setups and power-sharing arrangements, but eventually they will have to take into equal consideration the spoiling threats originating from **security concerns** affecting the warring parties. If the personal security of their leaders, and to a lesser degree also that of their men, is at risk, then they will be very careful and probably even reluctant to agree on, or implement any settlement that reduces their power to resort to armed

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<sup>45</sup> See Cousens and Kumar, 2001, p. 90.



violence<sup>46</sup>. Furthermore, security concerns need to be regarded in a short as well long-term perspective. Their negative effect on peace building processes can be very immediate and therefore easily recognizable, but it can also be linked to a long-term horizon whereby the leaders of warring factions, for instance, are persecuted by national or international tribunals. As the case of Cambodia shows<sup>47</sup>, but more recently even that of Sudan, with the indictment of President Omar al-Bashir by the International Criminal Court (ICC), the delicate equilibrium of a peace process can be suddenly disrupted by international threats to the personal security of those leaders. In such cases, if their access and control over violent means is still significant, their capacity to upset any previously agreed upon institutional arrangement is equally considerable and it should be taken into due consideration.

Finally, the Cambodian case raises important questions about the role of the international community in **economic reconstruction**. While it seems implicit that some attention to economic aspects of a post-settlement transition period are key to the short and medium term stability of the peace building process (as highlighted by the increased interest in these factors in more recent agreements, such as the Burundi and Sudan ones), the proper degree of involvement and responsibility that should be assigned (if at all) to international actors in this sector is less obvious. Those actors have in fact shown a general tendency of concentrating on their own survival and operational needs, leaving out more long-term structural aspects linked to economic recovery and development.

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<sup>46</sup> See also Peou, 2002, p. 523.

<sup>47</sup> With the establishment in 2005 of a special tribunal tasked with trying crimes against humanity and genocide dating back to the Khmer Rouge period. The genocide tribunal held its first public hearing in November 2007.

## 5. Recommendations

*Design intervention strategies accurately.* Substantial interventions by the international community in a post-conflict setting should be carefully planned in advance. In particular, in the case of interventions whereby important parts of state authority and sovereignty are taken over by external actors<sup>48</sup>, the following aspects should be taken into due consideration: a sound analysis and understanding of the political culture and complex power structures and dynamics in the country should precede any such intervention; mission's personnel should be properly trained for the required tasks; deployment and operational planning should be carried out well in advance and with the necessary attention; effective communication and coordination within the mission and with headquarters should be regarded as a primary requirement; and finally, the mission's authority and reach should extend well beyond the capital city.

Further, the case of Cambodia highlights the importance of considering the **involvement of third parties**<sup>49</sup> into a post-peace agreement phase, when they are known to have close linkages to potential spoilers and therefore also the capacity to keep them under control. In other words, when there is strong evidence that these parties have established themselves as informal “patrons” of any of the factions involved in a conflict, be it signatories or not to the settlement, their likely capacity to influence the behavior of those factions, either by withdrawing their political, economic or military support, should be acknowledged and, if deemed necessary, appealed to.

*Avoid coercive strategies, while aiming at a broadly supported peace agreement.* External actors should refrain from the temptation of forcing stability and security on a post-conflict society, without first prioritizing the democratic trajectory. Democratic peace can be a long-term, often frustrating and constantly at danger of derailing objective, but it cannot be replaced by the false perception of short-term stability. At the end the international community must realize that the most sustainable approach is the one that tries to facilitate the establishment of a level playing field among the various contending parties, by guaranteeing the active support of broadly carried institutional arrangements.

*Pay as much attention to the design of a peace settlement as to its **implementation**.* While a peacekeeping mission can be broadly hailed as successful, due to its restoration of collective security, and a peace agreement is regarded both as inclusive and exhaustive and holding the potential to be conducive to a stable peace, everything will still risk falling apart if the terms of the agreement are not properly implemented. Planning of the intervention in this phase is again crucial, in order to ensure that the proper structures and processes are in place.

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<sup>48</sup> As, for instance, during UN-run temporary administrations.

<sup>49</sup> Such as Vietnam on one side, and China, Thailand and the US on the other.

Another related recommendation refers to the need for the international community to ensure that those activities for which it is responsible, according to the terms of the peace agreement, are carried out in time and, above all, through the **timely deployment of sufficient human resources**. Especially in the case of security-related provisions, the lack of proper planning and the delayed or insufficient deployment of personnel in charge of implementing and monitoring the provisions, create the risk of stalling the overall peace process and, in the worst cases, of creating dangerous windows of opportunity for the warring factions to relapse into violent confrontation.

*Do not consider the political arena as a static playing field and be alert to the emergence of unexpected political forces.* The generally hailed elections can actually produce some surprising results, as it was the case, in Cambodia, with the admission to the coalition government, by popular vote, of a resistance army loyal to Sihanouk, “which had fought the SOC in the 1980s but had not been a party to the Paris Agreement”<sup>50</sup>, namely the Moulinaka.

*Ensure that peacekeeping is duly followed by peace building.* The traditional culmination of the peacekeeping effort, namely the organization of free and fair elections, should not conceal the importance of embarking on a parallel process of institutional, social, and economic reforms, without which a peace agreement could easily unravel. Often, the root causes of a conflict are deeply embedded in the structures of society and they need to be recognized and dealt with, if a peace settlement is entitled to have any chances to survive and move beyond a mere procedural façade.<sup>51</sup>

*When an **electoral process** is regarded as a key component on the road towards peace building, ensure that effective control over the arbitrary use of power by the competing factions is guaranteed.* Without a credible check on this threat, which needs to be maintained also in the medium to long term, initial gains in the political process can be easily and dramatically reversed by a sudden and uncontrolled recrudescence of the conflict, as witnessed by the July 1997 coup in Cambodia.

Concerning the same **electoral process**, it is important to guarantee equitable **access** to the **media** by the various contesting parties. The case of Cambodia shows how detrimental to long-term peace building efforts a unilateral (by the CPP) control over media can be.

*In the **electoral process**, do not underestimate the influence and power of traditional elite pacts over the emergence of new democratic forces.* The expulsion from the Cambodian government and from FUNCINPEC in 1994 of Sam Rainsy, a rising new political figure who had returned from France, is a corroboration of that sort of resistance. He had namely attempted to question the legitimacy of the establishment and had called for more effective anti-corruption policies.

When an **interim administration** has been agreed upon by the signatories to a peace settlement and possibly also by the international actors involved in that process, it is essential to guarantee that those formal institutions emerging from such an agreement do operate according to truly democratic principles, and do not become the informal domain of the strongest party among the various signatories. Administrative structures are particularly subject to this sort

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<sup>50</sup> Peou, 2002, p. 510.

<sup>51</sup> See Cousens and Kumar, 2001, p. 90.

of political control, as witnessed by the bitter confrontation that developed after the PPA in Cambodia, between the PDK and the SOC, about control of these structures.

*Be aware of the fact that institution building entails more than just designing and establishing formal governance bodies.* Especially in the case of **intervention** aiming to strengthen the role of a **parliament**, it is essential that the necessary procedures and programs are in place to guarantee that its elected members receive proper guidance and training to develop their legislative and oversight skills. In other words, the international community's mandate should not stop at the formal design and establishment phase of a legislative assembly, but should dedicate equal attention to the development of the human capital within such a key democratic institution.

Still in relation to **institution building**, be aware of the fact that informal power-sharing negotiations and arrangements can eventually undermine the efficacy of the democratic institutions envisioned by the peace agreement, with the support of the international community. More specifically, *be aware of **elite bargaining** as an informal strategy to circumvent democratic obligations.*

*Think about the consequences of exclusive/selective support.* In particular, the Cambodia case shows that maneuvers by the international community to sideline one of the undesired parties in a peace settlement, namely the Khmer Rouge Party of Democratic Kampuchea (PDK), eventually produced the unwanted result of weakening the opposition coalition of the CGDK, to the advantage of the pro-Vietnam SOC. While it is understandable that international parties might choose sides in a conflict, they should also be aware of the long-ranging destabilizing consequences of their intervention within an existing **balance of power**. Any such action should be carefully weighed against a whole series of possible scenarios.

While international actors keen to engage on peace settlement processes are certainly encouraged to maintain an as broad as possible approach to governance-related concerns, nevertheless they should not ignore the ever present spoiling threat of the warring parties' **security fears**. That is not to say that universal immunity should be granted to those parties regardless of their responsibilities during the conflict, or that they should be allowed to maintain private armies to protect their personal safety. However, international actors should be very careful in not forgetting to bring the security component in the overall equation of a peace settlement process.

And finally, when engaging in **economic reconstruction activities**, as part of a peace settlement, the international community should be aware of its potentially disruptive economic footprint. As the Cambodian case shows, the UNTAC machinery was mainly concerned with the need to guarantee its operational capacity, regardless of the consequences on the local economic and social structures. Its operations created therefore an enormous inflationary bubble that was not sustainable in the long-term and that aggravated the existing urban-rural divide. Other negative consequences of taking up such a role included: a further stress on existing income inequality (among those involved in UN-related activities and those left out); the creation of an internal brain drain (by "absorbing" into the UN machinery overqualified staff that would be subsequently assigned to menial jobs); and an increased dependency of the local economy on imported goods (in great demand within the UN community).

## Annex 1: List of Acronyms

### **Bosnia Herzegovina**

ARBiH	Army of the Republic of Bosnia and Herzegovina
CPA	Comprehensive Peace Agreement
DDR	Demobilization, Disarmament and Reintegration
DPA	Dayton Peace Agreement
EUFOR	EU-led peacekeeping force
IFOR	Implementation Force
OHR	Office of the High Representative
OSCE	Organization for Security and Cooperation in Europe
PEC	Provisional Election Commission
SFOR	Stabilisation Force in Bosnia and Herzegovina
SFRY	Socialist Federal Republic of Yugoslavia
SSR	Security Sector Reform
UN	United Nations
YPA	Yugoslav People's Army

### **Burundi**

AMIB	African Mission in Burundi
CENI	Independent National Electoral Commission
CNDD	Conseil National pour la Défense de la Démocratie
DDR	Demobilization, Disarmament and Reintegration
FAB	National Army of Burundi
FDD	Forces pour la Défense de la Démocratie
FNL	Front National de Libération
FRODEBU	Front pour la Démocratie au Burundi
IMC	Implementation Monitoring Commission
JCC	Joint Ceasefire Commission
MRC	Mouvement pour la Réhabilitation du Citoyen
NEC	National Electoral Commission
OAU	Organization of African Unity
ONUB	United Nations Operation in Burundi (French acronym)
PALIPHEUTU	Parti pour la Libération du Peuple Hutu
PARENA	Parti pour le Redressement National
PTC	Post Transition Constitution
SSR	Security Sector Reform
TA	Transitional Arrangements
TGoB	Transitional Government of Burundi
TRC	Truth and Reconciliation Commission
UN	United Nations
UNOB	United Nations Office in Burundi
UPRONA	Union Pour le Progrès National

**Cambodia**

ASEAN	Association of Southeast Asian Nations
BLDP	Buddhist Liberal Democratic Party
CGDK	Coalition Government of Democratic Kampuchea
CIVPOL	Civilian Police
CPP	Cambodia's People Party
FUNCINPEC	Front Uni National pour un Cambodge Indépendant, Neutre, Pacifique, et Coopératif
IDP	Internally Displaced Person
KPNLF	Khmer People's National Liberation Front
KR	Khmer Rouge
MILCOM	Military Component
MMWG	Mixed Military Working Groups
MOULINAKA	Mouvement pour la Libération Nationale du Kampuchéa
PDK Khmer Rouge	Party of Democratic Kampuchea (see also KR)
PPA	Paris Peace Agreement
PRK	People's Republic of Kampuchea
PRPC	People's Revolutionary Party of Cambodia
SNC	Supreme National Council
SOC	State of Cambodia
SRP	Sami Rainsy Party
SRSG	Special Representative of the Secretary General
UN	United Nations
UNTAC	United Nations Transitional Authority in Cambodia

**Mozambique**

BICC	Bonn International Center for Conversion
CCF	Ceasefire Commission
CNE	National Elections Commission
CORE	Reintegration Commission
CSC	Supervision and Control Commission
FRELIMO	Mozambique Liberation Front
GPA	General Peace Agreement
HIPC	Heavily Indebted Poor Countries
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Person
ILO	International Labour Organization
IMF	International Monetary Fund
MP	Member of Parliament
ONUMOZ	UN Mission in Mozambique
RENAMO	National Resistance of Mozambique
RSS	Reintegration Support Scheme
SRSG	Special Representative of the Secretary General
STAE	Technical Secretariat for the Elections Commission
TAE	Transforming Arms into Ploughshares
UN	United Nations
UNDP	United Nations Development Program
UNOHAC	United Nation for Humanitarian Assistance Coordination
WB	World Bank

## **Sri Lanka**

CFA	Ceasefire Agreement
GAM	Free Aceh Movement
IMF	International Monetary Fund
IPKF	Indian Peace Keeping Force
ISGA	Interim Self-Governing Administration
JVP	Janatha Vimukthi Peramuna (People's Liberation Front)
LTTE	Liberation Tigers of Tamil Eelam
P-TOMS	Post-Tsunami Operational Management Structure
SLMM	Sri Lanka Monitoring Mission
SSR	Security Sector Reform
TULF	Tamil United Liberation Front
UNP	United National Party

## **Sudan**

ABC	Abyei Boundary Commission
CPA	Comprehensive Peace Agreement
DDR	Demobilization, Disarmament and Reintegration
DRC	Democratic Republic of the Congo
GNU	Government of National Unity
GoS	Government of Sudan
GoSS	Government of Southern Sudan
IGAD	Intergovernmental Authority for Development
JIU	Joint Integrated Units
NCP	National Congress Party
NCS	National Civil Service
NDDRCC	National DDR Coordination Council
NIF	National Islamic Front
NSC	National Service Commission
NSDDRC	Northern Sudan DDR Commission
NSS	National Security Service
SAF	Sudan Armed Forces
SC	Security Council
SPLM/A	Sudan's People's Liberation's Movement/Army
SSDDRC	Southern Sudan DDR Commission
SSDF	South Sudan Defence Forces
SSR	Security Sector Reform
UN	United Nations
UNMIS	UN Mission to Sudan

## Annex 2: Case Studies

### **Cambodia and the Paris Peace Agreement (1991)**

#### **Background of the conflict**

Cambodia gained independence from France in 1953 under king Norodom Sihanouk, who remained the leader of the country until 1970, when general Lon Nol took over power after a coup. The Khmer Rouge, in combination with military action by the North Vietnamese army against the republican government forces, started a civil war which it won in 1975 and its leader Pol Pot renamed the country into Democratic Kampuchea. At the same time, Cambodia was caught in the middle of a great power conflict and a border war with Vietnam. China and the USA shared the same interest in stopping Soviet influence in Southeast Asia, especially in Vietnam. This led to an internationalization of the conflict. “Foreign intervention demonstrably escalated the war, prompting the massive Vietnamese invasion of Cambodia in late December 1978” and the subsequent installation of a Vietnamese-friendly government. The Khmer Rouge reign of terror was thereby ended, and in 1979 the People’s Republic of Kampuchea (PRK) was established<sup>52</sup>.

This occupation led to heavy criticism and diplomatic pressure from China, the international community and the Association of Southeast Asian Nations (ASEAN), with China eventually invading Vietnam<sup>53</sup>. ASEAN mobilized support for Cambodian resistance groups such as: a group of pro-Sihanouk parties which later formed the United Front for a Cooperative, Independent, Neutral and Peaceful Cambodia (FUNCINPEC); the anti royalist Khmer People’s National Liberation Front (KPNLF); and the Khmer Rouge Party of Democratic Kampuchea (PDK). In 1982, these groups formed a coalition government in exile, namely the Coalition Government of Democratic Kampuchea (CGDK)<sup>54</sup>. The CDGK enjoyed the financial and military support of the USA, Thailand and China, while the opposing forces of the PRK/Vietnam alliance relied on the “steady backing of the Soviet bloc”<sup>55</sup>. By 1987, however, the hard-line positions of all the foreign parties involved in the conflict began to soften, relations between Moscow and Beijing began to improve, and finally “a framework agreement for an eventual settlement of the Cambodian conflict” was reached among the United States, China, and the Soviet Union. This chain of events provided the necessary pressure on the different factions at war to start negotiations about a settlement of the conflict.<sup>56</sup>

<sup>52</sup> S. Peou, *Implementing Cambodia’s Peace Agreements*, in: S.J. Stedman, D. Rotchild, E..M. Cousens, *Ending Civil Wars. The Implementation of Peace Agreements*; (2002, Lynne Rienner Publishers, Boulder), p. 501.

<sup>53</sup> Peou, 2002, pp. 501, 502.

<sup>54</sup> KPNLF and prince Sihanouk, as non-communists, were united in their distaste for the Khmer Rouge, but clashed over the issue of coalition building and national reconciliation, since the KPNLF was originally formed by a follower of Lon Nol who had disposed of Sihanouk in 1970. The CGDK now held the UN seat which was denied to the PRK and was still held up till then by the Khmer Rouge. When the PPA was signed, the CGDK would be replaced by the SNC.

<sup>55</sup> Peou, 2002, p. 502.

<sup>56</sup> F.O. Hampson, *Nurturing Peace. Why Peace Settlements Succeed or Fail*; (1996, United Institute of Peace Press, Washington), p.178.



The PRK was led by president Heng Samrin and by the Cambodian People Party (CPP), which had evolved from the People's Revolutionary Party of Kampuchea. The regime, supported by the Vietnamese army, managed gradually to extend its administrative control, but faced opposition from the CGDK. In 1986, Hun Sen was named Prime Minister of the PRK.<sup>57</sup> Hun Sen was a less dogmatic leader and when he became president in 1987, initial steps towards reaching a comprehensive settlement to restore peace by Vietnam, the PRK and the CGDK, were followed upon by more substantive negotiations between Sihanouk and Hun Sen, in which they agreed that all the parties to the conflict would be involved in a post-settlement government. Vietnam ended occupation in 1989 and the country was renamed into the State of Cambodia (SOC). On 23 October 1991, the four Cambodian factions signed 'The Agreements on a Comprehensive Political Settlement of the Cambodia Conflict' - the Paris Peace Agreement (PPA), which *inter alia* mandated the UN to start the United Nations Transitional Authority in Cambodia (UNTAC). The UNTAC mission started in February 1992 and lasted until September 1993.

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<sup>57</sup> R.R. Ross, ed., *Cambodia: A Country Study*, Washington: GPO for the Library of Congress, 1987.



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## Governance issues of the Conflict

From 1987 onward, several attempts were made to start a negotiation process. In 1988, a meeting in Jakarta brought together the four factions and, for the first time, their allies. But the negotiation process was marred by a series of contentious issues, such as the likely characteristics of a power sharing agreement, disagreement on the role of the Supreme National Council (SNC – see below), disarmament provisions, timing of the elections, human rights and the formation of a transitional civil authority and UN peacekeeping force. The SOC was a one-party state led by the People's Revolutionary Party of Kampuchea (PRPK), which later changed its name into the Cambodian People Party (CPP). Initially it was led by Heng Samrin and from 1985 to date by Hun

Sen.<sup>58</sup> The SOC opposed proportional representation, fearing sizeable representation of the PDK, FUNCINPEC and KPNLF in the Assembly and arguing instead for a 'winner-takes-it-all' system based on single-member constituencies. A first breakthrough came in 1990 when the parties agreed on the establishment of the SNC. After four years of negotiations, the four Cambodian factions and eighteen other states<sup>59</sup> signed the PPA.<sup>60</sup> The presence of all these countries can be explained by the fact that ASEAN members such as Thailand and Indonesia were directly involved either in the conflict or in the mediation process. Furthermore, the regional association feared destabilization in the region, and more broadly, great powers' interests were at stake from the start of the Cambodian civil war.

## **Overview of the PPA**

The PPA consists of three instruments: the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict (with annexes on the UNTAC mandate, military matters, elections, repatriation of refugees and IDPs and principles for a new constitution); the Agreement Concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia; and the Declaration on the Rehabilitation and Reconstruction of Cambodia. It is a specific agreement when one looks at the mandate of UNTAC (Annex I) (though not comprehensive compared to later UN mission mandates such as in Burundi or Kosovo, which were thoroughly detailed and encompassed a wide array of governance issues).<sup>61</sup> The four parties (SOC, FUNCINPEC, PDK and KPNLF) worked together in the Supreme National Council (SNC), a power-sharing arrangement which was agreed upon by the parties one year before the signing of the PPA. The SNC was 'the unique legitimate body and source of authority in which, throughout the transitional period, the sovereignty, independence and unity of Cambodia [were] enshrined'.<sup>62</sup> The inclusion of the Khmer Rouge, however, became a very contentious issue for it was opposed by Vietnam and the PRK/SOC (accusing it of genocide), but heavily supported by China and Thailand and accepted by the US as a way of counterbalancing Vietnamese influence in the region.

Important parts of state authority and sovereignty were delegated to the UN mission during the transitional period (see below). This could be described as a case of 'shared' or 'international sovereignty', through "the creation of new institutional forms in which international actors share authority with domestic officials over key policy areas within a target state, with the objective of enabling these states to fulfil certain core functions."<sup>63</sup> As Peou writes, "for the first time in UN history, a sovereign state's administrative agencies, bodies, and offices in the ministries of foreign affairs, national defence, public security, and information were to be placed under the direct control of the United Nations."<sup>64</sup>

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<sup>58</sup> Throughout this document, the use of SOC refers to state and military structures dominated by the CPP before and after the signing of the PPA. The use of CPP refers to the political party and its leaders.

<sup>59</sup> Those present were the five permanent members of the Security Council, the six members of ASEAN (which were at the time Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand), Australia, Canada, India, Japan, Laos and Vietnam. Yugoslavia attended in its capacity as Chairman of the Non-Aligned Movement.

<sup>60</sup> Peou 2002, pp. 503.

<sup>61</sup> H. Miall, O. Ramsbotham, T. Woodhouse, *Contemporary Conflict Resolution*; (2004, Polity Press, Cambridge), p.192

<sup>62</sup> PPA, Part I, Section III, article 3

<sup>63</sup> K. Klotzle, *International Strategies in Fragile States: Expanding the Toolbox?*, CAP Policy Analysis, 01/2006.

<sup>64</sup> Peou 2002, p. 505

Overall, however, “the Paris Agreement provided no clear guidance as to how UNTAC could effectively carry out its mandate”, except for assuming that the signing factions would respect the terms of the agreement by competing at the elections in a free and fair manner, without the threat of any sanction. In addition, the agreement unintentionally helped erode the rough politico-military balance of power between the CGDK and the SOC. Led by their primary strategy to prevent the Khmer Rouge from returning to power, the international actors’ intervention in Cambodia eventually contributed to the weakening of the CGDK and the symmetric strengthening of the SOC, which reasserted “its hegemonic control in all major cities”<sup>65</sup>. The agreement, in fact, “did not recognize the CGDK as a single entity”, for it regarded the three resistance coalition partners as separate signatories, “who would therefore compete in elections individually vis-à-vis the SOC”<sup>66</sup>. Eventually, by dividing the SOC’s enemies, the Paris Peace Agreement gave the SOC a competitive advantage over its adversaries. This situation thwarted UNTAC’s attempts to convince the resistance factions (and in particular the Khmer Rouge) that it was there to establish a ‘neutral political environment’. Moreover, slow funding by donors and slow deployment of civilian, security and military personnel, further reduced confidence in UNTAC.<sup>67</sup> UNTAC itself was also responsible for problems during the implementation process. It experienced several operational problems such as lack of basic knowledge about Cambodia and its needs, inexperienced and poorly trained personnel, and lack of planning and coordination between headquarters and New York, and within the mission itself. With regard to civil administration, the UN had “no precedents, no experience, [and] no guidelines upon which to draw” and was seriously understaffed (e.g. 170 mission staff to oversee more than 100.000 civil servants under SOC control). Its area of operation mainly covered the capital Phnom Penh, which limited control over Khmer Rouge territory and allowing the SOC to dominate provincial administrative structures.<sup>68</sup>

### **Provisions on (transitional) governance**

Part 1 of the PPA defines the transitional period and the role of UNTAC and the SNC. As indicated above, the SNC functioned as the ‘unique legitimate body and source of authority’. The members of the SNC were to cooperate with UNTAC in holding elections and to hand-over authority of government structures to the UN-led transitional authority, in order to administer the country and prepare for elections. The SNC was presided over by prince Sihanouk and offered advice to UNTAC on the basis of consensus within the SNC. Without consensus, Sihanouk was entitled to decide what sort of advice would be given and, if he were not in a position to decide, this power would be transferred to the Special Representative of the UN Secretary General (SRSG), Yasushi Akashi. UNTAC was responsible for holding elections and establishing a ‘neutral political environment’, which necessitated its supervision and control over ‘agencies, bodies and offices that could directly influence the outcome of elections’.<sup>69</sup> These included offices in the ministries of foreign affairs, national defence, public security, and information. The SRSG had the power to reassign or remove local personnel and replace them with UN personnel and had decision-making authority within these structures.

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<sup>65</sup> *Ibid.*, p. 524

<sup>66</sup> *Ibid.*, p. 506-507.

<sup>67</sup> *Ibid.*, p. 523-524.

<sup>68</sup> *Ibid.*, p. 515-517.

<sup>69</sup> PPA, Part I, Section III, article 6

## Implementation of provisions on (transitional) governance

Doyle argues that the peace operation in Cambodia is often hailed as a peacekeeping success, but that it failed as a peace building process. The failure by UNTAC to build on the PPA and work on institutional, social and economic reforms has had a large impact on the period after the end of UNTAC's mandate.<sup>70</sup> UNTAC faced SOC obstruction of its mandate and never managed to seize control of the administrative structures due to its lack of personnel. The PDK acted as a spoiler and the SRSG reacted accordingly by delegitimizing its demands and defending the polls against a Khmer Rouge attack.<sup>71</sup> The SRSG failed however to respond in a similar way to the behavior of the SOC, partly because he depended on the SOC's collaboration in the administrative structures for the success of the peace process. According to Stedman this limited his options for controlling the SOC. "[...] Akashi failed to comprehend SOC's dependence on UNTAC. UNTAC had greatly strengthened SOC, which had a stake in holding the election and gaining international legitimacy and support."<sup>72</sup> Since the international community (except for China) objected the Khmer Rouge's return to power and the inclusion of Khmer Rouge leaders in the coalition government, SOC's own position was greatly enhanced. UNTAC had a narrow interpretation of its mandate and did not make use of the provisions on administrative control. "[...] UNTAC restrained from attempting to enforce compliance with its administrative directives. Akashi did not want to use the prerogative of replacing or repositioning SOC bureaucrats."<sup>73</sup> He also refrained from publicly holding SOC accountable for human rights violations. This lax attitude towards SOC was most explicit in the way UNTAC dealt with the CPP behavior after the 1993 elections (see below).

As mentioned above, the SRSG had specific powers and was only bound to comply with the SNC's advice when this was based on consensus and did not contravene the PPA. According to Stedman, however, UNTAC displayed "unwillingness to assert its administrative prerogatives as outlined in the Paris Accords"<sup>74</sup>, and to confront both SOC and its president, Hun Sen, with respect to the implementation of the PPA. In his turn, Hun Sen was clearly not interested in sharing his power with UNTAC, especially since the Khmer Rouge was continuing its violent struggle after it had concluded that it had nothing to gain from an electoral process.

Due to a strong focus on successful elections, UNTAC failed to foster an atmosphere in which independent judicial and government institutions could emerge. These, together with a concentration of power at the centre, became important obstacles for the period after the end of the UN mandate.<sup>75</sup> The failure to wrestle control of the state institutions from the SOC meant that Cambodia was unable to create an effective civil service, needed to implement reforms funded by the international community. Moreover, the fact that the existing SOC (CPP) structures had to absorb newly enrolled FUNCINPEC

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<sup>70</sup> M.W. Doyle, "Peacebuilding in Cambodia: Legitimacy and Power", in: E.M. Cousens, C. Kumar, *Peacebuilding as Politics. Cultivating Peace in Fragile Societies*; (2001, Lynne Rienner Publishers, Boulder), pp. 89-90

<sup>71</sup> S.J. Stedman, "Spoiler Problems in Peace Processes", in *International Security*, Vol. 22, No. 2 (Fall 1997), pp. 5-53.

<sup>72</sup> *Ibid.*, p. 33

<sup>73</sup> *Ibid.*, p. 33

<sup>74</sup> *Ibid.*, p. 32

<sup>75</sup> Beschrijvende Kenschets,

<http://www.minbuza.nl/nl/reizenlanden/landen,landenoverzichten/azie/cambodja.html>

officials after the 1993 elections created a bureaucratic stalemate.<sup>76</sup> A post-elections UN report stated that “Cambodia still faced enormous problems of security, stability, mine clearance, infrastructure improvement and general economic and social development, [...]. The political-military situation remained fragile and the tasks before the new government were ‘difficult and challenging’”.<sup>77</sup> The UNTAC mission was ended officially on 24 September 1993, when the new government was installed, with prince Norodom Sihanouk elected king of Cambodia by the Royal Council of the Throne.

### **Provisions on elections and constitution drafting**

UNTAC was responsible for the holding of elections “on a provincial basis in accordance with a system of proportional representation on the basis of lists of candidates put forward by political parties”.<sup>78</sup> A 120 member Constituent Assembly was to draft and adopt a new constitution within three months after the elections. There was no provision for an electoral commission within the PPA, although the 1981 SOC Constitution called for the establishment of a National Elections Committee.

### **Implementation of provisions on elections and constitution drafting**

Elections were held in May 1993, with the exception of those territories held by the PDK. The PDK withdrew from the electoral arena after its demands (see above) were not honored by the SRSG. Opposition parties were able to set up party offices across the country, despite threats and occasional attacks on FUNCINPEC and KPNLF offices by SOC. Voter registration and turnout were a success. Almost 90% of eligible voters had registered and on election day, more than 4 million people turned out at the polls, representing close to 90% of registered voters. FUNCINPEC and the Cambodian People’s Party (CPP) emerged as the largest parties, receiving 58 and 51 seats respectively in a 120-member Constituent Assembly (which would later become the National assembly). A coalition government was formed by the CPP, FUNCINPEC, KPNLF (renamed the Buddhist Liberal Democratic Party, BLDP) and Moulinaka<sup>79</sup> (a Sihanouk-loyal resistance army not represented at the Paris sessions). FUNCINPEC president Norodom Ranariddh (Sihanouk’s son) became first prime minister, CPP leader Hun Sen second prime minister. The elections were not free and fair however, since there was no ‘neutral political environment’ due to the failed disarmament process, the escalation of violence by PDK and SOC towards election day, and the perpetration of ceasefire violations and human rights abuses by all sides (again, especially by PDK and SOC).<sup>80</sup> The UNTAC mission even reconfigured its military component and included forces from SOC, FUNCINPEC and KPNLF to protect the election

<sup>76</sup> Doyle 2001, pp. 99-101

<sup>77</sup> The ‘second generation’: Cambodia elections ‘free& fair’, but challenges remain, UN Chronicle, September 1993, [http://findarticles.com/p/articles/mi\\_m1309/is\\_n3\\_v30/ai\\_14667483](http://findarticles.com/p/articles/mi_m1309/is_n3_v30/ai_14667483); website accessed 19-10-2007

<sup>78</sup> Annex III

<sup>79</sup> The Mouvement pour la Libération Nationale du Kampuchéa was one of the four major resistance groups opposing the Vietnam-supported PRK/SOC regime (Peou 2000). Unlike the other three (i.e. FUNCINPEC, KPNLF and PDK), however, Moulinaka was not part of the CGDK that had been formed in 1982. It became a political party during the 1993 election and won one seat in the Constituent Assembly. That seat was later transformed in one ministerial post, that of the Ministry of War Veterans. Moulinaka has never been a credible political force and has now disappeared from the political scene.

<sup>80</sup> Peou 2002, p. 517



process from Khmer Rouge attacks. But it was the SOC who continued to dominate the political scene.

The SRSB underestimated the SOC's spoiler behaviour and was unprepared when the SOC attempted to derail the peace process right after the May 1993 elections. Following a devastating electoral defeat of SOC's political party, the CPP, by FUNCINPEC, Hun Sen called the election results into question and SOC "orchestrated riots throughout Cambodia".<sup>81</sup> The SRSB tried to appease Hun Sen's claims of electoral fraud by commissioning a full investigation. "He also sought out the leader of FUNCINPEC [...] to urge him to be conciliatory towards the CPP". The CPP used violence to successfully force FUNCINPEC and UNTAC to reverse the election results. "[t]he UN acceded to a power-sharing arrangement mediated by king Sihanouk that provided SOC with more power and cabinet positions than its electoral performance deserved." The compromise led to the creation of two co-prime ministers (Ranariddh and Hun Sen) as well as co-ministers of the interior and defense. Stedman argues that the SRSB had turned the election into a 'holy grail', making other UNTAC goals such as promotion and protection of human rights, disarmament and demobilization and administrative control during the transition, subservient to the holding of elections.<sup>82</sup> Even though a total of 20 parties were established and registered, and SOC turned out not to be invincible at the polls<sup>83</sup>, its dominance was quickly restored through the political power exercised by the CPP.

### Post-UNTAC elections

The period after the elections saw a renewal of hostilities between the Khmer Rouge and the new coalition government, but these gradually came to an end. The government granted amnesty and some autonomy to Khmer Rouge leader Ieng Sary, who managed to remain in control of part of north-western Cambodia. Thousands of Sary's combatants defected in late 1996, while coming under nominal command of the government, and soon after the Khmer Rouge started to disintegrate.<sup>84</sup>

As Lizée writes, the factional allegiances that had dominated the political landscape for the past decades felt threatened by the idea of rooting political power in the concept of popular representation.<sup>85</sup> FUNCINPEC and CPP decided to equally divide the control of district authorities and provincial governorships. However, the upcoming 1998 elections drove FUNCINPEC and CPP apart, eventually resulting in a coup by the CPP in July 1997. The previous year FUNCINPEC had in fact demanded a bigger "share of district-level offices", considering their control a decisive instrument to reach voters. In addition, the impending 1998 elections were a threat to the CPP since it was "deeply unpopular"<sup>86</sup>, according to public opinion polls. On the contrary, to FUNCINPEC the same elections represented a way out of the coalition in which it was overshadowed by the CPP. FUNCINPEC, therefore, first attempted to form an electoral alliance with the Sam Rainsy Party (SRP), popular among

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<sup>81</sup> Stedman 1997, p. 32

<sup>82</sup> *Ibid.*, p. 35

<sup>83</sup> S. Peou et al., International Assistance for Institution Building in Post-Conflict Cambodia, Working Paper 26, Clingendael Institute, March 2004, pp.13-16

<sup>84</sup> Peou 2002, p. 522; Cambodians to Seek Amnesty For Khmer Rouge Defector, NY Times, August 24, 1996

<sup>85</sup> Lizée, P. P., "Cambodia in 1995: From Hope to Despair" (1996) XXXVI: 1 *Asian Survey*, p. 83

<sup>86</sup> Doyle 2001, pp. 92

the urban young, and secondly it courted the Khmer Rouge leadership, which was willing to come out of the bush in return for amnesty and for handing over its leader Pol Pot. Tensions mounted and after a period of clashes in the capital, on 5 July 1997, Ranariddh was ousted by Hun Sen.

In July 1998, the CPP-dominated government held elections, which were won by the CPP, followed by FUNCINPEC and the SRP. The multiparty electoral system had remained intact and 39 parties were allowed to register. The turnout was even larger than in 1993. This time however, following the 1997 violent incidents, the opposition media were either destroyed or taken over by the CPP, and the electoral process “was marred by political violence and intimidation, with the CPP dominating the political and security arenas.”<sup>87</sup> The opposition vehemently protested the results, claiming widespread intimidations and fraud. The CPP and FUNCINPEC (with Ranariddh who was allowed to return to the country only months before election day, after he had suddenly left on the eve of the coup) eventually formed a coalition government, but with Hun Sen as sole premier.<sup>88</sup>

Access to media was even more problematic in the 2002 commune elections when (both state-owned and private) news media covered almost exclusively the activities of the government and the CPP. The pre-election period saw politically-motivated killings and intimidation of political party candidates by the military and local officials (under the control of the CPP). Compared to previous elections, these were less violent and the multi-party system remained in place. The CPP “took control of nearly 99 percent of all communes”, there were also fewer complaints in the post-election period and power was transferred without “any serious protests from the losing parties.”<sup>89</sup>

The 2003 national elections resulted in the CPP further consolidating its political power, whereas FUNCINPEC lost ground and the SRP won some. The election was more free and fair than the previous ones and there was better media access for opposition parties, although the state-run media remained under ‘tight’ control and private media ‘remained biased’.<sup>90</sup> More troublesome however was the presence of village chiefs (99% of which were CPP members) who were ‘wandering around polling stations’ and were ‘keeping record of voters coming in and out’ and were ‘directing and advising them’.<sup>91</sup>

### **Provisions on political parties**

Political parties were allowed to be formed by any group of five thousand registered voters and party platforms had to be consistent with the principles and objectives of the PPA. UNTAC was responsible for the proper registration and compliance with the PPA. The parties were to adhere to a Code of Conduct, which meant that “[T]hey were particularly urged to take all measures to ensure freedom of speech, assembly and movement, as well as fair access to the media for all registered political parties during the electoral campaign, and to reassure Cambodians that the balloting would be secret.”<sup>92</sup> One of the main weaknesses of the PPA, it is argued, was the fact that the CGDK was not recognized as a bloc and that each of the three parties had to

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<sup>87</sup> Peou 2004, p. 15

<sup>88</sup> Peou 2002, pp. 521, 522

<sup>89</sup> *idem*, p. 15

<sup>90</sup> *idem*, p. 16

<sup>91</sup> *idem* p. 16

<sup>92</sup> Cambodia: voter registration a success; cease-fire violations continue, [UN Chronicle](#), June, 1993



compete against CPP individually, thereby giving the CPP a competitive advantage.<sup>93</sup>

Since the 1993 elections, traditional elites reinforced factional hierarchy and the monarchy, at the detriment of more democratic forces, which resulted in repeated crackdowns on government critics. In 1994, Sam Rainsy, a returnee from France, was expelled from the government and from FUNCINPEC due to his strong stance against the existing establishment and for his calls for anti-corruption policies. Sympathizing with Rainsy, Norodom Sirivudh, FUNCINPEC secretary-general and half brother of king Sihanouk, was arrested.

The CPP is the most institutionalized and sustainable party in the political landscape. Since the 1993 elections it has continued to solidify its power base and hold of the country. According to Peou et al., this does not mean the CPP enjoys unconditional legitimacy. It uses its control of the state and security structures to intimidate voters and opposition. Over time, the party has become less dependent on individual leaders, although Hun Sen is still regarded as the undisputed leader.

FUNCINPEC's position was weakened after its leader was ousted in 1997 and clashes with the army decimated its troops. Ranariddh was allowed to return and campaign for the 1998 elections, but faced growing internal problems and divisions within his party. Whereas the CPP managed to grow stronger and become more cohesive after each election round, FUNCINPEC slowly disintegrated until the party disposed of its leader in 2007 following allegations of embezzlement for which Ranariddh was sentenced – in absentia – to 18 years in prison. Following the abysmal result of the July 2008 parliamentary elections, FUNCINPEC maintained its presence in the governing coalition, but it was forced by the CPP to replace its leadership.

New parties are formed before each election, but only the SRP has managed to gain seats since the 1998 elections. The SRP, however, has a limited support base, predominantly represented by voters from urban areas, such as students, teachers and labour union members. Both FUNCINPEC and SRP make use of xenophobic rhetoric targeted at (ethnic) Vietnamese, and ironically their lack of internal democratic governance, according to some analysts, renders the CPP the most 'democratic' party.<sup>94</sup>

### **Provisions on security related governance**

UNTAC was to supervise and control operations of all civil police (both SOC as opposition) and other law enforcement and judicial processes, as well as engage in investigative activities. UNTAC was also to supervise, monitor and verify the withdrawal of foreign forces, the cease-fire and related measures, such as locating and confiscating weapons caches and supplies, and assisting with demining. Under the ceasefire agreement, the parties were to cooperate with the highest military officer of the UNTAC mission, in the framework of the Mixed Military Working Group (MMWG). This United Nations-run network had been established to deal with problems related to the ceasefire. The effectiveness of this consultative mechanism was very low, since the Khmer Rouge and other parties continued to fight. Another important security-related

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<sup>93</sup> Peou 2002, p. 506

<sup>94</sup> Peou 2004, p.19; B. Lintner, One Big Happy Family in Cambodia Asia Times Online, March 20, 2007, [http://www.atimes.com/atimes/Southeast\\_Asia/IC20Ae03.html](http://www.atimes.com/atimes/Southeast_Asia/IC20Ae03.html).

element in the peace agreement was the supervision of the regrouping and the relocation of all forces in cantonment areas where they would be disarmed (70 percent of each of the four parties' armed forces was to be disarmed). This would happen in two phases, the first being in effect at the moment of signing of the PPA, with UNTAC monitoring and verifying the ceasefire and drawing up a plan for the modalities of the second phase. The second phase would involve the cantonment, demobilization and disarmament of former combatants.<sup>95</sup> UNTAC was to assist in the reintegration into civilian life of demobilized forces prior to elections.

### **Implementation of Provisions on security related governance**

According to Peou, UNTAC's Civilian Police (CIVPOL) was "perhaps the least effective of all mission components". It failed to fulfil its primary mandate as supervisor and controller of local police, lacked an effective command system and its personnel was inexperienced and lacked training. "Throughout UNTAC's life span, SOC police intimidated civil society organizations and physically assaulted and assassinated members of the opposition."<sup>96</sup> The Military Component (MILCOM) was not fully deployed until ten months after signing of the PPA. Slow troop deployment meant MILCOM was understaffed to implement the second phase operation of cantonment, disarmament and demobilization, which later led to security fears with the conflict parties, especially the Khmer Rouge (PDK), who were reluctant to demobilize and disarm.<sup>97</sup>

Stedman offers three reasons for this reluctance. First, the PDK claimed that in violation of the PPA, Vietnamese forces were still present at the time of cantonment (even though Vietnam reconfirmed its withdrawal from the country in 1989)<sup>98</sup>. Second, the PDK demanded the dismantling of SOC administrative structures and third, it demanded investing the SNC with the power to run the country (since UNTAC had not established effective control over the SOC administrative structures). Peou argues that it "is debatable [...] whether 'firmness' with the Khmer Rouge would have generated more cooperation, given its security concerns. Strict enforcement would have undermined not only what legitimate authority UNTAC enjoyed in Cambodia but also its credibility internationally."<sup>99</sup> Engaging the PDK would have meant starting a protracted war with an enemy that more than 100.000 Vietnamese troops could not defeat. Although UNTAC could have sought a Chapter 7 mandate to force the PDK to comply<sup>100</sup>, the SRSG of the UN, Akashi, resisted calls to forcefully disarm the PDK, among others because he feared this would disturb the balance of power in favour of the CPP. FUNCINPEC and KPNLF derived some of their power from the PDK's counterbalance to the CPP's strength.

Since UNTAC was to establish a 'neutral political environment', fighting the PDK would have relatively strengthened the CPP, thereby also running the risk of breaking consensus within the group of international parties to the PPA. Through meetings with the PDK's patrons (China and Thailand)

<sup>95</sup> PPA, Annex I and II

<sup>96</sup> Stedman 1997, p. 32

<sup>97</sup> Peou 2002, p.517. The Khmer Rouge was not only afraid of the SOC, but also of the inhabitants of areas they didn't control.

<sup>98</sup> Cambodia UNTAC Background,

[http://www.un.org/Depts/dpko/dpko/co\\_mission/untacbackgr2.html](http://www.un.org/Depts/dpko/dpko/co_mission/untacbackgr2.html)

<sup>99</sup> Peou 2002, p. 519

<sup>100</sup> "Under the UN Charter, a Chapter 7 operation permits enforcement against identified threats to peace and does not require the warring parties' consent" (Stedman 1997: 28).

and criticizing the PDK at SNC meetings, Akashi managed to withstand PDK's non-compliance. As Stedman writes: "UNTAC's strategy for dealing with the KR [Khmer Rouge] was imaginative and effective, and serves as the prototype of the departing train strategy for managing spoilers. When faced with KR attempts to undermine peace, UNTAC emphasized that the peace process would not exclude the KR, nor would it be held hostage by it."<sup>101</sup> When the demands of the PDK started to become a threat to the peace process, UNTAC sought to delegitimize the PDK internationally and continue the process without it.

The other three parties partially complied and cantoned almost 55.000 soldiers. But due to the PDK's refusal to disarm and demobilize and UNTAC's refusal to honour their demands, UNTAC returned all surrendered arms to the three factions for self defence.<sup>102</sup> The three factions had requested UNTAC the return of their weapons, "based on the fact that they held primary responsibility for security in zones under their control."<sup>103</sup> At the end of 1992 UNTAC suspended phase II of the ceasefire and the demobilization and disarmament process. The suspension meant that the 1993 elections would take place with the two largest armed forces mostly intact (PDK and CPP), and with some of the forces of the other two parties (FUNCINPEC and KPNLF) still in the field. This situation led to an increase of ceasefire violations by PDK and SOC forces, leading to the killing of ethnic Vietnamese and other Cambodians, and 82 UNTAC personnel. Due to this increase in insecurity, Hun Sen became more reluctant to allow UNTAC supervision of SOC administrative structures. "This growing reluctance [...] became particularly evident as the military situation deteriorated and applied to nearly all fields of control and supervision entrusted to UNTAC."<sup>104</sup>

### **Provision on economic restructuring**

The war and occupation had destroyed the economy. The legacy from the colonial period had resulted in an economy with huge inequalities, which had not been substantially transformed by the rule of the Khmer Rouge and the subsequent Vietnamese invasion. On the contrary, "the 1978 Vietnamese invasion imposed a new kind of colonialism"<sup>105</sup>. The deep wounds inflicted by decennia of war and oppressive regimes left a country characterized by huge rehabilitation needs. UNTAC was mandated<sup>106</sup> to rehabilitate and restructure the economy and society but failed at (re)building infrastructure or establish "general productive capacity beyond putting in place capacity needed for its operational requirements".<sup>107</sup> UNTAC managed to control hyperinflation, prevent government bankruptcy, facilitate a ban on logging and create new jobs for unemployed Cambodians, including refugees.<sup>108</sup> But it was not mandated to

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<sup>101</sup> Stedman 1997, pp. 31-32.

<sup>102</sup> Peou 2002, p. 509

<sup>103</sup> The 'second generation': Cambodia elections 'free& fair', but challenges remain, UN Chronicle, September 1993, [http://findarticles.com/p/articles/mi\\_m1309/is\\_n3\\_v30/ai\\_14667483](http://findarticles.com/p/articles/mi_m1309/is_n3_v30/ai_14667483)

<sup>104</sup> Cambodia UNTAC Background, [http://www.un.org/Depts/dpko/dpko/co\\_mission/untacbackgr2.html](http://www.un.org/Depts/dpko/dpko/co_mission/untacbackgr2.html)

<sup>105</sup> Doyle 2001, p. 95

<sup>106</sup> See article 24 on rehabilitation and reconstruction. This is elaborated upon in the Declaration on the Rehabilitation and Reconstruction of Cambodia.

<sup>107</sup> Peou 2002, p. 517

<sup>108</sup> Peou 2002, pp. 515-517; Doyle 2001, p. 101. UNTAC tried to protect natural resources, particularly timber, minerals and gems and appealed to neighbouring countries to assist in implementation of a SNC adopted moratorium on the sale of timber and export of gems. This initiative, however, failed, due to wide scale violations and because the PDK refused to allow UNTAC to establish checkpoints within its zones.

develop a long-term perspective on economic reconstruction. This was left to the responsibility of Cambodia after the transitional period.<sup>109</sup> The UNTAC presence in the capital created economic growth in the service sector, but was also a cause for inflation. There was a “strong urban-returnee relief bias”, which “fostered high rates of consumer imports and growing inequality.”<sup>110</sup>

UNTAC failed to restructure former SOC bureaucracies. UNTAC neither managed to control the civil service, nor did it succeed in its mandate to rehabilitate the economy. The mission focused mainly on aid coordination and on the provision of technical assistance. It started rehabilitation efforts at the end of its mandate, at the moment “when the needs of refugee resettlement required a more active role.”<sup>111</sup> Realistically, rehabilitation was impossible due to the fact that both the PDK and the CPP were obstructing the peace process. With no effective administrative control (especially outside the capital) and a failed demobilization and disarmament process, there was no basis for economic rehabilitation. The 1998 coup had a negative effect on what little progress was made and halted foreign assistance. Since the end of the mandate, Cambodia has experienced economic growth (6.4% between 2001-2004 and over 13% in 2006), although the rural-urban rift remains. Its main economic drivers are the tourism and the garment industry. But still, the country lacks basic physical infrastructure, a functioning health care and education system. The war has destroyed human, social and physical capital and poverty is still widespread. As the World Bank states: “Cambodia faces a formidable array of development challenges.”<sup>112</sup>

## **Entry points for the International Community/Netherlands MoFA**

### UNTAC Mission and international involvement

Although the SRSG tried to influence PDK behaviour through its patrons China and Thailand, it wasn't able to bring the PDK back into the peace process. The overall attitude of the international community towards the PDK was such that it didn't want to see the PDK's return to power. This enhanced the capabilities of the SOC to obstruct the peace process in order to solidify its position vis-à-vis the other parties. In such a case, it would have been recommendable for the international community to envisage a common strategy in order to ensure a balance of power between the various parties to the peace agreement.

The failure to maintain a ceasefire and to enforce disarmament of the parties has had a very negative impact on the peace process. On the other hand, a decision by UNTAC to disarm the PDK before the 1993 elections would have certainly meant an armed confrontation, with the consequent disruption of the existing balance of power and the destruction of the aimed at 'neutral political environment'. Since the PDK showed no sign of commitment to the peace process, the SRSG constantly tried to mobilize the mediation of the only two countries with the capability to influence the PDK, Thailand and China. Given that the Thai army was involved in the smuggling of gems and timber from PDK-held territory, stricter border control would have cut-off the PDK from an important source of income. Even though UNTAC failed to maintain a ceasefire and disarm the warring parties, it successfully defended the peace

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<sup>109</sup> Peou 2002, p. 505

<sup>110</sup> Doyle 2001, p. 101

<sup>111</sup> Doyle 2001, p. 101

<sup>112</sup> Cambodia Country Brief, [www.worldbank.org](http://www.worldbank.org)

process in the sense that there was no large-scale return to violence. From this example one can draw a more general conclusion that a combination of maintaining an open-door policy, while simultaneously involving the patrons of a spoiler in the overall peace process, can result in at least partial successful implementation of a peace agreement.

### Governance Issues

It is recommendable to give priority to democratic institution building. The domination of the CPP in state administrative structures has hindered the establishment of a politically independent civil service, thus forestalling accountability and transparency of state institutions. Three areas of intervention could be identified: political parties, elections and media.

#### Political Parties

The lack of internal democratic procedures within the SRP and FUNCINPEC is a problematic issue. Besides, none of these two parties has the ability to govern the country more effectively than the CPP. On the other hand, if the SRP and FUNCINPEC were able to become strong enough to gain sufficient weight in legislative institutions, they could pressure the CPP to reform existing institutions.

#### Elections

The failure to include a provision on an electoral committee has had a negative impact on the proceeding of elections in the country. A functioning electoral committee might have been able to deal with CPP objections to the results of the 1993 elections. Although a National Elections Committee is in place since 1998, it has been dominated by CPP and FUNCINPEC appointed officials and its independence is a matter of dispute. It would be advisable to offer assistance in strengthening the independence and transparency of the electoral administration and support local election monitoring organizations. This will require legislative reform.

#### Media

It would be recommendable to support those media institutions that are least politicized and have obtained some form of independence from the political factions. Better media access for opposition parties in the 2003 elections has been a positive sign to be possibly worked upon. This will require long-term commitments typically spanning a longer period than that normally ending right after elections.

## **General Peace Agreement for Mozambique (1992)**

### **Background of the Conflict**

Following the 1974 young military officers' overthrow of the Portuguese government, Portugal withdrew from Mozambique after negotiations. Without a formal transfer of power, various political groups struggled for power, with the leader of the independence movement Frelimo, (Mozambique Liberation

Front) eventually floating on top and declaring independence in 1975.<sup>113</sup> Frelimo's leader Samora Machel (who after his death in 1986 was succeeded by Joaquim Chissano) created a one-party state and implemented Marxist-Leninist policies, which caused societal discontent and eventually resistance by a heterogeneous group that became organised with Rhodesian and later South African support<sup>114</sup>. This opposition group consisted of disgruntled Frelimo members, former soldiers who had served in the Portuguese army, and escapees from re-education camps. In the early 1980's<sup>115</sup>, it became the National Resistance of Mozambique (Renamo), led by Afonso Dhlakama. Its anti-Marxist political agenda promulgated capitalism and democracy, though it lacked a coherent ideology and organizational structure.<sup>116</sup>

From 1977 until 1992 a devastating struggle ensued between Frelimo (backed by its communist Cold War allies) and Renamo, with the latter pursuing tactics that destabilised the countries' infrastructure and service sector and with both sides committing atrocities.<sup>117</sup> By the end of the 1980's the war had devastated the economy and reached a mutually hurting stalemate. War fatigue, the shedding of Marxist ideology by the Frelimo government, adoption of political and economic reforms, and the shifting of political priorities in South Africa, created the right conditions for mediation efforts. In 1990, the Catholic Community of Sant'Egidio was accepted as mediator at formal negotiations in Rome. After two years of negotiations surrounded by a climate of mutual distrust, a General Peace Agreement was signed on 4 October 1992 in Rome.<sup>118</sup>

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<sup>113</sup> M. Sinjela, *Mozambique: A Successful Conflict Resolution?*, in: A.A. Yusuf (ed.), *African Yearbook of International Law*, (African Association of International Law, 1997), pp.37-39

<sup>114</sup> Mozambique supported and harboured Rhodesian guerrilla fighters. After Zimbabwe's independence, South Africa took over the task of supporting Renamo.

<sup>115</sup> C. Manning, *Mozambique: RENAMO's Electoral Success*, in: J. de Zeeuw (ed.), *From Soldiers to Politicians. Transforming Rebel Movements After Civil War*, (Lynne Rienner Publishers, Boulder, 2008)

<sup>116</sup> M. Rupiya, *Historical context: war and peace in Mozambique*, in: J. Armon et al., *The Mozambican peace process in perspective* (1998 Conciliation Resources, London)

<sup>117</sup> M. de Tollenaere, *Democracy Assistance to Post-Conflict Mozambique. Intentions and Outcomes*, Working Paper 37, Netherlands Institute of International Relations 'Clingendael', Conflict Research Unit, May 2006

p. 1-2

<sup>118</sup> *Ibid.*, p. 1-2



Source: Ministerie EZ

### Governance Issues of the Conflict

At independence Mozambique's economy had a low level of development and the departure of Portuguese settlers caused a drain of human capital. After 1978, the Frelimo government started to accumulate substantial amounts of

liabilities, mostly due to droughts and excessive lending.<sup>119</sup> Frelimo's Marxist-Leninist ideology disrupted an already weak economy and social life through failed agricultural policies and villagization projects, which resulted in a decline in production.<sup>120</sup> By trying to remove traditional authorities, it exacerbated traditional differences within Mozambican society.<sup>121</sup> The outbreak of conflict sparked regional and ethnic tensions. Frelimo's traditional power base was in the capital and the south, while Renamo's in the centre and the north<sup>122</sup>, and this was reflected in the voting patterns at the 1994 elections.<sup>123</sup> The destruction of the war affected political, economic and social life throughout the whole of Mozambique. Out of a total population of 15 million, 1million people died, 1.5 million became refugees and 3 million became IDPs. Zimbabwean and Malawian troops intervened to protect transportation corridors to the port of Beira. During the 1980's Frelimo, in need of foreign financial assistance from the IMF, opened up its economy and started capitalist reforms. In 1989 it shed its Marxist ideology, and soon after it started a process of democratization and engaged in direct talks with Renamo.<sup>124</sup>

Frelimo adopted a new constitution in 1990 which paved the way for a multi-party democracy and "the inclusion of different sensitivities in the political system".<sup>125</sup> According to Sinjela, Frelimo wanted to demonstrate its commitment to a lasting peace by introducing major political and economic reforms in the country, thereby addressing Renamo's political agenda. The new constitution contained everything Renamo fought for. It provided for free and regular elections with a confidential vote; it guaranteed basic freedom of movement, expression, religion and press; an independent judiciary; a direct vote for the president by the electorate; and the introduction of a mixed economy with an emphasis on private investment.<sup>126</sup> Renamo, however, had serious objections to these changes since they seriously undermined its bargaining position with respect to concluding a peace agreement. "Renamo argued this was not a legitimate Constitution, as they had not taken part in the revision process. This was understood as a Government strategy to pre-empt all major demands from Renamo and render their negotiation position irrelevant, which elevated the level of suspicion between the parties."<sup>127</sup> This created two choices for Renamo: either accepting these changes or continue on a path of war which could not be won and which would enhance Frelimo's position on the world stage. It chose the former option while following an obstructionist course in order to gain as many concessions from Frelimo as possible.<sup>128</sup>

<sup>119</sup> A. Rebutti, *Why Mozambique Run Into Debt? Mozambique Debt Burden in Historical Perspective*, IMF Country Report, December 2000, <http://www.imf.org/external/np/cv/CV.aspx?AuthID=110> (website accessed 04-10-2007)

<sup>120</sup> R. Paris, *At War's End. Building Peace After Civil Conflicts*, (Cambridge University Press, New York, 2004), p. 143; P. Chabal, *The Construction of a Nation State*, in: P. Chabal et al., *A History of Postcolonial Lusophone Africa*, (C. Hurst & Co., London, 2002), p.68

<sup>121</sup> Chabal 2002, p. 69

<sup>122</sup> C.L. Manning, *The Politics of Peace in Mozambique. Post-conflict democratization, 1992-2000* (Westport, Praeger, 2002) pp. 55-67

<sup>123</sup> Rupiya 1998

<sup>124</sup> Paris 2004, p. 143; Sinjela 1997, p. 37-39

<sup>125</sup> A. Lalá, *Democratic Governance and Common Security in Southern Africa: Mozambique in Focus*, *Journal of Security Sector Management*, vol. 2 nr. 1, March 2004

<sup>126</sup> Sinjela, 1997, p. 39, 40; A. E. Ostheimer, *Transforming peace into democracy: Democratic structures in Mozambique*, *African Security Review* Vol. 8 No 6, 1999

<sup>127</sup> Lalá 2004

<sup>128</sup> Ostheimer 1999



## Overview General Peace Agreement

The General Peace Agreement (GPA) consists of seven protocols: I) Basic Principles, which states that Renamo shall pursue its struggle in a peaceful, political way, “in conformity with the laws in force, within the framework of the existing institutions” and in accordance with the conditions and guarantees of the GPA. There is also a provision for the establishment of a commission to supervise and monitor implementation of the GPA; II) Criteria and arrangements for the formation and recognition of political parties; III) Principles of the Electoral Act; IV) Military Questions; V) Guarantees; VI) Cease-fire; and VII) Donor’s Conference. The GPA was signed in Rome on 4 October 1992, after two years of negotiations, facilitated and mediated by the Community of Sant’Egidio, the Archbishop of Beira and representatives of the Italian government. In the negotiations leading to the GPA, four documents were signed which form an integral part of the GPA: the Joint Communiqué; the Agreement on a Partial Cease-fire; the Declaration on the Guiding Principles for Humanitarian Assistance; and the Joint Declaration. The GPA called for the creation of several peace commissions which were responsible for the implementation of the GPA and whose mandate would end after elections. The peace commissions were composed of representatives of the government, Frelimo, Renamo and occasionally of the UN Special Representative of the Secretary General (SRSG) and major donors.<sup>129</sup>

The Joint Communiqué stated the intention by the conflicting parties to enter into a negotiation process to reach a peaceful settlement of the conflict. In this document, the two parties agreed to create, amongst others, economic conditions for a lasting peace. This intention did not materialize however into a separate Protocol on socio-economic provisions. The task ahead was probably too daunting and contested to be solved at the negotiation table. One of the drivers of the conflict had in fact been Frelimo’s failed economic policy and the forced relocation of part of the rural population into villages, which (in combination with the war) had created massive poverty. Moreover, the country’s shattered economy had to deal with 4.5 million refugees and IDPs, and Renamo’s tactic of destroying infrastructure and the public service sector created unfavourable conditions for post-war reconstruction. Eventually, the only socio-economic provisions are to be found under Protocol IV, with respect to the economic and social reintegration of demobilised soldiers. The Joint Declaration gave a leading role to the UN as main monitor, guarantor and implementer of the GPA. The UN mission in Mozambique (ONUMOZ) between 1992 and 1995 is often described as being a success.<sup>130</sup> The mission ended soon after the results of the October 1994 elections. The Agreement on a Partial Ceasefire involved the disengagement of Zimbabwean troops from those bordering areas on Mozambican territory and called for an end to Renamo’s military operations in the Beira and Limpopo corridors, as well as the setting up of a Joint Verifications Committee. The Declaration on the Guiding Principles for Humanitarian Assistance gave guarantees to the UN and ICRC that they could operate and deliver humanitarian assistance without restrictions on the territory of Mozambique. Renamo and Frelimo promised not to take military

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<sup>129</sup> Manning, 2002, p.7

<sup>130</sup> G. Downs and S.J. Stedman, *Evaluation Issues in Peace Implementation*, in: S.J. Stedman, D. Rotchild, E.M. Cousens (ed), *Ending Civil Wars: the implementation of peace agreements*, (London, Lynne Rienner Publishers, 2002), p.59. Downs and Stedman give the UN mission a difficulty score of 3 on a scale of 0 to 8 and a willingness score 1.2 on a scale of 0 to 3. This reflects the climate of distrust between both parties during the negotiations and the implementation phase and possibly hints as to why the peace process didn’t fall apart because of this climate.

advantage of humanitarian assistance operations and work together with the international community towards the implementation of the Declaration.

Although the GPA is a relatively sophisticated document with regard to procedures and timetables, it remains rather vague in terms of implementation. Even though the UN mission (ONUMOZ) is generally considered a success, the implementation of the GPA turned out to be a daunting process. Mutual distrust between both parties created an unfavourable atmosphere. Renamo kept on renegotiating the terms of the GPA, Frelimo resisted attempts by the international community to accept a power sharing arrangement and perceived this and the strong UN presence as infringement on its sovereignty.<sup>131</sup> Slow donor funding and poor logistical planning by the UN - ONUMOZ troops arrived six months after the request - delayed implementation and required further negotiations. Despite these setbacks, “peace continued to hold, refugees were returning in the hundreds of thousands from neighbouring countries, and humanitarian relief was successfully reaching the neediest people.”<sup>132</sup>

### **Provisions on (Transitional) Government**

Between the entry into force of the cease-fire and the time the new government took office, the parties agreed to keep intact the existing public administration, laws, legislative provisions and institutions.<sup>133</sup> They also agreed to incorporate the GPA, the Protocols and the Guarantees into Mozambican law, thereby making it possible for Renamo to pursue its goals in a non-violent way.<sup>134</sup> Overall supervision over the peace process was done by the Supervision and Control Commission (CSC), which met for the first time on 4 November 1993 and was chaired by the UN SRSG, the government of Mozambique, Renamo and major donors. The GPA ruled that Mozambique had to be a multiparty presidential democracy with proportional representation and with simultaneous elections, based on electoral districts, for parliament and the presidency.<sup>135</sup> Manning argues that “the absence of power sharing has been a central issue in Mozambique’s transition process. After each election, the opposition, led by Renamo, has demanded accommodation following defeat at the polls”. The international community and the UN unsuccessfully tried to convince Frelimo and Renamo to conclude a post-election pact, but ultimately failed. Renamo was in favour of a power-sharing agreement and so were, to a certain extent, younger elements in Frelimo, but the old guard strongly resisted, hoping to humiliate and defeat Renamo at the ballot box. Ultimately Renamo demanded a post-election pact, but this request was flatly rejected by Frelimo. This negative response from its opponent spurred Renamo to find ways to win the electoral contest.<sup>136</sup>

### **Impact of the Provisions**

Stedman argues that both Renamo and the Frelimo government used the slow deployment of UN peacekeepers and of an administrative capacity in charge of overseeing cantonment, as an excuse to stall their obligations. When UN units

<sup>131</sup> R. Synge, *Mozambique. UN Peacekeeping in Action 1992-1994* (Washington, United States Institute of Peace Press, 1997), p. 149

<sup>132</sup> Synge, 1997, pp. 27, 28, 52, 53; A. Lalá, *Demobilisation, Disarmament and Reintegration in Mozambique: The Borderlines of Success*, in: A. M. Fitz-Gerald (Ed.), *From Conflict to Community: A Combatant's Return to Citizenship*, (GFN-SSR, Shrivenham, 2005)

<sup>133</sup> Protocol V, par. 3

<sup>134</sup> Joint Declaration, Protocol V, par. 4

<sup>135</sup> Protocols II and III

<sup>136</sup> Manning, 2002, pp. 32, 33

and personnel arrived, Renamo continued this obstructing behaviour by announcing a three-month boycott to the implementation process. Despite inducements by the SRSB (including direct money transfers to Dhlakama and financial assistance to Renamo – see below) and successful appeals to neighbouring states to acknowledge Renamo's legitimacy, Renamo continued to behave as a spoiler<sup>137</sup>. "Renamo used its participation in the commissions, as it later used the troop quartering issue as a lever to secure its needs in other areas – to ensure that the government and the international community followed through on their commitments to fund Renamo's transformation into a political party and to secure a greater role for the UN in ensuring the security of Renamo personnel and the impartiality of the peace accord's implementation."<sup>138</sup> These peace commissions were also used by Renamo as sources of patronage, filling positions with unqualified people without considering possible long-term consequences of these appointments. Frelimo followed a path of "strict legalistic interpretation of the political process", thereby trying to give up as little as possible terrain, whereas Renamo consistently interpreted the GPA as broad as possible in order to be able to renegotiate after implementation. Manning attributes this to "the party's weak analytical capacity and lack of political experience".<sup>139</sup> But as Stedman shows, Renamo also acted as a hungry spoiler, trying to gain as many concessions from the international community as possible. However, even though these inducements kept Renamo in the peace process, they did not avoid Renamo's unsuccessful boycott on the eve of the elections.

After the 1994 elections (55.2% of the votes went to Frelimo and 44.8% to Renamo) Mozambique went through a period of country-wide consultations on legislation matters (financed by the international community) and towards revision of the Constitution. "Paradoxically, the major proponent of its changes- Renamo- refrained from its adoption, as the second elections were approaching and their belief of victory, lead them to preserve the status quo, frightened by the scenario of reduced presidential powers leading to the direction of having to enter a power-sharing agreement."<sup>140,,</sup>

The provisions with respect to (transitional) government have had a mixed impact on the peace process. Somehow, the parties have not resumed civil war and one can speak of a functioning government. However, defining success in this way is rather limited. A process of reconciliation and cooperation between the parties has never taken place. Naidu maintains that the political structures still tend to indicate some form of one-party state, since the Constitution endorses a winner-takes-all system.<sup>141</sup> Ostheimer speaks of a "centralised political and administrative system [preventing] the formation of power-sharing mechanisms"<sup>142</sup>. The President's prerogative to nominate Provincial deputies was a serious cause of disagreement between Frelimo and Renamo in 1999, and led to clashes in 2000 with "violent provocations by Renamo [posing] a serious threat to law and order" and "excessive police force

<sup>137</sup> S.J. Stedman, *Spoiler Problems in Peace Processes*, in: M.E. Brown, R.R. Coté Jr, S.M. Lynn-Jones, S.E. Miller (eds.), *Nationalism and Ethnic Conflict* (MIT Press, Cambridge 2001), pp. 402, 403

<sup>138</sup> Manning, 2002, p. 31

<sup>139</sup> idem, p.31

<sup>140</sup> Lala 2004, p.6

<sup>141</sup> S. Naidu, *Presentation of Research Findings on Mozambique*; in: *Proceedings, International Seminar on Power Sharing; Coping with Internal Conflict Project*, Netherlands Institute of International Relations 'Clingendael', Conflict Research Unit, January 15, 2001

<sup>142</sup> A.E. Ostheimer, *Mozambique. Country Risk Profile 2001* (Swiss Peace Foundation Institute for Conflict Resolution, 2001), p. 3

used to deal with those who were merely expressing their political convictions”.<sup>143</sup> The absence of power-sharing arrangements has also led to the situation that the entire Cabinet is made up of Frelimo executives. Skewed financial resources have favored Frelimo during elections (like late disbursement of opposition campaign funds) and donor assistance for the opposition is now prohibited by law. The democratic experiment has forged no unity between the two parties and old divides have become more pronounced because of uneven development between the North/Central provinces and the South. Renamo failed to offer policy alternatives and the main institutions that underpin democracy, namely civil society, media and trade unions, still lack or are weak in capacity.<sup>144</sup> According to Ostheimer, “a discourse on power prevails, rather than a discussion of political alternatives to Frelimo government.”<sup>145</sup>

Since 1994, the National Assembly has become more independent of the executive and by 1999, more than half of the legislation passed originated in the Assembly<sup>146</sup>. But the parliament is failing as an “institution for governance oversight and for conflict resolution”<sup>147</sup>. Renamo contested the results of the 1999 elections, but its claim was rejected by the Supreme Court. Renamo then turned the parliament non-operational with a boycott. In 2000, demonstrations organized by the party in a northern province turned violent, leaving almost 120 dead. Parliament failed to reach consensus on the findings of a report which investigated these deaths. At one time, MPs created such disorder and noise inside the Parliament that the police had to intervene to restore order. Given the low quality of members of parliament in terms of education, preparation and experience, qualitative governance oversight still needs to mature.<sup>148</sup>

Although not part of the GPA, decentralization was considered in 1994 as a means to strengthen the state by creating citizenship from below and envisaged the reinforcement of the administrative process in the whole Mozambican territory. The Frelimo parliament approved the bill in September 1994. “Law number 3/94 made the provision for the gradual creation of both urban and rural municipalities, with administrative, financial and patrimonial autonomy [i.e. traditional authority] and with their executive and legislative organs directly elected by the local communities”<sup>149</sup>. When Renamo entered the parliament after the October 1994 elections, it demanded that municipalities be created in the 128 districts and that these municipalities coincided with the totality of each district, thereby extending the effects of decentralization over the entire territory of Mozambique. This was rejected by Frelimo, arguing that “fractioning the governance of the country on the period in which building national reconciliation and the restoration of the State were the order of the day would be contra-productive”<sup>150</sup>. Renamo then rejected the entire package as being unconstitutional.

Between 1996 and 2003, several laws have been adopted creating provisions for provincial and local governance. Law 9/96 established the co-

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<sup>143</sup> A.E. Ostheimer 2001, p. 20.

<sup>144</sup> Naidu 2001

<sup>145</sup> Ostheimer 2001, p.3.

<sup>146</sup> *Background Note: Mozambique*, <http://www.state.gov/r/pa/ei/bgn/7035.htm> accessed 04-10-2007

<sup>147</sup> Lalá, 2004

<sup>148</sup> *Ibid.*

<sup>149</sup> E. Sitoe and C. Hunguana, *Decentralisation and sustainable peace-building in Mozambique: Bringing the elements together again* (CEDE 2005), [http://www.nsi-ins.ca/english/pdf/MozambiqueWorkingPaper\\_Oct\\_05\\_Eng.pdf](http://www.nsi-ins.ca/english/pdf/MozambiqueWorkingPaper_Oct_05_Eng.pdf), p. 5.

<sup>150</sup> *Ibid.*, p. 5. Only in the late 1990's did decentralization occur, albeit the proper term would be de-concentration according to the authors.

existence of district administrations led by government appointees, and local governments elected by the communities. Law 2/97 provides for gradual decentralization of Municipalities (cities and district towns) and villages. “There are 23 cities and 128 district towns in Mozambique of which only the cities and 10 district towns were entitled to establish local government structures in the first run in 1998. Thus, the existing local governments in Mozambique correspond only to a tiny fraction of the country's potential lot of municipalities.”<sup>151</sup> Law 8/2003 defines the district as the basic planning unit for development of the country with a provision for the transfer of funds from the central government to the district level.

## **Provisions on Political Parties**

### Overview of the Provisions

Protocol II consists of six paragraphs. The first and second describe the nature of political parties and prohibit promotion of ‘local and sectoral interests or exclusive interests of a given social group or class of citizens’<sup>152</sup>. Political parties should be transparent and founded on democratic principles and pursue national and patriotic interests. The third paragraph describes the rights of parties such as the right to freely and publicly propound their policies; guarantees with respect to mass media access, sources of public funding and public facilities; and exemption from taxes and fees. The fourth paragraph describes the duties of political parties, such as the prohibition to use names, acronyms and symbols that may be considered offensive and have divisive connotations. The fifth paragraph deals with the registration of parties and the final paragraph with the implementation of the Protocol. It says that after the signing of the GPA, ‘Renamo shall commence its activities as a political party [...] it shall, however, be required to submit at a later date the documents required by law for registration’. It further says that the parties agree to establish a timetable of activities necessary for the proper implementation of the Protocol. There is no provision with regard to Frelimo’s status as a political party, possibly due to the fact that the Constitution of 1990 (see above) created a multi-party system in which it was supposed to automatically fit.

### Impact of the Provisions

The process of turning Renamo into a political party has proven to be a difficult one, even though it started already in the 1980’s. Since Renamo originated in the rural areas, it lacked an urban educated elite in its ranks. Whereas Frelimo had a well functioning and funded party, Renamo and other opposition parties lacked funds to fight an electoral campaign. “Following the peace accords, Renamo received US \$17 million from a United Nations trust fund to help transform the rebel movement into a political party. Despite generous funding, the party’s transition into a multiparty political structure was arduous, as most of Renamo’s leaders had military backgrounds but little formal education or political experience.”<sup>153</sup> Over the years, however, “despite structural weaknesses

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<sup>151</sup> *Ibid.*, p. 5

<sup>152</sup> Protocol II, par. 1

<sup>153</sup> *Observing the 2004 Elections*, Carter Centre 2005, (www.cartercenter.org). These funds were inaccessible due to a disagreement with the National Elections Commission (CNE) which was supposed to set rules and criteria and disburse these funds. The CNE argued it was not consulted, had no mandate and refused to disburse funds until an agreement was reached three months before elections.; N. Adriano, *Post-war Reconstruction in Mozambique: The United Nations’ Trust Fund to assist former rebel movement RENAMO, UN Trust Fund Case Study Mozambique*, (Tiri, London, 2007)

and consolidation problems, it can be argued that Renamo has succeeded in transforming itself into a political party". Ostheimer argues there are three reasons for this: far-reaching demobilization of combatants; development of core structures of a political party; and ability to establish itself in urban centres Renamo recruited administrators in formerly Renamo controlled areas and former clandestine sympathizers to become parliamentarians.<sup>154</sup> Renamo as a political party has grown over the years since the signing of the GPA. Although lacking internal democracy and in spite of the recurring dismissal of dissenters, it has never resumed fighting or "renounced the principles of electoral competition". "With each passing election the party has sought to improve its ability to monitor polling, to campaign more effectively, and to reform electoral administration for the next attempt."<sup>155</sup>

Within the Frelimo party, hardliners still maintain a powerful position and support for them derives not only from former combatants, but also from public servants fearful of reform in the public administration. According to Ostheimer, Frelimo has managed to transform into a party with a solid structure, access to resources from a free market and a strongly affiliated public administration.

Both parties have gone through controversial and divisive phases. Frelimo saw a period of turmoil with the choice of a successor to its leader Chissano. Renamo experienced problems with the nomination of a new secretary-general, and its leader, Dhlakama, "seems to have embarked on a campaign to obliterate all the possible strong successors."<sup>156</sup>

## **Provisions on Elections**

### Overview of the Provisions

Protocol III consists of six paragraphs. Paragraph five describes the provisions with regard to electoral procedures and turned out to be one of the more difficult parts of implementing the GPA. It calls for elections within one year after the date of the signing of the GPA, though a provision is made for extension of this period if 'it is determined that circumstance exist which preclude its observance'.<sup>157</sup> The timeframe in the GPA turned out to be utterly unrealistic. Therefore elections were postponed. This was due to continued distrust between the parties, slow assembly and demobilization of troops, return of refugees, and logistical difficulties in a country with a destroyed infrastructure rife with landmines.<sup>158</sup> Paragraph five further describes the setting up of a National Elections Commission (CNE) of which one third of the members were to come from the Renamo camp. The other members came from the government, Frelimo and other political parties. Its tasks were amongst others to draw up regulations governing election campaigning and the use of broadcast airtime and facilities, compilation of electoral rolls and checking and recording election results, monitoring of the electoral process and dealing with complaints. Its implementing arm was the Technical Secretariat for the Elections Commission (STAE).

<sup>154</sup> Ostheimer, 2001; A. E. Ostheimer, *Transforming peace into democracy: Democratic structures in Mozambique*, African Security Review Vol. 8 No 6, 1999

<sup>155</sup> Manning, 2008, p. 55

<sup>156</sup> Lalá 2004, p. 7.

<sup>157</sup> Protocol III, par. 5

<sup>158</sup> Manning 2002.

### Impact of the Provisions on the implementation period

“The political party representation in the election commissions and the political appointees within the STAE are intended to increase the opposition’s trust in the electoral process but, as political representation is based on shares of parliamentary seats, the ruling party, Frelimo, still dominates by virtue of its majority in the Parliament. While party-based [...] membership can have the advantage that each party polices the actions of all the others, the Mozambique experience shows its limitations when one party retains a majority over a substantial period of time.”<sup>159</sup> From the beginning the CNE was rife with mutual distrust. Before the 1994 elections, the structure of the CNE was renegotiated with Frelimo managing to get a better deal (10 seats vs. 7 for Renamo and 3 for other parties). Despite mutual distrust, consensus was often reached due to the qualities of CNE’s president. The 1998 municipal elections, however, were boycotted by Renamo, which demanded a return to the 1994 electoral procedures. Renamo claimed that the National Elections Council (CNE) and the STAE were entirely made up by pro-Frelimo staff (GPA ruled that the a third of CNE staff should be Renamo appointed). The STAE deputy director, a Renamo appointee, was dismissed by Renamo leader Dhlakama as a pro-Frelimo state functionary who is of ‘no help to us’. During the 1999 elections, the CNE and the STAE were heavily politicized and lacked independence, transparency and impartiality.<sup>160</sup> Although Renamo did manage to fight the conflict in the political arena rather than on the battlefield, it continued to act as if it was negotiating a peace settlement. Dhlakama wanted to enter direct negotiations with Frelimo leader Chissano over these procedures and sought help from international diplomats.<sup>161</sup>

Since demobilization, according to the GPA, was a necessary condition for holding elections, the delay incurred in its implementation provided ONUMOZ with additional time to carefully plan the elections, and when in June 1994 the amount of returned refugees reached 1 million, voter registration began. In August the demobilization programme was finished, although almost 17.000 troops were still in assembly areas. The next month electoral campaigning could begin. On the eve of the elections, Renamo attempted to boycott the elections by pulling out, claiming widespread irregularities.<sup>162</sup> Together with members of the international community, the CNE managed to withstand Renamo’s attempt to postpone the elections and Renamo was brought back into the fold. According to electoral regulations, Renamo was too late to pull out. Eventually, Frelimo came out on top and won a large share of parliamentary seats (55.2% vs. 44.8% for Renamo) and the presidency. After the boycotted 1998 elections, which were plagued by delays, the government accommodated Renamo’s concerns over procedures for national elections in 1999. The National Assembly passed by consensus a new electoral law and with financial aid by international donors, a ‘very successful’ voter registration was conducted.<sup>163</sup> With a high turnout (70%), the 1999 elections gave Frelimo an even higher share of seats in the National Assembly and the presidency again went to Frelimo leader Chissano. Even though the majority of international and national observers gave a positive assessment on the voting process, the tabulation process later was criticized by the opposition and some other

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<sup>159</sup> M. Gould and J. Lindroth, *Mozambique: A Need for Depoliticization*, p. 148 ([http://www.idea.int/publications/emd/upload/EMD\\_CS\\_Mozambique.pdf](http://www.idea.int/publications/emd/upload/EMD_CS_Mozambique.pdf)).

<sup>160</sup> Manning 2002.

<sup>161</sup> Mozambique political process bulletin Issue 20 - 18 March 1998; Lalá, 2004

<sup>162</sup> Mozambique political process bulletin Issue 14 – February 1995

<sup>163</sup> *Background Note: Mozambique*

observers.<sup>164</sup> Renamo did not accept the CNE's results of the presidential vote, but the Supreme Court dismissed this challenge and validated the election results. Apart from Frelimo and the Renamo Electoral Union coalition, no third party was represented. According to Lalá, the "electoral system does not enable any further political inclusiveness".<sup>165</sup> Although there was a system of proportional representation, a 5% threshold precluded small parties to gain seats, turning the multiparty system into a bi-partisan one. November 2003 saw the second round of local elections and passed without significant boycotts, but again there were disputes over vote tabulation, voter registration and a call for greater transparency. In 2004, a new general elections law was passed, which contained innovations based on the 2003 experience. The third general elections of 2004 had a lower turnout (44%) than the previous one, but the Frelimo presidential candidate Guebuza won with 64% of the popular vote, with Renamo leader Dhlakama receiving 32%.<sup>166</sup> In spite of significant fraud and misconduct being reported, their alleged extent was not deemed sufficient to explain Frelimo's convincing victory and both internal and external observers pressed Renamo to accept these results. Nevertheless, the CNE was heavily criticized, for instance, by the Carter Centre, for its secrecy with respect to the tabulation process, for the exclusion of 600 polling stations and extensive corrections to the results<sup>167</sup>.

The constitution mandated that provincial assembly elections be held no later than January 2008, but in the course of 2007 it became clear that the term could not be respected. There were fears that seasonal rains would likely drive down voter turnout if elections were to take place in January. Both major parties agreed to amend the constitution to allow for later elections. Those were likely to be held sometime in 2009.

The Electoral Administration Technical Secretariat (STAE) faced some difficulties during the municipal elections, which were held in 43 municipalities on November 19, 2008. Although less than 50 percent of the electorate cast its vote, long queues formed at the ballot boxes due to the inability to process voters quickly. In light of the national elections planned for 2009 and expected to involve a much higher turnout, this limitation presents some serious problems for STAE, including the risk that the elections might become chaotic.

## **Security Arrangements**

### Overview of the Provisions

Several peace commissions were set up to plan, supervise, monitor or oversee the implementation of the security arrangements-related Protocols. The CSC was responsible for the overall peace process. The Cease-fire Commission (CCF) was responsible for monitoring the cease-fire and demobilization and disarmament. This was to be concluded in 180 days after the signing of the GPA, with very strict deadlines for handing over lists of assembly points and concentration of forces. Eventually, none of these deadlines were met. The Reintegration Commission (CORE) planned and oversaw social integration through the Reintegration Support Scheme (RSS), which was funded by the international community and implemented by the United Nations Humanitarian Assistance Coordination (UNOHAC).

<sup>164</sup> Ibidem; *Observing the Electoral Reform*, Carter Centre October 2005 ([www.cartercenter.com](http://www.cartercenter.com))

<sup>165</sup> Lalá 2004, p. 6.

<sup>166</sup> *Background Note: Mozambique*

<sup>167</sup> Mozambique Peace Process Bulletin, special elections bulletin Nr. 31 December 2004;



### Implementation and benchmark provisions:

The CCF started monitoring and verifying the disbanding and disarming of armed groups, one of the key provisions for holding elections, twenty months later than agreed upon and only after renewed negotiations along the same format as the GPA were concluded. “Renamo delegates still had to refer to Dhlakama [...] for all important decisions [...]. The SRSG “criticized the inability of Renamo delegates on the commissions without referring to [Dhlakama].<sup>168</sup>” Both sides feared the other was holding back troops and weaponry.<sup>169</sup> The formation of a new army also took more time than was envisioned in the GPA. After two years from the signing of the GPA the vast majority of troops was eventually demobilized and a new army was formed.

ONUMOZ failed to conduct a successful disarmament process due to an inadequate time framework and lack of human resources. According to a study conducted by the UN Institute for Disarmament Research, the GPA was non-specific. That feature gave both parties room to interpret the plans according to their own interests, making it difficult for the international community to ensure that the parties adhered to the provisions. Civil society took over full responsibility for disarmament after the ONUMOZ mission left. The Christian Council of Mozambique managed to collect only several thousand arms under the Transforming Arms into Ploughshares program (TAE) and its activities met criticism from the Bonn International Center for Conversion (BICC). According to BICC, TAE’s handling of weapons and ammunition ‘is often extremely unsafe and insecure’, operates without ‘explicit legal authorization’, ‘publishes misleading data’ with respect to its operations and is also ‘deeply involved in the commercial business of buying guns and explosives’, using funds and resources not in a transparent way.<sup>170</sup>

The United Nations Office for Humanitarian Assistance Co-ordination (UNOHAC) was officially the coordinating body. The reintegration component of the GPA was implemented by several actors. It mainly consisted of a transportation programme for relocating the demobilized and their dependants, a two-year subsidy programme as form of severance or transitional safety net and an information service where the demobilized were informed about the benefits they were entitled to. Provincial Funds were set up for micro- and long-term projects and the ILO executed a UNDP-funded occupational skills programme. Some of the programmes were a success, others lacked integration or just bought time for the ex-combatants, who were sometimes living in dire conditions in the assembly points, often leading to uprisings and insubordination. Especially the occupational skills programme turned out to be

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<sup>168</sup> Synge 1997, pp. 45-46; A continuing feature of the peace process was the supplementing and sometimes supplanting of democratic process and institutions “by parallel processes of sustained elite bargaining, which mirror the institutional framework that guided the formal peace process” (Manning, 2002, p.7).

<sup>169</sup> Protocol V also gave a guarantee to Renamo’s leaders that they could form their own militia with police status for personal security. Although this provision was to expire after the holding of elections, Renamo boycotted the DDR process to renegotiate the terms of this provision and guarantee funds to transform into a political party, which eventually led to the setting up of the Trust Fund *Renamo Accuses Frelimo of Fabricating Maringue Violence*, Agencia de Informacao de Mocambique, 17/09/2007; Lálá, 2005

<sup>170</sup> S. Faltas and W.C. Paes, *Exchanging Guns for Tools. The TAE Approach to Practical Disarmament—An Assessment of the TAE Project in Mozambique*, BICC Brief 29, p.33; see also: *Mozambique: Operation Rachel*, (NISAT September 2003)  
<http://www.nisat.org/EU/EU%20Joint%20Action%20on%20Small%20Arms%20and%20Light%20Weapons/Mozambique.htm>.

ill-conceived: training programmes did not match needs according to rural, semi-rural and urban realities.<sup>171</sup> According to Synge, the Reintegration Commission CORE (and UNOHAC) was effectively bypassed by the donors because of a lack of support and confidence undermining its authority and ability to mobilize action. This was also due to the delay in the demobilization programme, which rendered CORE ineffective<sup>172</sup>

### **Provisions on economic governance**

The GPA did not contain provisions on economic governance. Mozambique continued with its structural adjustment programmes started in the mid 1980' under close supervision of the International Monetary Fund (IMF) and World Bank (WB). Since the signing of the GPA, Mozambique has relied on annual injections of foreign grants and soft loans, with the capital budget funded by foreign aid. The government has pursued a strict programme of monetary and fiscal tightness, and liberalization of trade and investment. Under these conditions, which have been strictly adhered to, Mozambique has managed to grow out of the dire conditions it found itself in at the end of the war, although it can be argued that given the level of wartime destruction, nothing but growth was possible. "Since the mid-1990s, the targets of high growth rates, low inflation and currency stability have all been met, and the government has won praise from its international partners for its tight control over public finance."<sup>173</sup> Notwithstanding these achievements, the majority of the population remains below the poverty line. "Subsistence agriculture continues to employ the vast majority of the country's work force. Mozambique's once substantial foreign debt has been reduced through forgiveness and rescheduling under the IMF's Heavily Indebted Poor Countries (HIPC) and Enhanced HIPC initiatives, and is now at a manageable level."<sup>174</sup> In 2007 Mozambique was one of the best-performing African economies, with an estimated economic growth rate of 8.8 percent.

### **Entry points for the International Community/Netherlands MoFA**

#### Economic Governance

The GPA did not contain provisions on economic governance. Given to the fact, however, that the economic policies of the 1970's and 1980's caused uneven development patterns in the areas traditionally controlled either by Frelimo or by Renamo, the inclusion of such provisions might have been advisable. As Manning argues, Renamo has built on the regional socioeconomic and political bias towards Frelimo policies, which eventually coincided with "long-standing ethnoregional divisions".<sup>175</sup> Being in the opposition, Renamo did not have to adjust its wartime rhetoric with respect to these uneven development patterns. Provisions on economic governance could have addressed these unbalances and alleviated some of the pressures on the population. This might have created the necessity for Renamo to search for other issues to address during the political campaigns, while at the same time forcing it to drop its wartime rhetoric.

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<sup>171</sup> Lalá, 2005

<sup>172</sup> Synge, 1997, pp. 83, 84, 157

<sup>173</sup> P. Fauvet, *Mozambique: Growth with Poverty. A difficult transition from prolonged war to peace and development*, Africa Recovery, October 2000

<sup>174</sup> CIA World Factbook ([www.cia.gov](http://www.cia.gov))

<sup>175</sup> C. Manning, Mozambique: RENAMO's Electoral Success, in: J. de Zeeuw (ed.), *From Soldiers to Politicians. Transforming Rebel Movements After Civil War*, (2008, Lynne Rienner Publishers, Boulder), p. 56

### Elite bargaining and democratic process

Manning argues that democratic consolidation in Mozambique requires more than elites accepting formal democratic institutions. Rather than a process of adaptation to definitive rules, these rules are the result of a 'protracted process of repeated interaction between the major political actors, within an environment that may itself be changing'. Democratic process and institutions were 'supplemented and sometimes supplanted by parallel processes of sustained elite bargaining, which mirror the institutional framework that guided the formal peace process.'<sup>176</sup> It is therefore recommendable to insert consultative provisions for the transition phase, which can absorb or deflect parallel processes of elite bargaining and which can be overseen by third parties (such as an SRSG) and the public.

The exclusively Mozambican National Elections Committee (CNE) played a vital role in the peace process. Especially its president Mazula, working closely with the SRSG, played a key role in generating confidence and providing coherent and credible political oversight. This enabled donors to provide strong support to the CNE and the electoral process.<sup>177</sup> The CNE and its implementing arm, the STAE, however, were overstaffed and lacked training to manage financial resources efficiently. This has remained a problem to date, according to an International IDEA report. "The most significant threat to the sustainability of electoral management in Mozambique is the enormous cost of the electoral administration structure. With constituted electoral commissions at national, provincial and district levels, the number of commissioners in the country is over 1,600 for general elections. The political party appointees within the STAE also add a layer of additional political party supervision, which carries substantial extra expense."<sup>178</sup>

### UN Mission

It is advisable to allow for realistic time frames in peace agreements with respect to planning and implementing provisions. The logistical difficulties ONUMOZ experienced in deploying military contingents and in realizing other elements of its mandate such as the planning of elections and cantoning and demobilizing armed combatants, had a negative impact on the authority of the SRSG and his ability to hold RENAMO and FRELIMO to their agreements. It is especially important to coordinate with and organize support from bilateral donors and the international community to bolster the SRSG's authority.

Synge argues that apart from the reluctance of parties to demobilize and disarm, the GPA lacked priority to these issues. There was an overlap between the demobilization period and the period for preparations for elections, which aggravated the tense political atmosphere.<sup>179</sup> It is therefore advisable to make sure this is being properly sequenced and that there is enough flexibility in a peace agreement to allow for setbacks and slow implementation. Synge also

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<sup>176</sup> C.L. Manning, *The Politics of Peace in Mozambique. Post-conflict democratization, 1992-2000* (Westport, Praeger, 2002), p. 7

<sup>177</sup> R. Synge, *Mozambique. UN Peacekeeping in Action 1992-1994* (Washington, United States Institute of Peace Press, 1997), p. 156

<sup>178</sup> M. Gould and J. Lindroth, *Mozambique: Case Study. Mozambique: A Need for Depoliticization*, p. 148

([http://www.idea.int/publications/emd/upload/EMD\\_CS\\_Mozambique.pdf](http://www.idea.int/publications/emd/upload/EMD_CS_Mozambique.pdf)).

<sup>179</sup> R. Synge, *Mozambique. UN Peacekeeping in Action 1992-1994* (Washington, United States Institute of Peace Press, 1997), p. 113

concludes that ONUMOZ's 'short-term priorities of that period diverted attention from Mozambique's longer-term requirements for social and economic reconstruction and ironically – perhaps inadvertently-derailed the governments own efforts to reform and restructure the state and economy.’<sup>180</sup> According to an assessment of the SRSG, the GPA had three weaknesses. It lacked a police-monitoring component, there was no provision for the impartiality of the media and there was no power-sharing arrangement for the post-election period. He emphasized the need for flexibility in the implementation schedule given the unrealistic calendar for the GPA.<sup>181</sup> The strong leadership role of the SRSG (although he lacked more technical and people-management skills) and effective donor coordination was key in the peace process (maybe because of UNOHAC failure to deliver).

### Reintegration

The failure to recognize the needs of ex-combatants has been a problematic issue. The training programmes did not distinguish between Mozambicans with (predominantly FRELIMO) and without education (predominantly RENAMO), or between common soldiers and high-ranking officers. The programmes failed to make use of the organizational and management skills acquired through years of military duty, but tended to focus on smallholder life in the rural area or vocational skills, for which there was neither need nor absorptive capacity.

### RENAMO

An important goal of the GPA was to transform RENAMO into a political organization. It was achieved through patient engagement with the RENAMO leadership by both the SRSG and the international community, and by giving large sums of money to its leadership. This however was resented by the FRELIMO leadership. The fact that RENAMO has not returned to war or rejected the democratic process can be seen as a success, although the party itself lacks the trappings of a western-style political party and continues to be dominated by its leader Dhlakama.

## **Dayton Peace Agreement (1995)**

### **Background of the Conflict**

Following the death of President Tito in 1980, a rotating presidency was implemented in accordance with the 1974 Constitution of the Federal Republic of Yugoslavia (FRY). Many years of economic crisis and a rise of nationalism followed in the republics. The growing tension between the ethnic and national groups started the break-up of the FRY in 1991.<sup>182</sup>

In October 1991, the Bosnian Parliament declared independence of the Republic, the validity of which was questioned by the Serbian community of Bosnia. During the next three years the Bosnian Government forces fought to preserve their independence. The government found itself at war on at least two

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<sup>180</sup> R. Synge, *Mozambique. UN Peacekeeping in Action 1992-1994* (Washington, United States Institute of Peace Press, 1997), p. 149

<sup>181</sup> R. Synge, *Mozambique. UN Peacekeeping in Action 1992-1994* (Washington, United States Institute of Peace Press, 1997), p. 147

<sup>182</sup> In June 1991, Slovenia and Croatia declared independence, followed by Macedonia in September 1991.

fronts. The Bosnian Government mainly fought radical Bosnian Serbs who were closely tied to and actively supplied by Serbia. The Bosnian Serbs declared an independent Serbian Republic (*Republika Srpska*) that was eventually to join Serbia proper. Secondly, the Bosnian Government faced the Bosnian Croats who launched an ethnically driven land grab in central and southern Bosnia in 1993. In 1995 a comprehensive settlement was reached among all three warring parties with the signing of the Dayton Peace Agreement (DPA).



Source: International Crisis Group

### Overview Dayton Peace Agreement

The Dayton Peace Agreement consists of a short “General Framework Agreement” and twelve Annexes, which contain the actual content of the Agreement. The political formula for resolving the Bosnian conflict was to create a single Bosnian state that is divided between two “entities”, the *Republika Srpska* and the Bosniac-Croat Federation.<sup>183</sup> Bosnia’s new Constitution is included in the DPA, Annex 4, and establishes an intricate set

<sup>183</sup> The first being a result of the conflict with the Bosnian Serbs, which were supported by Serbia. The latter being the result of the truce between the Bosnians and the Croats since its formation in 1994. See DPA, Annex 4 (Constitution), Article I (3).

of power-sharing institutions at national and entity levels.<sup>184</sup> The Articles set up a central democratically elected government and provide for the specific Joint Institutions which are to form part of the central government. Significantly, the composition of the Joint Institutions is specified, i.e. it is listed how many seats are allocated to Bosnians, Croats or Serbs. Accordingly, the Articles also specify which ethnic groups can elect which member of Joint Institutions.<sup>185</sup>

The joined institutions under the DPA were considered the primary mechanisms to manage tensions between the pull toward unity and the push toward partition and were to start functioning with the first post-war national elections.<sup>186</sup>

The DPA also committed various members of the international community to significant involvement in helping the parties implement the DPA's military and civilian provisions. DPA offered a model of third party implementation in which international military and civilian efforts were assigned to lead agencies by sector.<sup>187</sup> Elections, for instance, were to be managed by the OSCE, which was also to oversee the regional arms control and confidence building measures.

### **Power-sharing Arrangements**

The DPA contains a comprehensive set of power-sharing arrangements. The majority of these provisions have been included in the Constitution of the DPA, which largely provides for the set up of Joint Institutions. However, despite the efforts to make the new central government as inclusive as possible, in practice the provisions do not seem to have reached their intended goal. Most power still lies with the entity governments rather than with the new central government, significantly lowering the level of inclusiveness of all national ethnic groups.

#### Overview of the provisions

##### *The Constitution*

Bosnia's Constitution<sup>188</sup> outlines a comprehensive institutional balance of power among Bosnians, Serbs and Croats. Judging from Annex 4, the DPA authors intended to create a multi-ethnic country with rule of law, in which a Constitution and democratic elections form the basis of legitimate political authority.

The Preamble to Annex 4, refers to three "constituent peoples", namely Serbs, Croats and Bosnians, along with "others."<sup>189</sup> The group "others" has

<sup>184</sup> Significantly though, the provisions are surprisingly similar to those that failed to manage the rivalries that tore apart both Bosnia and Yugoslavia.

<sup>185</sup> DPA Annex 4, Article. IV Accordingly, the article on the House of Peoples reads for instance: "The House of Peoples shall comprise of 15 delegates, two thirds from the Federation (including 5 Croats and 5 Bosniacs) and one third from the Republika Srpska (5 Serbs)." Thereafter it stipulates that: "The designated Croat and Bosniac Delegates from the Federation shall be selected, respectively, by the Croat and Bosniac Delegates to the House of Peoples of the Federation. Delegates from the Republika Srpska shall be selected by the National Assembly of the Republika Srpska."

<sup>186</sup> E. Cousens, "Building Peace in Bosnia" in: E. Cousens and C. Kumar (ed), *Peacebuilding as Politics: cultivating peace in fragile societies*, (London, Lynne Rienner Publishers), 2001, at p. 125.

<sup>187</sup> Cousens, 2001, p. 127.

<sup>188</sup> See Dayton Peace Agreement, Annex 4.

<sup>189</sup> DPA Preamble.

hardly been included in the DPA and is only referred to as “citizens” even though they comprise almost 8% of the population of Bosnia and Herzegovina in 1991. The label “constituent peoples” is reinforced in many operative paragraphs of the Constitution, where formal reference to “others” or “citizens” cannot be found.<sup>190</sup> The fact that the conflict was essentially ethnic in character and that a large part of society was excluded on paper by the Constitution, played a significant role in difficulties that emerged in the implementation of the DPA.

Yet, even all constituent peoples are not recognized as such on a state level, also referred to as “entity level”. Bosnians and Croats are, for instance not “constituent peoples” in the *Republika Srpska*. Similarly, Serbs are denied that status in the Federation of Bosnia and Herzegovina. It appears that all three people are constituent only at the level of the central state of Bosnia and Herzegovina.

### *Joint Institutions*

The Articles III, IV and V of the Constitution provide for several Joint Institutions: the House of Peoples, the Presidency, the domestic Judges of the Constitutional Court and the Council of Ministers of Bosnia Herzegovina.

The composition of all Joint Institutions is based on the two entities, three nations formula. Accordingly, the Presidency is comprised of one Serb, one Croat and one Bosnian. The group “others” are therefore disenfranchised in the vote for the Presidency of Bosnia and Herzegovina. The same observation can be made regarding the House of Peoples, which were to consist of 5 Serbs, 5 Croats, and 5 Bosnians.<sup>191</sup> Voters from the *Republika Srpska*, including numerous Bosnians, Croats and “others” can only vote for a Serb to the Presidency. Serb voters in the Federation can only elect a Bosnian or a Croat. The creation of such institutions did not contribute to overall legislative strengthening due to their ineffectiveness.

### **Impact on the implementation**

One of the main points of criticism has been the fact that the Constitution does not address all inhabitants of the Bosnian state.<sup>192</sup> As a result, the vast majority of state prerogatives, such as the military, police and the judiciary are in the hands of the *entity* governments. The reality is that minorities are discriminated against in their dealings with government institutions.

Most of the Joint Institutions called for, largely exist on paper only. On the frequent occasions that the central institutions met, they typically proved to be unable to come to an agreement on the agenda.<sup>193</sup> During the first years after the agreement, laws passed by the Parliamentary Assembly have only rarely been implemented or enforced, and many were forced by the international community. Also, the Parliamentary Assembly does not have the authority to enter into governmental matters within the entities. Thus, the performance and

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<sup>190</sup> The Serbs, Croats, Bosnians and others are not categorized *jointly* as citizens. “Citizens” are an additional group of people in the state.

<sup>191</sup> CPA, Annex 4, Article II (5).

<sup>192</sup> *Is Dayton Failing? Bosnia Four Years After the Dayton Peace Agreement*, International Crisis Group, Balkan’s Report nr 80, 26 October 1999, p. 19.

<sup>193</sup> ICG Report October 1999, p. 19.

functioning of the central government has been described by the Peace Implementation Council as *inadequate*.

Also, what the House of Peoples is concerned, unlike what was stipulated in the Constitution, the Federation was allocated twice as many seats as the *Republika Srpska*. Although both entity parliaments contained minorities, the *Republika Srpska* National Assembly was only allowed to elect Serbs to the House of Peoples, in spite of the fact that 53% of *Republika Srpska*'s pre-war population was Serb. The Serbs from the Federation were not represented. The real purpose of the House to give the three ethnic groups the right to veto legislation on the grounds that it is against their national interest, was thereby largely undermined.

Several reasons can be given as to why the Constitutional provisions have primarily remained unimplemented. First of all, the joint institutions deal primarily with foreign affairs issues and have little authority to regulate internal affairs. The Constitution makes the entities *de facto* mini states with an imaginary central state. The central state has no army, no police force, does not raise taxes (with the exception of passport fees), does not control its own borders, has a judiciary with extremely limited responsibilities that rarely meets and a legislature that cannot formulate laws without the entities' approval. The entities may even formulate their own laws, provided they do not contravene the Constitution. The Constitutional provisions institutionalize the procedures by which the various nationalist ethnic leaders can opt out of the state level law process and veto the passing of legislation on the grounds of national interest. The performance of the Joint Institutions demonstrates that they do not represent the real centers of power.<sup>194</sup> At best the central state is an uneasy confederation with no real power.

Secondly, even in the case of properly functioning Joint Institutions, the DPA lacks state level enforcement mechanisms to compel the entities to implement state level decisions.

Third, because the joint institutions depend on the entities for funding, these institutions are only as strong as the entities permit them to be.<sup>195</sup>

### **Elections and external intervention**

Despite the number of comprehensive provisions on elections in the DPA, the implementation phase did not live up to the expectations as set out in the DPA Articles. This was particularly due to the fact that voter eligibility provisions were not lived up to, despite OSCE supervision.

#### Overview of the provisions

The DPA gave the parties the responsibility to "ensure that conditions exist for the organization for fair and free elections, in particular a politically neutral environment [...] and to allow and encourage freedom of association (including political parties)." The DPA tasked the OSCE with "supervising preparation and conduct of elections." The OSCE therefore established a Provisional Election Commission (PEC), with the mandate<sup>196</sup> to supervise all aspects of the

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<sup>194</sup> *idem*, p. 19

<sup>195</sup> *idem*, p 20.

<sup>196</sup> Annex 3, Article 2 provides for the OSCE to supervise the preparation and conduct of elections in cooperation with other international organizations. Among others, elections for the



election process, to ensure that the structures and the institutional framework for free and fair elections were in place,<sup>197</sup> compliance with the rules, and that action would be undertaken in case of a violation of those rules.

### Impact on the implementation of the provisions

Despite the inclusion of a detailed number of provisions on the conditions that the parties should agree for the organization of free and fair elections, the elections themselves did not live up to the expectations raising from the DPA. The parties did not honor their commitment to those conditions. The limited voter registration process was characterized by intimidation of displaced persons and refugees to register to vote for their municipalities at that time, rather than their pre-war municipalities. This intimidation eventually led to the postponement of the elections. In fact, the ethnic regulations approved by the OSCE during the 1997 municipal elections, contradicted the text of Annex 3, in particular Article IV on voter eligibility. Annex 3 was intended to result in large ethnic minority voter blocks spreading throughout both entities, the existence of which would have forced politicians to compromise, had it been correctly implemented.

### **Security Arrangements**

Overall, the implementation of the security arrangements has largely succeeded, notwithstanding the fact that some civilian armed groups had not been disarmed four years after the agreement.

### Overview of the provisions

Annex 1A is primarily concerned with the military aspects of the peace agreement. The main provisions set out in the agreement allow the international community to temporarily send forces (IFOR) to the region in order to implement the territorial and other militarily related provisions of the agreement.

More specifically in terms of DDR, the DPA includes provisions which recognize that also non-military actors could have military capability and should therefore be subject to the same obligations as the parties.<sup>198</sup> The parties have also committed themselves to “disarm and disband” all armed civilian groups, except for authorized police forces.

There are some provisions in Annex 1A which could be interpreted as SSR provisions, though they are not formulated in these words.<sup>199</sup> Also, Annex 11 provides for the set up of an International Police Task Force. Yet this Task Force is only assigned the tasks of monitoring, facilitating and giving advice to the police sector, rather than reforming them as such. So to conclude, there are no genuine SSR provisions.

### Implementation of the provisions

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House of Representatives and the Presidency of the Federation of Bosnia and Herzegovina and the Presidency and the House of Representatives of both the Federation and the *Republika Srpska*.

<sup>197</sup> The registration of political parties and the independent candidates, the eligibility of the candidates and the voters, the insurance of an open and fair electoral campaign and the certification of the final election results.

<sup>198</sup> CPA Annex I A, Article II. See also CPA Phase III (2) of the general agreements in Annex 1A.

<sup>199</sup> See for instance the provisions on the deployment of the troops under Article 4 of Annex 1A.

Of all the annexes to the DPA, Annex 1A (in addition with Annex 2) was one of the few Annexes that has largely been implemented. None the less, significant areas of Annex 1A have not been enforced, most notably the provisions concerning the presence of foreign forces on Bosnian soil (such as Mujahideen) and armed civilian groups. Yet, specifically related to DDR provisions, it can be said that four years after ratification of the agreement, a number of paramilitary formations still existed and could still function actively throughout Bosnia Herzegovina, particularly the *Republika Srpska*.<sup>200</sup>

The greatest success of the DPA was the cessation of hostilities as outlined in Articles I-VI DPA Annex 1A. Overall the presence of SFOR forces gave the country the feeling of security and stability that have enabled the efforts of post war reconstruction to succeed.

### **Entry Points for the International Community/ Netherlands MoFA**

Overall, a gap can be identified between what is desirable to include in a peace agreement from a purely security perspective and what is politically desirable and feasible. Detailed provisions for designing post-war structures or policies should ideally rest on a comprehensive needs assessment on this ground, even though this is difficult to undertake in a pre-settlement environment.<sup>201</sup>

#### Peace Accords

The available information seems to suggest that even though significant on paper, the Joint Institutions set up by the CPA seem to exist largely on paper only. Despite the comprehensive provisions included in the CPA, the power still lies with the separate entities, rather than the central government. In order to ensure a successful centralization process, the analysis suggests that the Joint Institutions should have been assigned more significant powers and independence from the state entities. The Joint Institutions were, for instance, dependent on the entities in terms of funding and only mandated to deal with foreign affairs related matters, not internal issues. This largely resulted in the powerlessness of the central institutions.

Also, the information strongly indicates the importance to include all inhabitants of a state in the Constitution and government institutions. In general, it can be advocated that there is need for a more consultative and comprehensive approach.<sup>202</sup> As a result of provisions indirectly excluding specific ethnic groups, the vast majority of state prerogatives, such as the military, police and the judiciary are in the hands of the *entity* governments. Taking due account to the inclusiveness of Constitutional provisions, would prevent the fact that minorities are discriminated against in their dealings with government institutions. In similar vein, it appears advisable not to disproportionately focus on the ruling elites. Even though working with the political leadership is essential to implementing the peace agreement to which they are signatories, and while elites enjoy greater capacity to obstruct the process, the international community will miss opportunities when failing to engage directly with those segments of the population that could provide the

<sup>200</sup> ICG Report October 1999, p. 19, p. 4.

<sup>201</sup> *Peace Processes and State Building: Economic and Institutional Provisions of Peace Agreements*, UNDP Report February 2007, p. 12

<sup>202</sup> ICG Report October 1999, p. 19

most powerful opposition to nationalistic feelings that may tear the country apart.

As a result of the practical exclusion of certain ethnic groups, in several instances democratically elected officials were either unable to take office due to the obstruction from hostile ethnic majorities occupying the municipality, or were sidelined from real decision-making when they actually occupied office. The analysis therefore suggests that it is advisable that an agreement provides for real inclusion of all inhabitants in the Constitution, but that the international community should also provide for mechanisms dealing with possible problems in terms of the implementation of such provisions.<sup>203</sup>

The agreement lacked provisions that anticipated the consequences if certain provisions could not be met. In the political civilian context, the imposed timeframe for elections was only one of the two obligations for which time frames had been set. Overall, the information suggests that more attention should have been paid to the *relationship* between the numerous articles that were included on police reform, elections and constitutional reform. The DPA, for example, lacks provisions that deal with what effect elections were likely to have in the absence of basic civilian security.

The absence of provisions for judicial reform in the DPA helps explain why efforts for judicial independence came so late in Bosnia.<sup>204</sup> Therefore, it is advisable to pay more attention to comprehensive provisions on judicial reform, in order to ensure a timely implementation thereof.

### Implementation

The analysis indicates that despite the comprehensiveness of the DPA, several critical elements were missing from the document. The information suggests that it is advisable to include more provisions on the *specifics of the implementation* of the Constitution. The DPA lacks any specific provisions on the implementation of the Constitution. As a result, it has often been left to external efforts to strenuously encourage compliance.

The available information also suggests the importance of providing for effective mechanisms which deal with the continued conflict between the Bosnians and the Croats that make up the Federation of Bosnia and Herzegovina. In other words, in case of possible obstruction to the effective functioning of the institutions, it is desirable to include provisions with alternatives mechanisms, rather than to leave it to the international implementers to develop strategies and instruments to deal with it.

Overall, the available information also suggests the importance of oversight mechanisms in terms of voter eligibility, particularly when the conflict resulted from inter-ethnic tensions. OSCE-approved regulations, which were implemented contrary to the provisions of the agreement, caused severe problems in terms of the implementation of the electoral provisions leading eventually to postponement of the elections. Also in terms of electoral provisions, it appears highly advisable not to provide significantly strict timeframes for elections to take place after ratification of the agreement. This has been indicated as one of the main causes of failure to successful implementation of the DPA.

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<sup>203</sup> ICG Report October 1999, p 11.

<sup>204</sup> "UNDP 2007, p. 12.

In general, the DPA “is often cited to show the problematic aspects of specifying a range of post-war state building mechanisms in a peace agreement”.<sup>205</sup> The key tension underlying the state building agenda, namely whether its primary aim is to achieve peace, or to create legitimate democratic state institutions, often results in inconsistent agreements. Power-sharing agreements may be a good way to end the violence, but in the long term they may inhibit the creation of stable and peaceful states by paralyzing subsequent government action. The DPA for Bosnia illustrates the contradiction between aims of peace making and state building.<sup>206</sup>

## **The Arusha Peace and Reconciliation Agreement for Burundi (2000)**

### **Background and Governance Issues of the Conflict**

Since independence, Burundi has been rife with ethnicized violence due to a colonial policy of divide and rule between the Hutu and the Tutsi.<sup>207</sup> Burundi’s conflict is defined as a struggle for domination between the minority Tutsi and the majority Hutu political elites. The national army of Burundi (FAB) was dominated by the Tutsi. “Following a coup by [Tutsi] Major Pierre Buyoya in 1987, tensions between the ruling Tutsis and majority Hutus exploded, leaving more than 150,000 dead and sending tens of thousands of refugees fleeing into neighboring countries.”<sup>208</sup> After adopting a new constitution in 1991, Buyoya ordered democratic elections for 1993 within a multiparty system under the new constitution with power-sharing arrangements. Buyoya, political leader of the Union pour le Progrès National (UPRONA), wanted to draw the Hutu into the political elite, which alarmed Tutsi radicals and military personnel. Buyoya tried to balance Hutu and Tutsi interests, but this eventually triggered wide scale violence and acts of reprisal.<sup>209</sup> The 1993 elections resulted in the choice of Hutu president Ndadaye of the Front pour la Démocratie au Burundi (FRODEBU). Six months later, senior military officers attempted a coup in which president Ndadaye got killed. This started a period of ethnic massacring, followed by a long gruesome civil war during which some 300,000 people were killed. Despite the huge impact on FRODEBU’s organizational capacity of the large scale of massacres perpetrated by the army and of the flight of about 600,000 Hutus into neighboring countries, FRODEBU managed to retain the presidency, although at the cost of a larger share of executive posts for Tutsi-led parties. The new Hutu president Ntaryamira received UN assistance to facilitate the restoration of constitutional rule through the United Nations Office in Burundi (the UNOB mission which later played an important role in the implementation of the Arusha Agreement).<sup>210</sup> Ntaryamira got killed in a plane crash with his Rwandese colleague Habyarimana in 1994. When (the third) FRODEBU president Ntibantunganya accommodated demands set by the Tutsi dominated FAB and the government and opposition signed a power-

<sup>205</sup> UNDP 2007, p. 12.

<sup>206</sup> *The Future of UN State Building: Strategic and Operational Challenges and the Legacy of Iraq* Policy Report International Peace Academy, November 2003, p. 7; UNDP Report, p. 12.

<sup>207</sup> The demographic proportions nationwide are about 85 % Hutu, 14% Tutsi and 1% Twa

<sup>208</sup> Burundi: ICTJ Activity, International Center for Transitional Justice website, accessed 12/10/2007 <http://www.ictj.org/en/where/region1/512.html>

<sup>209</sup> Burundi Fact File (February 2005) [www.issafrica.org](http://www.issafrica.org)

<sup>210</sup> S. Jackson, *The United Nations Operation in Burundi (ONUB) – Political and Strategic Lessons Learned*, Conflict Prevention and Peace Forum (July 2006, New York) (UN DPKO independent external study)

sharing agreement on national and local level, this was seen as treason by leading FRODEBU party members and the (Hutu) Minister of the Interior Nyangoma, who moved abroad to form the Conseil National pour la Défense de la Démocratie (CNDD) with its armed wing the Forces pour la Défense de la Démocratie (FDD), vowing to defeat the national army of Burundi. The FDD started to attack civilians, and this move intensified the civil war.

An Organization of African Unity (OAU) mediation effort, in 1996, by Tanzanian envoy president Nyerere resulted in the deployment of a regional OAU intervention force. This was perceived as a threat by the army of Burundi, creating in turn a life-threatening situation for president Ntibantunganya, who fled. The new Tutsi president Buyoya (UPRONA) immediately banned political parties and dissolved the National Assembly. He appointed a Hutu Prime Minister and several Hutu ministers entered the Tutsi dominated cabinet. Buyoya restored the National Assembly in 1996 and he disclosed that his government had held secret talks with the CNDD. A new power-sharing agreement was reached with FRODEBU members who had stayed behind in Burundi (although this agreement was opposed by those in exile) and it brought FRODEBU back in government. A new transitional constitution was introduced and Buyoya was sworn in as president. Tanzanian president Nyerere continued his mediation efforts, alongside bilateral attempts to encourage peace initiatives. Between June 1998 and August 1999, Nyerere set up a new series of peace talks with 18 parties to the conflict, which were split up into two groups: the G10 (Tutsi) and the G7 (Hutu). In fact, these two groups were all but coherent factions and consisted of several movements pursuing mutually exclusive goals. The renewed peace talks resulted in the formation of five commissions which later became the five Protocols of the Arusha Agreement. But they also led to a split within the CNDD, with the FDD abandoning the peace process, alongside the “Front National de Libération” (FNL), the armed wing of another Hutu party, the “Parti pour la Libération du Peuple Hutu” (PALIPEHUTU)<sup>211</sup>. These main rebel groups’ absence from the peace process was to become an important stumbling block in the years to come.

After his death in September 1999, Nyerere’s key role in the peace negotiations was taken over by Nelson Mandela, who stepped up the pace, changed the negotiation format, internationalized the problem (thereby creating more visibility *and* preventing the parties to the conflict to play off the regional actors against each other), and he ended the work of the committees. The most contentious issue concerned the leadership during the transitional period following the signing of a peace agreement. Negotiations ensued with the leaders of the four main groups, FRODEBU, CNDD, Parti pour le Redressement National (PARENA) and UPRONA, under high international pressure. The Arusha Agreement was eventually signed on 28 August 2000 by the majority of parties, although most of them kept reservations and issued a document with individual remarks to the Protocols of the agreement. The FDD and the FNL denounced the agreement and continued the fighting with even greater intensity.<sup>212</sup> The fact that there was no ceasefire agreement hindered its implementation, which was smeared out over a five-year period with continuous re-negotiation and mediation efforts.

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<sup>211</sup> It should be said that over the course of the conflict various factions with the same name came to existence (Jackson, 2006).

<sup>212</sup> UNOB Press Kit February 2004, <http://www.grandslacs.net/doc/3520.pdf>, website accessed 11/10/2007



Source: UN

### Overview of the Peace and Reconciliation Agreement (Arusha Agreement)

The Arusha Agreement consists of 5 protocols, 5 annexes elaborating on the protocols and two appendices with general remarks. The most important are Protocol II, which contains provisions for democracy and good governance, Protocol III on peace and security and Protocol V with guarantees on implementation. Protocol II on Democracy and Good Governance is divided into two chapters, one with Constitutional Principles of the Definitive Constitution and one with Transitional Arrangements for the interim period. The Transitional Arrangements (TA) describe the functions, (transitional) rules of the game and competences of (transitional) institutions in detail, while the Constitutional Principles of the Definitive Constitution outline all the general principles and rules these institutions must adhere to after the transition. Unless amended, rules from the TA were expected to be valid also after the transition. The TA served as supreme law during the interim period.

## **Provisions on (Transitional) Government**

The Arusha Agreement called for a transitional period lasting from the moment of signing until the election of a new president. In between, democratic elections for a national assembly had to take place. Protocol II provided for a transitional Executive, Legislature and Judiciary and set principles for, among others, political parties, elections, the legislature, the executive, local government, the judiciary and the administration. The Assembly and Senate adopted a post-transition Constitution which had to be verified by the Constitutional Court and approved by way of referendum. An important monitoring mechanism during the interim period was the Implementation Monitoring Commission (IMC), consisting of several commissions and subcommissions. The goal of the Arusha Agreement was to form a broad-based transitional Government of national unity. The transitional President and Vice-President (from different ethnicity and party affiliation) were expected to allocate a specific proportion of portfolios to the various parties of the Arusha Agreement. Decentralization of administrative entities was relegated to the Post Transition Constitution (PTC). The Arusha Agreement was supplemented in 2003 with the signing of the Pretoria Protocol in which the transitional government and the CNDD-FDD agreed to a political and security power-sharing agreement and cessation of hostilities.

On the eve of the signing of the Arusha Agreement, the two most important Burundian leaders and adversaries, Burundi's president, self-proclaimed representative of the Tutsi community and UPRONA leader Pierre Buyoya, and Jean Minani, leader of FRODEBU and the G7 (representing Hutu parties) entered into direct negotiations which led to "very significant amendments". These were last-minute compromises demanded by Buyoya in return for his signature.<sup>213</sup>

Buyoya managed to include amendments that provided for 'a transitional Senate with reinforced powers (nominations to senior posts in the civil service, in the judicial system and in the army), the indefinite extension of the 50/50 rule in the armed forces (Hutu-Tutsi parity) and a change in the qualified voting (from a 3/5 to a 2/3 majority), requested to amend organic laws (which determine the organization of the army and Supreme Court, both important guarantors for protection of the minority Tutsi). These three changes strengthened considerably the representation and protection of Tutsi interests within the country's institutions, their political weight becoming equivalent to about three times their demographic weight. Especially the strengthening of the Senate meant that Buyoya and his UPRONA party, and to a lesser extent the other Tutsi parties, had the means to guarantee that "an unofficial quota of their followers" would be represented in the leadership of institutions.<sup>214</sup>

These changes, however, were not a direct political threat to the peace process itself. Though politically weakened, FRODEBU leader Minani accepted these amendments, trusting that his moral reputation would be enhanced and because of guarantees from Mandela that Buyoya would not be a candidate for the leadership during the transitional period. What did constitute a political threat was the agreement to replace the necessity of a 2/3 majority for decisions within the Transitional Government, with a consensus principle. This created the possibility of paralysis in decision making (even the smallest parties could take the government hostage), without any institutionalized form of

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<sup>213</sup> Burundi: Neither War nor Peace, ICG Africa Report nr. 25, 1 December 2000, pp 3, 4

<sup>214</sup> Burundi: Neither War nor Peace, ICG Africa Report nr. 25, 1 December 2000, pp. 3-9



appeal, other than mediation by the chairman of the Implementation Monitoring Commission (IMC see below).<sup>215</sup> With the necessity of consensus, Buyoya was the only leader thought to be able to win over the Tutsi G10 parties. Buyoya became therefore the natural choice for a president for the transitional period. These concessions meant a continuation of the status quo, as Buyoya already was president, even though he had as many critics within the Tutsi G10 as in the Hutu G7.

### **Implementation of the Provisions**

After the signing of the accord, a period of deadlock ensued. Since the Arusha Agreement contained no ceasefire, hostilities continued unabated between government forces and the FDD and FNL, making the implementation of the provisions almost impossible. The only 'functioning' institution was the IMC, which served as an expensive forum for endless debates and 'perpetual negotiations' over procedures.<sup>216</sup> The interim period, which was supposed to last six months, expired without a ceasefire or the nomination of a transitional president. Tutsi parties were unable to unite behind UPRONA leader Buyoya and Hutu parties failed to unite in opposition to Buyoya. This stalemate led to the end of negotiations between UPRONA and FRODEBU.

In October 2001 Mandela managed to broker a deal between the UPRONA leader Buyoya and FRODEBU, to allow a transitional government to come into being for a period of 36 months (due to expire in late 2004), with Buyoya as its president for the first 18 months and Hutu Ndayizeye for the remaining period. Even though the civil war did not come to a halt, discrediting the transitional institutions in the eyes of the Burundians, the transition period continued under heavy pressure from regional leaders.<sup>217</sup> In line with the Arusha Agreement, a transfer of power took place after 18 months, but not without opposition from Buyoya, other Tutsi parties and the FAB.<sup>218</sup>

Through South African mediation, the transitional government and CNDD-FDD signed the Pretoria Protocol in 2003 in which they reached consensus on power-sharing and army reform. CNDD-FDD promised to abandon the armed struggle and to start confining its fighters in exchange for four government ministries, 40% of command positions in the new army and several diplomatic and local government posts. This led to a serious decline in hostilities but the FNL continued its violent struggle. After the agreement with CNDD-FDD, talks began between PALIPEHUTU-FNL and the transitional government, but failed nevertheless to show results.

Between January and June 2004, the Burundian political leaders held a series of negotiations on the post-transition constitution, one of the key parts of the Arusha Agreement, but failed to reach consensus on the draft constitution. South African Vice-President Zuma managed to close negotiations on power-

<sup>215</sup> Burundi: Neither War nor Peace, ICG Africa Report nr. 25, 1 December 2000, pp. 11-15

<sup>216</sup> Burundi: Breaking the Deadlock, ICG Africa Report Nr. 29, 14 May, 2001, p. 25

<sup>217</sup> Jackson writes that "elections would show that a majority of the Burundian population had come increasingly to see the Arusha parties as equally discredited participants in the genesis of the crisis and the CNDD-FDD as an impressive new force for change." S. Jackson, *The United Nations Operation in Burundi (ONUB) – Political and Strategic Lessons Learned*, Conflict Prevention and Peace Forum (July 2006, New York) (UN DPKO independent external study)

<sup>218</sup> Burundi Fact File (February 2005) [www.issafrica.org](http://www.issafrica.org), F. Reyntjens, Briefing: Burundi: A Peaceful Transition After a Decade of War, African Affairs, 105/418 pp. 117-135 (2005)



sharing between CNDD-FDD and the transitional government, which resulted in the signing of the Pretoria power-sharing agreement on 6 August 2004.<sup>219</sup>

Tutsi and Hutu parties disagreed as to how to fill the Tutsi quota in the cabinet and Senate. With the accession of CNDD-FDD to the transitional government, “a significant number of Tutsi supporters [crossed] the floor of parliament”, which caused UPRONA to upgrade their demands for constitutional protection.<sup>220</sup> Protocol II of the Arusha Agreement promised 40% of the cabinet and 50% of the Senate seats to Tutsis for a period of at least five years after the ending of the transitional period. These seats were to be distributed according to ‘political-ethnic affiliation’; that is, along lines of party membership. The Tutsi parties wanted to keep this arrangement for the post-transition period too, fearing that pro-Hutu Tutsis would be appointed by Hutu parties in case that a purely ethnic affiliation criterion would have been adopted. Ndayizeye proposed postponement of general and presidential elections, but this was rejected by FRODEBU and CNDD-FDD, whilst supported by UPRONA and other Tutsi-backed parties, who wanted postponement of the referendum for a new Constitution. A national referendum on a new constitution was impossible as long as no consensus was reached on the text. Talks in October 2004 between ONUB<sup>221</sup>, Ugandan president Museveni, South African mediator Zuma and the Burundian Independent Electoral Commission (CENI) led to a new constitution without the Tutsi demand for ‘political-ethnic affiliations’, but with a small concession to the Tutsi parties with respect to the appointment of the vice-presidents.<sup>222</sup> This enabled further implementation of the Arusha Agreement and the constitution was finally approved in February 2005 through a referendum.<sup>223</sup>

## **Provisions on Political Parties**

### Overview of the Provisions

During the transitional period, a new law on political parties was to be adopted setting forth qualifications and procedure for registration. Under these provisions, parties were prohibited from having an ethnic base or regional exclusivity. In the post-transition phase, Burundi was expected to have a multiparty democracy built on parties with democratic principles and keen to promote equality and peace. These provisions have had a mixed result on the peace process. Whereas in Rwanda reference to ethnicity has been outlawed, in Burundi, ethnicity has been institutionalized. The constitution ruled that party lists were to be multi-ethnic in nature and had to take gender balance into account. Of every three candidates proposed on a list, only two could belong to the same ethnic group, and at least one out of every four had to be a woman.’ As Reyntjens writes, “the ‘multi-ethnic’ nature of the CNDD-FDD is mainly the result of legal engineering, and the ‘disappearance of the ethnic factor’ [...] will need further confirmation”.<sup>224</sup>

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<sup>219</sup> Elections in Burundi: The Peace Wager, Crisis Group Africa Briefing, 9 December 2004

<sup>220</sup> R. Southall, *A Long Prelude to Peace: African Involvement in Ending Burundi's War*, in: R. Southall (ed), *South Africa's role in conflict resolution and peacemaking in Africa*. Conference proceedings (2006, HSRC Press, Cape Town)

<sup>221</sup> The United Nations Operation in Burundi, [resolution 1545](#)

<sup>222</sup> F. Reyntjens, *Briefing: Burundi: A Peaceful Transition After a Decade of War*, African Affairs, 105/418 pp. 117-135 (2005), p. 129, footnote 31

<sup>223</sup> Burundi Fact File (February 2005) [www.issafrica.org](http://www.issafrica.org)

<sup>224</sup> Reyntjens 2005, pp. 117-135

### Impact of the Provisions

The political landscape has become more multi-polar. Whereas in 1993 only two parties (and two opposing ethnic groups) competed for the general elections, the 2005 elections (municipal, parliamentary and presidential) saw a more diverse political landscape. Political parties generally refrained from enticing hatred and used instead a language conducive to cooperation and open communication. Even the FNL, the only (Hutu) party still using violence, has claimed interest in joining the political landscape.<sup>225</sup> The two main Arusha parties, FRODEBU and UPRONA have experienced a downfall in popularity due to their failure to bringing security to the Burundese people after the Arusha Agreement. In 2004, 50 members of parliament (both Hutu and Tutsi) defected to the mainly Hutu CNDD-FDD for reasons of political opportunism. CNDD-FDD gained increased popularity, as reflected in the outcome of the 2005 elections. This popularity can be ascribed to their legitimacy from years of armed struggle, a rejection of the ethnic discourse used by UPRONA and FRODEBU and the fact that they were never affiliated with these parties. But as Reyntjens argues, a vote for CNDD-FDD might also have expressed a desire for peace out of fear that CNDD-FDD would have returned to fighting in case of bad results at the polls. The multi-ethnicity of parties has turned out somewhat bleak. 30% of Tutsi members represented in parliament were chosen on a CNDD-FDD ticket, thus this party turned out to be the most 'multi-ethnic' party. Tutsi parties like UPRONA or the Mouvement de Réhabilitation du Citoyen (MRC) secured just one seat in the provinces, sending only the first candidate on the 'multi-ethnic' list, a Tutsi, to parliament. This led to complaints and exit of Hutu executives from UPRONA, thereby making it almost exclusively Tutsi. Representation of 'Tutsi' parties in municipalities is low since nine percent of the votes has been scattered over ten 'Tutsi' parties. FRODEBU's successive defeats at the polls have led to a split in the party. This fragmentation of Tutsi parties and FRODEBU has created a weak opposition to CNDD-FDD. But CNDD-FDD lacks administrative experience and expertise among its ranks and needs 'to harness the available capacity, irrespective of political or ethnic affiliation'.<sup>226</sup>

### **Provisions on Elections**

#### Overview of the Provisions

The main issues in the Burundi conflict: are "the fear of an ethnic vote, seen as synonymous to a loss of power, and [...] a guarantee of ethnic representation that maintains the status quo".<sup>227</sup> During the transitional period elections were to be held at the commune, national level and presidential in that exact order. Despite several postponements, these elections have been held throughout 2005. A system of blocked lists was used (meaning that the order of candidates could not be changed) and as mentioned above, of every three candidates proposed on a list, only two could belong to the same ethnic group, and at least one out of every four had to be a woman. The National Assembly elected the first post-transition president. The transitional government was to establish a National Electoral Commission (NEC) which was supposed to work together with members of the transitional National Assembly and organize elections at national, regional and local level and establish electoral rules. This was to become the Independent National Electoral Commission (CENI).

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<sup>225</sup> *idem* pp. 117-135

<sup>226</sup> *idem* pp. 117-135

<sup>227</sup> End of Transition in Burundi: The Home Stretch, ICG Africa Report N°81, 5 July 2004

### Impact of the Provisions on the implementation period

The Independent National Electoral Commission (CENI) was established by a presidential order at the beginning of September 2004. The donors made the establishment of CENI, and the preparation of both an electoral timetable and a preparatory document for the elections prerequisites for the release of funds needed for the election campaigns. CENI launched its activities by establishing electoral commissions at the provincial level registration of voters.<sup>228</sup> CENI played a crucial role during the elections and was given considerable powers, “which it exercised skilfully”. Although some of its decisions were far-reaching, they were generally uncontested. For example, the constitution provides that no ethnic group may have more than 67 percent of mayors. CENI managed to draw up two lists of communes together with the parties without much problem; one of 86 communes to be headed by a Hutu mayor and another of 43 to be headed by a Tutsi mayor.

As shown above, Tutsi attempts to postpone elections and withdraw the draft interim constitution were resisted by regional leaders. A limited delay was however accepted. The June 2005 municipal elections, won by CNDD-FDD, were mainly opposed by FRODEBU, which proved to be a poor loser. Both parties tried to discredit each other during the campaign which sometimes led to violent incidents. The elections proceeded calmly however and incidents did not fundamentally affect the outcome. CENI was not impressed by FRODEBU’s claims made four days after the results of the elections were known, concluding that FRODEBU first wanted to know the results and only filed a complaint when it “realized the extent of the debacle”.<sup>229</sup> Only four parties reached the 2 percent threshold, out of the 30 parties that had contested the elections. According to Reyntjens, this showed how unrepresentative most of these parties were and “that these parties held the political process to ransom, in order to enjoy the spoils as long they could”.<sup>230</sup>

The July 2005 parliamentary elections were also won by CNDD-FDD, representing many Tutsi members. No Hutu’s were elected on the ‘Tutsi’ UPRONA and MRC lists due to the fact they received only one seat per province. Since the constitutional quota rules were not met, the CENI co-opted extra MP’s to let parliament meet the requirements of 60% Hutu, 40% Tutsi and 30% women in addition to three representatives of the Twa minority. CNDD-FDD secured 54% of the seats.<sup>231</sup> Still, it needed to search for coalitions in order to pass legislation and in June 2007, this relatively comfortable position came to an end when 30 MP’s walked out of the CNDD-FDD parliamentary group due to a leadership crisis.<sup>232</sup> FRODEBU again claimed irregularities, but this time its criticism was more moderate. The results of the municipal elections meant that CNDD-FDD won the vast majority of seats in the Senate. The constitution rules that the house should be evenly divided among Hutus and Tutsis. With its multi-ethnic party lists during municipal elections, this meant that CNDD-FDD won 30 out of 34 seats, while FRODEBU won only three and CNDD one.

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<sup>228</sup> Elections in Burundi: The Peace Wager Crisis Group Africa Briefing, 9 December 2004

<sup>229</sup> Reyntjens 2005, p. 124.

<sup>230</sup> *idem*, p. 122-124.

<sup>231</sup> *Idem*, p. 125-127

<sup>232</sup> Burundi: Grappling With a Looming Political Crisis, Integrated Regional Information Networks (IRIN), United Nations, June 24, 2007

The August 2005 presidential elections finally were a mere formality. The only candidate, Pierre Nkurunziza of the CNDD-FDD, was chosen with 151 out of 166 votes. His subsequent selection of cabinet ministers has been highly contested as noted above, but the opposition, remaining weak ever since, has not been able to alter the configuration of the cabinet.

### **Post-Transition Electoral Developments**

As described above, the power-sharing arrangements in the Arusha Agreements gave the Tutsi minority an over-representation in the state institutions, but it seems that the guarantees were more significant on paper than in practice. Since the 2005 elections, the political climate deteriorated. The arrests and reported torture of several prominent opposition politicians and civil society leaders have rekindled ethnic tensions in the capital – among the arrestees, only Tutsis were tortured.<sup>233</sup> With respect to the 2010 elections, the International Crisis Group notes that fragmentation of the opposition may lead to forging of effective coalitions, or to a return to the use of force. Unsuccessful efforts both by FRODEBU and CNDD to influence the FNL is a case in point. CNDD-FDD's fears of a "Hutu block" forceful enough to oppose CNDD-FDD militarily, "underlines the importance of implementing the 7 September 2006 ceasefire with the FNL."<sup>234</sup>

The composition of the new government and governance at large, have been very contentious issues since the election of a new president and due to the several violations of the constitution that took place. According to the constitution, the president was expected to allocate ministerial positions to reflect the distribution of seats in parliament<sup>235</sup>, but failed to do so. The distribution of ministerial seats occurred instead in violation of the principles of the Arusha Agreements and Burundian law. Both UPRONA and FRODEBU received less ministries than they were entitled to. Using the excuse of positive discrimination, the president chose to allot those ministries to three small parties, which in principle were not entitled to receive any ministerial position, while the CNDD-FDD kept its full portfolio. The constitution also gave the president the right to name governors, judges of the Supreme Court and Constitutional Court, directors of state companies and top administrative officials. With 65% of the seats in the Senate, approval was not a problem and the UPRONA Vice-President never turned down a nomination, thus rendering these parliamentarian checks useless. Overt misuse of the law on public administration has led to sweeping personnel changes in state companies, local administration and the court system, with most positions going to [CNDD-FDD] members.

Pending a presidential decree for a supervisory commission to oversee this process, CNDD-FDD has successfully "replaced all FRODEBU and all but one UPRONA directors of state companies with its loyalists. The placing of many CNDD-FDD officials in the court system has undermined judicial independence"<sup>236</sup> "Another troubling trend has been the government's removal of elected public officials. [T]he dismissals violated the law on communal administration, which requires administrators to be appointed and replaced by communal councils. These abuses led to FRODEBU's decision in March 2006

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<sup>233</sup> Burundi: Democracy and Peace at Risk, Crisis Group Africa Report N°120, 30 November

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<sup>234</sup> *idem*

<sup>235</sup> *idem*

<sup>236</sup> *idem*

to withdraw from government and go into opposition. Although some members of UPRONA have pushed their party to go along FRODEBU's example, its leadership has decided to retain its ministerial positions.<sup>237</sup>

### **Provisions on Security Arrangements**

The PTC principles stipulate that not more than 50% of the national defence force shall be drawn from one ethnic group. Protocol III outlines the principles with regard to the organization, missions, structure, composition, size, balance and recruitment of the defence and security forces (being the military, police and intelligence service). There are no clear benchmark criteria regarding the size of the security forces.<sup>238</sup> Although there is no specific reference to security sector reform (SSR), it is implied through the necessity of balancing the security sector on the basis of the political, ethnic, regional and gender criteria. This was to be done during the transitional phase. The new national defence and police force was to include Burundian armed forces and combatants of political parties. A technical committee consisting of external advisors and trainers was to implement the procedures. Protocol III gives a rudimentary outline to demobilization which should be undertaken by the Ceasefire and Reintegration Commissions<sup>239</sup>. There are no specified criteria or benchmarks for demobilization disarmament and reintegration (DDR) of former soldiers and combatants. A technical committee (Ceasefire Commission) dealt with demobilization programme and modalities, and a Reintegration Commission with socio-professional reintegration<sup>240</sup>. Annex V gives a clear timetable for the DDR programme.

#### Implementation of the provisions:

The implementation of the DDR/SSR components of the Arusha Agreement was delayed until 2003 because of continued warfare. Some of the most active rebel movements, being left out of the Arusha negotiations, were not signatories. The ceasefire agreement between the government and the CNDD-FDD kick-started this process. "The African Mission in Burundi (AMIB) was deployed in April 2003 with a mandate to oversee the implementation of ceasefire agreements, support demobilization, disarmament and reintegration (DDR), prepare the ground for a fuller UN peacekeeping operation and promote political and economic stability."<sup>241</sup> Just before the ending of the transitional period, the AMIB mission was transformed into a blue helmet force and on 1 June 2004, the ONUB started its mission, absorbing the UNOB mission.

Albeit behind schedule<sup>242</sup>, the SSR objectives have reached an "advanced stage" and have achieved "most of its structural objectives" of integrating several armed groups into a single military and single police force.<sup>243</sup> Integration of CNDD-FDD rebels and combatants from the former regular army into a

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<sup>237</sup> idem

<sup>238</sup> Article 15, Protocol III states that the strength of the defence force will be determined by potential internal and external threats; economic and fiscal resources; allocated budget; and defence policy. The size of the police force is determined by surface area of the country; population; population density; urbanization level; economic resources; crime level; and budgetary allocation. The size of the intelligence is left unspecified.

<sup>239</sup> Annex V and Protocol V

<sup>240</sup> Protocol V, article 5, par. 8

<sup>241</sup> Jackson, 2006

<sup>242</sup> Jackson, 2006

<sup>243</sup> W. Nindorera and K. Powell, *Delivering on the Responsibility to Protect. Reforming the Security Sector to Protect the Most Vulnerable in Burundi*, ISS October 2006 ([www.iss.co.za](http://www.iss.co.za)), p. 3

new national defence force has succeeded in accordance with the quotas agreed upon in the Arusha Agreement and the 2003 Ceasefire Agreement. The constitution of a new national police force has succeeded too, although it is largely controlled by former CNDD-FDD combatants (35%).<sup>244</sup> Progress has also been achieved as to demobilization and disarmament. On a total of nearly 26.000 combatants, 5000 still await demobilization.

Control of the army has been a very contentious issue given Tutsi dominance in all ranks. This has been problematic for both the Transitional Government of Burundi (TGoB) and the post-transition CNDD-FDD government. The success of the SSR and DD part of the DDR programme can be ascribed to the Joint Ceasefire Commission, a subsidiary of the IMC. “[...] DDR and SSR [...] processes are both intensely technical and political. As the only ceasefire organ that brought together almost all groups [...], the Joint Ceasefire Commission [...] emerged as a key body through which disputes could be resolved. These were not limited to technical dimensions of military affairs. The JCC, although chaired by the ONUB Force Commander, became a venue in which political struggles disguised as technical ones were frequently played out. Indeed, while the IMC appeared the more significant body, in actual fact, the JCC did the bulk of the work in implementing the agreements, ensuring that solutions were reached on such issues as harmonization of ranks and pushing through the security sector legislation. With the ONUB’s energetic work, the IMC did gradually become more effective and efficient, producing clearer recommendations, but, as a body that included all the Arusha signatories, it remained more an extension of the Arusha debate than a forum through which to hold the TGoB to account.”<sup>245</sup>

## **Entry points for the International Community/Netherlands MoFA**

### Government

The CNDD-FDD dominated government should be reminded of its obligations with respect to the Constitution. The stipulations with regard to governance of state institutions and companies should be respected since these were the outcome of a protracted negotiation process between all parties. Distribution of positions according to these stipulations should take place in full respect for the law on public administration.

### Elections

It is advisable to closely monitor the behavior of the parties in the run-up to the 2010 elections. Especially the formation of new alliances between CNDD-FDD opposition and FNL is a worrying aspect as long as the latter continues its violent struggle. Support for the continuing South African mediation attempts to respect the 2006 ceasefire between the Burundian government and the FNL, should be coupled with close monitoring of a reported fall-out within FNL leadership.

### Security Governance

The Implementation Monitoring Commission (IMC) remained more of an extension of the Arusha debate than a forum through which to hold the TGoB

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<sup>244</sup> idem, p.3

<sup>245</sup> Jackson, 2006

to account.<sup>246</sup> The Joint Ceasefire Commission (JCC), a subsidiary of the IMC, proved to be an effective instrument that might be reproduced in other contexts. But as Jackson argues, the position of the chair needs to be supported by providing strategic and political advice, given the fact that its activities are often highly political. This could be a valuable lesson for the future. With respect to a possible ceasefire between the government of Burundi and the FNL, technical support should be given to DDR activities.

### Transitional Justice

The Arusha Agreement contains provisions for a Special Tribunal for Burundi and Truth and Reconciliation Commission, but these provisions were not implemented during the period of transition. In November 2007, a three party committee in charge of conducting popular consultations was launched to chart the path towards the setup of the Truth and Reconciliation Commission (TRC) and a Special International Tribunal for Burundi to deal with war crimes committed over the three past decades.<sup>247</sup> It is advisable to investigate whether this consultation process can be supported. Due consideration should be given to possible adverse effects as former militia leaders could tend to evade or frustrate such a process.

## **Comprehensive Peace Agreement Sudan (2005)**

### **Background of the Conflict**

Sudan's civil war between the North and the South began in 1955, one year prior to the country's acquisition of independence from Britain. Tensions over religion, resource control, power and ethnicity lasted for over 18 years. In 1972, with the signing of the Addis Ababa Peace Agreement, the first peace treaty was ratified, ending the North-South conflict. The Agreement established a ceasefire that lasted for eleven years. However, in 1983, the disagreements resurfaced from the first civil war and renewed the conflict between the Government of Sudan in the North and the Sudan's People's Liberation's Army (SPLM/A) in the South.

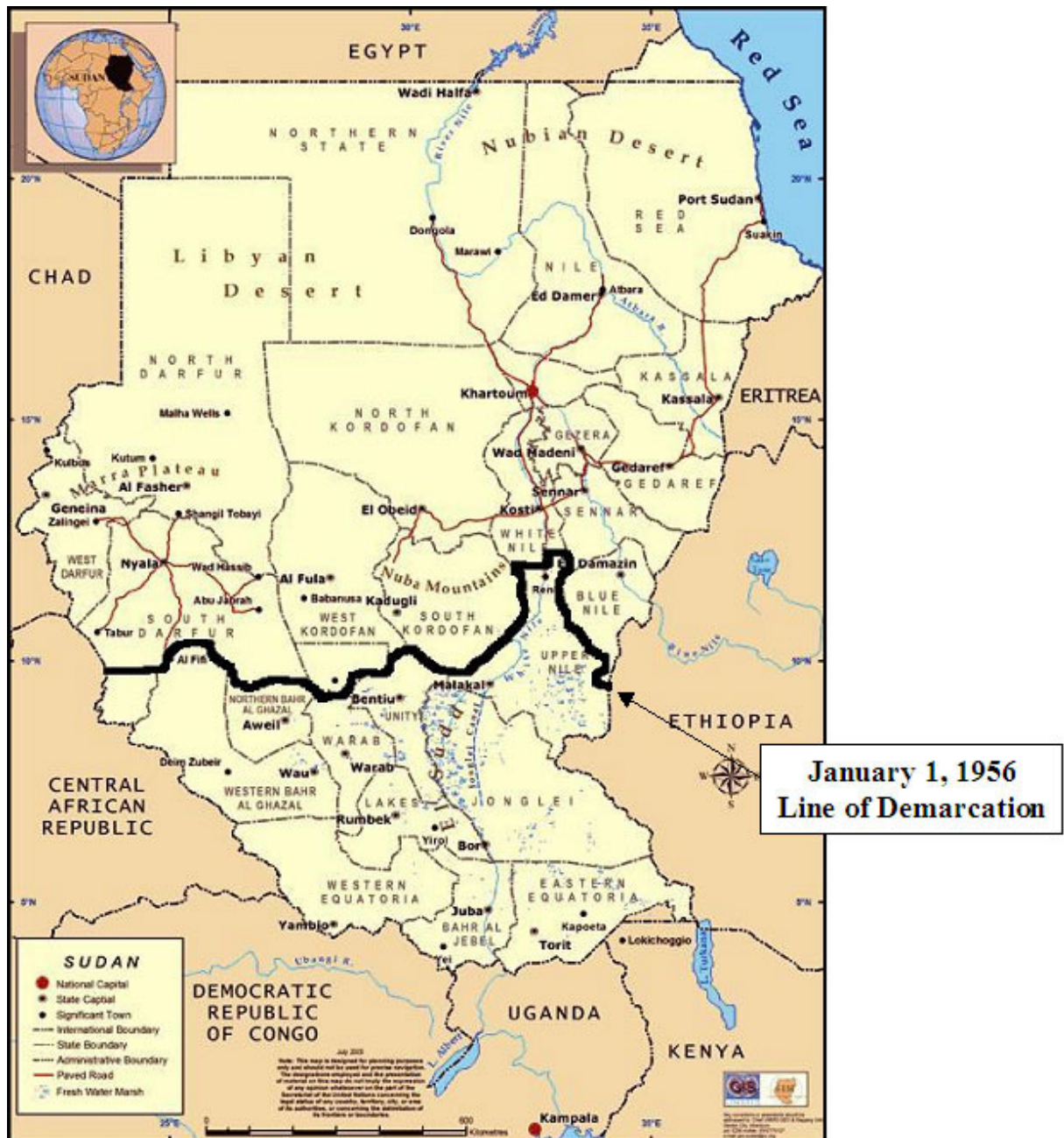
The 1956 Line of Demarcation generally sets the division between the two parties. The area of the North tends to gravitate mostly towards the Islam and mostly identifies itself with the Arabic countries, whereas the South tends to have a Christian base and associates itself with sub-Saharan Africa. During the civil wars the political parties in the respective regions aligned into two distinct camps of the North and the South, to fight for control over the country and regime security.

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<sup>246</sup> *idem*

<sup>247</sup> Burundi: President Nkurunziza Launches the Activities for TRC, *Burundi Réalités*, 4 November 2007, <http://allafrica.com/stories/200711040159.html>





Source: [www.state.gov](http://www.state.gov)

## Governance issues of the conflict

The Sudan's civil wars were not rooted in population diversity, but rather in exclusive governance.<sup>248</sup> Governance problems in Sudan related to three factors: a) dictatorial and exclusionary policies generated from the capitol at the expense of the Southern Sudanese and other marginalized peoples; b) the autocratic rule of the SPLM/A in areas under its control; c) institutional politicization and the failure to deliver services and enforce the rule of law.

<sup>248</sup> E. Rogier, *No More Hills Ahead? The Sudan's Tortuous Ascent to Heights of Peace*, Clingendael Security Paper No. 1, August 2005 (I)



Both the Sudan's first and second civil war are generally similar in cause, in particular the Sudanese government's failure to honor its commitment on Southern autonomy. While in 1956 Southerners were not granted the special arrangements that they had been promised, in 1983 they were deprived of those provisions that had been conceded to them eleven years earlier under the Addis Ababa Agreement. Thus power-sharing issues were central to both wars.

The Sudanese conflict resulted from the perceived discriminating policies and was fought over long-standing differing group interests and views on the country, the ones defending the Arab-Islamic supremacy and the others advocating a secular and multicultural 'New Sudan'.<sup>249</sup> The Sudan conflict was characterized by an excess of political agenda.<sup>250</sup> The conflict in Sudan can therefore be labeled as a 'conflict of governance', fuelled by contested policies and fought over conflicting interests.<sup>251</sup>

### **Overview Comprehensive Peace Agreement (CPA)**

The Comprehensive Peace Agreement (CPA) was signed on 9 January 2005 by the Government of Sudan (GoS) and the Sudan People's Liberation Movement/Sudan People's Liberation Army (SPLM/A). It comprises various accords that had been successively reached in the course of the Intergovernmental Authority for Development (IGAD) process.<sup>252</sup> The main provisions of the CPA are: the creation of a Government of National Unity (GNU) as well as a Government of Southern Sudan (GoSS); representation in the national government, the Presidency and the civil service, exemption from Sharia Law in the South and the right to self determination for South Sudan to decide whether to remain in a united Sudan or become independent after a six-year interim period ending in 2011. In the course of the interim period before the referendum, the challenge was to implement these provisions and make unity "attractive" for Southerners.

As aforementioned, the CPA provided for a decentralized government system. Significant powers from the national government were shifted to the lower levels of government, but only South Sudan was to have its own regional government that would act as an interlocutor between the national government and Southern states.

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<sup>249</sup> South Sudan is largely inhabited by African Christian and animist groups, whereas the North's population is primarily Arabic in origin and Muslim. Rebel groups have continuously accused the Sudanese Government of favoring the ruling Arab elite. They are demanding a greater share of Sudan's power and wealth. Another contested issue has been the imposition of Islamic Law in the South, which was opposed by the inhabitants of the South.

<sup>250</sup> E. Rogier, *Rethinking Conflict Resolution in Africa: lessons from the Democratic Republic of the Congo, Sierra Leone and Sudan*, Clingendael Security Paper, July 2004, p. 18.

<sup>251</sup> Compare this to conflicts of 'government' such as Sierra Leone or the DRC, which are often driven by self interest and fought over government positions. Rogier, 2004, p. 18

<sup>252</sup> Machakos Protocol (20 July 2002), Agreement on Security Arrangements (25 September 2003), Agreement on Wealth Sharing (7 January 2004), the Protocol on the Resolution of the Conflict in Southern Kordofan and the Blue Niles States, the Protocol on the Resolution of the Conflict in the Abyei Area and the Protocol on Power Sharing (all three signed on 26 May 2004). The CPA also includes two annexes in which the parties proclaimed a permanent cease fire and detailed implementation modalities on each separate agreement.

## Power Sharing Arrangements

### Overview of the Provisions

The CPA includes a separate Protocol on Power Sharing, which provides for power-sharing arrangements on various levels. It stipulates, for instance, that the Southerners are entitled to run their own affairs, in particular via the newly established Government of South Sudan (GoSS) and to obtain greater political participation at the central level. The Protocol further allows for the political space to open gradually to other political forces and recognize the ‘need for inclusiveness.’ The CPA provides for a decentralized system of government<sup>253</sup> and foresees modalities for increased budget allocations to state governments. The CPA includes a separate annex which lists the specific powers of the central and state institutions, including which powers are shared among the institutions.<sup>254</sup>

The CPA also provides that the President is to be elected in national elections.<sup>255</sup> The elect is to appoint two Vice-Presidents, one from the South and the other from the North. “If the President elect is from the North, the position of the First Vice-President is from the South” and *vice versa*.<sup>256</sup> The posts of the presidency are allocated to individuals, not parties.<sup>257</sup>

### Joint Institutions

Unity was prioritized and could *not* be achieved by creating two systems in one country. Instead, it meant that country wide institutions had to be created or strengthened. SPLM/A wanted to make peace in divided societies by granting minority groups guarantees and safeguards to protect their interests. The GoS, on the other hand, held on to a more ‘integrative’ approach and focussed on creating incentives for inter-group cooperation, building joint institutions and enhancing collective decision making processes.<sup>258</sup>

The CPA includes several provisions on fair representation within the National Civil Service (NCS). Article 2.6.1 for instance reads that “[t]he Government of National Unity shall ensure that the National Civil Service [...] is representative of the people of Sudan.” The Article further stipulates a number of principles that shall be recognized accordingly. One of the most important principles in terms of NCS reform is that 20-30% of qualified and trained southern Sudanese will be included in order to “fairly represent all the people of the Sudan and [...] utilize affirmative action and job training to achieve equitable targets for representation within the agreed time frame.”<sup>259</sup>

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<sup>253</sup> Comprehensive Peace Agreement (CPA), Article 1.5.1.1 “There shall be a decentralized system of Government with significant devolution of powers, having regard to the National, Southern Sudan, State and Local levels of Government.”

<sup>254</sup> CPA Part V.

<sup>255</sup> CPA Article 2.3.1.

<sup>256</sup> CPA Article 2.3.7.

<sup>257</sup> This means that in case of a vacancy the NCP would fill in the position of the President and the SPLM/A the post of the first vice-president.

<sup>258</sup> Rogier, 2005 (I), at p. 106.

<sup>259</sup> article 2.6.1.5 Power Sharing Protocol, CPA

### Interim Administration

The two parties agreed on symmetrical power-sharing arrangements on a *state level*.<sup>260</sup> Pending elections, in the Northern *executive* and *legislative* branches, the National Congress Party (NCP) were to be allocated 70%, other Northern political forces 20% and the SPLM/A 10% of the seats.<sup>261</sup> Similarly for the Southern executive and legislative branches, 70% of the seats were to be allocated to the SPLM/A, 20 % to other southern political forces and 10% to the NCP.<sup>262</sup> Hence, in the absence of general elections at this level, the power sharing agreement reads like a bilateral deal in terms of the division of power.<sup>263</sup>

On a national level, the CPA provides that 52% of the ministerial seats are reserved for the NCP (including 49 % northerners, 3% southerners), 28% for the SPLM (including 21% for the southerners and 7 % for the northerners) and 14% to other northern political forces.<sup>264</sup> Prior to elections, a population census has to be conducted.<sup>265</sup>

### Impact of the provisions

On paper, the CPA appears largely comprehensive in that it outlines a foundation for the entire nation. Even though bilateral in nature, the process allowed for the influence of external views, interests and interferences.<sup>266</sup> The SPLM, for instance, also represented (at least indirectly) the National Democratic Alliance and was also mandated by the people of the Nuba Mountains and the Southern Blue Nile to defend their interests during the negotiations. Both parties recognized the importance of inclusiveness for the sustainability of the agreement and accepted the inclusion of, albeit in small proportions, opposition parties in the political structures of both Northern and Southern states and in the GNU.

Even excluded stakeholders were aware that the CPA may initiate the process of loosening the ruling party's grip on power and to new political dispensation in which they should be able to operate.

Yet, the reality is that, despite the inclusion of these provisions, the CPA lacks support from groups that were underrepresented during the negotiation process. Both the GoS and the SPLM refused to see their status of major actors undermined in an all inclusive process. What has been identified as an important factor is the fact that both the GoS and the SPLM/A rather than accepting direct participation of individual representatives, or giving them observer status, chose to co-opt individual representatives and their interests. As a result, important stakeholders not only felt excluded from the talks, but also from the governance arrangements that were created in the course of the negotiation process. This has raised questions concerning the *legitimacy* and the *sustainability* of the CPA.

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<sup>260</sup> Note that this was with the exception of the Blue Nile and Southern Kordofan states.

<sup>261</sup> CPA Article 4.4.2.2 and Article 5.5.1

<sup>262</sup> CPA Article 3.5.1 and Article 3.6.4

<sup>263</sup> Also note that the SPLM/A representation in the GoSS was thought to create some difficulties, as the SPLM/A is perceived to be dominated by Dinkas only and not necessarily representative of the entire Southern region.

<sup>264</sup> CPA Article 2.2.5.

<sup>265</sup> CPA Article 1.8.1 "Population census throughout Sudan shall be conducted and completed by the end of the second year of the Interim Period."

<sup>266</sup> Rogier, 2005 (I), p. 135. Rogier for instance stated that *formally* the process has been less exclusive than usually proclaimed.

In terms of the CPA provisions on the Three Areas,<sup>267</sup> it should be noted that the articles contain a number of possible shortcomings, which suggest that even when fully implemented, they might not foster the political settlement called for.<sup>268</sup> The indigenous peoples of the areas were not to be directly consulted in accordance with the Protocol. The CPA recognizes that “popular consultation is a democratic right” but fails to work out the specific mechanism through which this right shall be exerted. While autonomous status on paper seems to be significant, the areas are to remain under the ruling party’s control for at least the four years following the CPA.

Although there should be a clear distinction of power and responsibilities between the two Vice-Presidents, the lack of precision concerning the functions of the Second Vice-President, who may perform any task or duty assigned to him by the President, enables the incumbent to play a bigger role than initially expected.<sup>269</sup> The Presidency is to appoint the members of most of the commissions created by the peace agreement, as well as the Judges of the Constitutional Court and the National Supreme Courts, which may not necessarily be beneficial for the democratization process.<sup>270</sup>

It also seems important to note that the greatest threat to the success of the CPA has not only come from the parties that considered themselves underrepresented or excluded, but increasingly also from the signatories’ own parties, elements from within the ruling party in particular.<sup>271</sup> Often, ruling elites wanted to keep the benefits of exclusive power. Therefore, there seems to be no simple correlation between inclusiveness and the sustainability of a peace agreement. Eventually support provided by a party to a peace agreement depends less on this party’s status than on its perceived interests.<sup>272</sup> Even the parties not directly included in the talks generally recognize that a change in government may lead to an overall change in governance. Hence, even though the CPA does not directly address the concerns of all groups, at least it creates conducive conditions for doing so in the relatively near future through opening the political space, restructuring the governance system and providing a framework for resolution of local conflicts.<sup>273</sup>

While on itself desirable provisions in terms of inclusiveness and representation, little has been done to implement the provisions in practice. The Parliament passed the bills authorizing the creation of the National Service Commission (NSC) in January 2007. However, the bill which set out terms and conditions for the civil service was rejected by the SPLM/A and other opposition parties and it was solely passed by the NCP majority. Also, it was prepared by the Council of Ministers, not the National Constitutional Review Commission, the body tasked with the drafting of all legislation, to ensure compatibility with the CPA and the interim national constitution. In fact there has been no noticeable difference in the recruitment or formation of the national civil service.<sup>274</sup>

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<sup>267</sup> Abyei, the Nuba Mountains and the Southern Blue Nile

<sup>268</sup> Rogier, 2005 (I), p.120.

<sup>269</sup> The two functions of the two vice presidents are briefly described in the implementation modalities of the Protocol on Power Sharing.

<sup>270</sup> Rogier, 2005 (I), p. 108.

<sup>271</sup> *idem*, p. 137.

<sup>272</sup> *idem*, p. 137.

<sup>273</sup> *idem*, p. 138.

<sup>274</sup> *A Strategy for Comprehensive Peace in Sudan*, International Crisis Group, Africa Report nr 130, 26 July 2007

## Elections

### Overview of the provisions

The Protocol on Power Sharing stipulated that elections be held during the third implementation year and left the date for presidential elections open. But during the implementation talks, however, the parties agreed to hold elections at all levels “before the end of the fourth year, by July 2009 at the latest”.<sup>275</sup>

The CPA also stipulates that after the elections there “shall be *equitable representation* of the people of South Sudan in both Legislative Chambers.”<sup>276</sup> However, the agreement does not specify whether “equitable representation” means strict proportionality or may entail over- representation of minority groups.<sup>277</sup> It solely reads that “relevant considerations shall be taken into account in determining what constitutes equitable representation.”<sup>278</sup>

In furtherance of the request of the SPLM/A, the agreement further stipulated a number of ‘considerations’<sup>279</sup> that should be taken into account before holding elections, i.e. in relation to repatriation and the rebuilding of infrastructures and institutions.

### Impact of the provisions on the implementation period

It has often been said that the CPAs most transformative element is the part on elections. The *principle and timing* of the elections were contentious issues in the course of the CPA negotiation process. Although initially opposed, the SPLM/A finally accepted the principle of elections in the CPA after having obtained constitutional provisions prohibiting campaigning against the peace process and compelling any contestant to implement its provisions. Although legitimate, this provision obliges parties not invited to the negotiation rounds to abide by the agreement. It also prevented possible necessary adjustment of or amendment to the peace agreement.

Even though the CPA has significantly addressed the grievances of the SPLM/A, in practice the latter has had trouble in maintaining its focus on both national issues and the many challenges it was faced with in terms of leadership.<sup>280</sup> As a result, it mainly focused on its own area in the South, at the expense of the national agenda. Moreover, the CPA tried to involve the SPLM/A in the national political system by promoting a joint electoral list, an idea first raised during the negotiations.<sup>281</sup> The objective was to strengthen the NCPs chances to survive democratic elections and prevent the SPLM/A to form an alliance with marginalized political groups. However, the ruling party’s systematic undermining of the agreement seems to provide little basis for a lasting arrangement, despite the modest progress in the recent discussions.

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<sup>275</sup> Rogier, 2005 (I), p. 110. The Political Parties Act was passed by the National Assembly in January 2007 but has not yet been implemented.

<sup>276</sup> CPA article 2.2.2.1. Emphasis added.

<sup>277</sup> Rogier, 2005 (I), p. 110.

<sup>278</sup> CPA Article 2.2.2.2.

<sup>279</sup> CPA Article 1.8.5. Certain *considerations, while not conditional* upon their completion, should be taken into account with respect to the timing of the elections [...].”

<sup>280</sup> ICG Report, July 2007, p.3.

<sup>281</sup> ICG Report July 2007, pp. 3-4.

## Socio- Economic Arrangements

### Overview of the provisions

The Protocol on *Wealth Sharing* stipulates how to allocate profits from the land and natural resources. The revenue from national ventures will be divided among the respective parties and then allocated to their governing districts. The funds are to be used to assist civil society in areas such as infrastructure development pertaining to roads and government facilities. The Protocol further divides oil resources and gives control of this allotment to the National Petroleum Commission, while setting up a body that fiscally monitors the allocations. The Protocol formalizes a tax collection system as well as a formula for sharing oil and non-oil revenues within the government structure (on a 50:50 basis). It also lays the foundation for a government economic body and it determines the fiscal responsibility of each branch of the government.<sup>282</sup> The *Wealth Sharing Agreement*, however, fails to be specific with regard to natural resources other than oil, such as water and land.

### Implementation

Generally, the implementation of the CPA *Wealth Sharing Agreement* has been slow, mainly due to the GoSS' lack of trust in the CPA's capacity to implement the provisions. As far as oil provisions are concerned, the GoSS did not receive 50% of the net revenues of the oil in the South. Besides, the GoSS, did not receive financing for the establishment of an oil or petroleum ministry. Accordingly, the GoSS revenues have diminished, investment in the South has been deterred and there has been a lack of transparency, risk of waste and corruption.<sup>283</sup>

Mounting tensions in the oil-rich Abyei region “are the most dangerous threat to reignite the war”.<sup>284</sup> The ruling NCP is violating the CPA by refusing the “final and binding” ruling of the Abyei Boundary Commission (ABC). The ABC was set up after it proved impossible to resolve the Abyei border issues of the CPA. The Abyei region is a region geographically, politically and ethnically caught between the North/South dispute, with its two dominant ethnic groups having been aligned to the GoS and SPLM. “The CPA granted the disputed territory, which has a significant percentage of Sudan’s oil reserves, a special administrative status under the presidency, and a 2011 referendum to decide whether to join what might then be an independent South. However, in violation of the CPA, the ruling National Congress Party (NCP) is refusing the “final and binding” ruling of the Abyei Boundary Commission (ABC) report, leaving an administrative and political vacuum. Negotiations between the NCP and the former rebel Sudan People’s Liberation Army/Movement (SPLA/SPLM) are stalled, and both sides are building up their military forces around Abyei.”<sup>285</sup> As a consequence, the SPLM decided to suspend its participation in the GNU. After a new round of negotiations, it returned to the GNU, but demarcation of the North-South border and control of Abyei were left unresolved.<sup>286</sup>

<sup>282</sup> CPA article 6.1 and 6.2.: the Agreement lists the sources in relation to which the GoS and the GoSS are entitled to legislate, raise and collect taxes and revenues.

<sup>283</sup> *Implementation of the Wealth Sharing Accords*, Centre for Strategic International Studies and Goldwyn International Strategies, paper based on presentation 11 September 2006

<sup>284</sup> *Sudan: Breaking the Abyei Deadlock*, Africa Briefing Nr. 47, 12 October 2007

<sup>285</sup> ICG Africa Briefing Nr. 47

<sup>286</sup> *Sudanese sides 'recommit to deal'*, BBC News report, Saturday, 3 November 2007

Furthermore, Sudan emerged from the CPA with an actual dual economic system. Three of the six protocols<sup>287</sup> explicitly recognized the coexistence of two governance systems (i.e. the GoS and the GoSS) within the long-term vision of a unitary nation. The policy implication of this duality is that a macroeconomic policy framework has to take into account the needs on the one hand of a post-conflict economy of the South, and on the other the requirements of economic stability of the economy of the North. Currently the North has an economic growth of around 7% a year, whereas the southern economy has largely been stagnant.

## **Security Arrangements**

### Overview of the provisions

#### *SSR*

The Protocol on Power Sharing also provides for one National Security Service (NSS), which in accordance with the SPLM/A's request, should be representative of the population.<sup>288</sup> The new security service is to focus on information gathering and analysis, whereas arrests and interrogations are to be performed by the police force.<sup>289</sup> The service is to remain anchored in the presidency, but its mandate is advisory and to be further elaborated in the National Security Act. As the security service is vital to the NIF (National Islamic Front) regime and as such the most powerful and organized state institution, these provisions are considered crucial for the success of the agreement.<sup>290</sup>

During the interim period, the CPA provides that the Sudan is to have two separate armies and that all other armed groups must disband.<sup>291</sup> These separate armies will redeploy their forces to Northern and Southern Sudan respectively.<sup>292</sup> The armies will also create several Joint Integrated Units (JIU). Depending on the referendum's outcome in 2011, the two forces will either merge into a single army or become the respective armed forces of two separate states.

#### *DDR*

The CPA calls for a DDR programme that includes reconciliation and is part of the cease fire agreement of the CPA. It further articulates the principles for and structure of the DDR institutions and calls for the parties to take steps in order to avoid any possibilities of relapse into war. This process is assisted by the UN Mission to Sudan (UNMIS), which was mandated in March 2005 by the UN SC Resolution 1590, "to assist the establishment of the DDR programme as called for by the CPA [...]".<sup>293</sup>

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<sup>287</sup> Machakos protocol of July 20<sup>th</sup>, 2002; Security Arrangements Agreement of September 25<sup>th</sup>, 2003 and Framework Agreement on Wealth Sharing of January 7<sup>th</sup>, 2004

<sup>288</sup> CPA Article 2.7.2.2 and 2.7.2.3 "The NSC shall be representative of the population [...]" and "[t]he South shall be equitably represented in the NSC"

<sup>289</sup> CPA Article 2.7.2.4

<sup>290</sup> Rogier, 2005 (I), p 109.

<sup>291</sup> CPA Article 1.b and Article 4.

<sup>292</sup> CPA Article 4.

<sup>293</sup> UN Security Council Resolution, S/RES/1590/2005.

The CPA mainly provides for the establishment of a National DDR Coordination Council (NDDRCC) to be appointed by the presidency and responsible for the guidance and evaluation of two separate DDR committees,<sup>294</sup> the Northern Sudan and the Southern DDR Commission (NDDRC and the SDDRC respectively).<sup>295</sup> These committees are tasked with designing and implementing programmes at their respective levels in the North and in the South.<sup>296</sup> Until these institutions are established, the CPA provides for the establishment of a number of interim DDR bodies.<sup>297</sup> In addition to the North-South focus for DDR programmes, ‘other armed groups’ have been targeted for disarmament and incorporation into the DDR process.<sup>298</sup>

### Implementation of the provisions

In terms of security matters, the parties missed their first deadline, 9 July 2007, by when all Sudan Armed Forces (SAF) troops other than those in the Joint Integrated Units were to redeploy from the South. According to UNMIS, only 66.5 % redeployed on time.<sup>299</sup> The greatest danger has indeed been within the security sector, where the SPLA has struggled with its own reorganization process. Delays in completing head counts and demobilizing troops were becoming magnified, as the SPLA agreed to incorporate 31.000-51.000 troops that were formerly aligned with the Sudanese Government and that subsequently formed the South Sudan Defense Forces (SSDF).<sup>300</sup> The most immediate challenge for the SPLA was the management of a large force, but problems were also likely to surface with the allocation of SPLA leadership positions to SSDF’s officers. In short, mistrust within the SPLM leadership, in addition to financial constraints and an inadequate UN led DDR program, has hampered military reorganization.

Even though the DDR of the former combatants was seen as a crucial aspect of a secure and peaceful Sudan, the implementation modalities of the DDR activities included in the CPA were not significantly elaborated upon. Also, the establishment of a DDR programme remained stagnant due to mistrust between the parties, a lack of resources to implement peace and internal political rivalries.<sup>301</sup>

Despite the fact that a number of provisions have been included in the CPA on redeployment, the CPA did not stipulate *the respective troop strength* for the Sudanese Armed Forces (SAF) and the SPLM/A. The parties agreed to downsize their forces in equal proportions, but were to start negotiations on the modalities only after completion of the SAF redeployment.

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<sup>294</sup> CPA Article 25.1.1.

<sup>295</sup> CPA article 25.1.2.

<sup>296</sup> CPA Article 25.

<sup>297</sup> CPA Article 25.2.

<sup>298</sup> CPA Article 11.6. The CPA also sets out that “[...] the Parties agree to expedite the process of incorporation and reintegration of armed groups allied to either Party, into their armed forces, other organized forces, the civil service and civil societal institutions.” (CPA Article 11.1). The CPA also calls for the set up of an Incorporation and Reintegration Ad Hoc Committee. (CPA Article 11.2)

<sup>299</sup> This figure was provided by the UN-led Cease Fire Joint Monitoring Committee, a body created by the CPA for the SPLA, SAF and the UN to oversee implementation of the security arrangements. “Press statement by the Cease Fire Joint Monitoring Committee on the redeployment of forces north and south of line 1-1-56 on 9<sup>th</sup> July 2007”, 9 July 2007 at [www.unmis.org](http://www.unmis.org).

<sup>300</sup> ICG Report July 2005, p.6.

<sup>301</sup> L.A. Schafer, *Negotiating the North/South Conflict: Sudan's Comprehensive Peace Agreement*, ISS paper 148, July 2007, at p. 20. See also UN Security Council Resolution Res/S/2007/41 2007



## Entry points for the International Community/ Netherlands MoFA

In general terms, the research suggests paying more attention to the actual implementation of the agreement. There seems to be also an overall need for the inclusion of all stakeholders in order to ensure successful implementation and sustainable peace. The presence of such stakeholders as observers to the negotiation table might be more effective than having the main parties in the agreement to represent them indirectly.

### Peace Accords

Overall, the conducted research suggests the importance of specific provisions on the implementation of the agreement, especially in terms of identifying and making available the proper resources for implementation. As a result of a lack of such provisions, the CPA has often been criticized for being more comprehensive on paper than in reality. Moreover, the lack of precision in defining the powers of the Second Vice President has led to different power allocations than initially expected.

### Implementation

Despite the declared ambition to make the peace agreement as comprehensive and inclusive as possible, the CPA is still primarily *perceived* to be a two-party deal.<sup>302</sup> As already suggested, it is important for “other” stakeholders to feel more included in the peace process, starting from the talks, and in those governance arrangements that are created in the course of the negotiation process.

The research also suggests that despite the great importance of the inclusiveness principle of an agreement, there is not always a simple correlation between that and the sustainability of a peace agreement. That is particularly true when taking a closer look at the elite groups, who are often reluctant to give away the benefits of exclusive power.<sup>303</sup>

The availability of adequate resources is another important element in enabling a successful implementation of the provisions, as, among others, revealed by the stagnant DDR programme<sup>304</sup>.

On a more general level, it seems that state entities often disproportionately focus on state level governance, at the expense of the (often) newly established national (central) governments. Real power often remains confined to the state level entities. Therefore, it seems recommendable to include provisions that guarantee more powerful mandates for the national level governance systems.

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<sup>302</sup> ICG Report, July 2007, pp. 2-3. The CPA has been criticized by the Northern opposition groups for giving too much power to the NCP in the North. At the same time, national reforms and democratic elections pose a threat to the NCP, as they could break the NCP's monopoly over structures it now uses to control the country. The ruling party considers that its very survival is threatened by a full CPA implementation. The NCP shows general willingness to implement those CPA provisions that deal exclusively with Southern Sudan, but it resists those at the national level that could challenge its power.

<sup>303</sup> Rogier, 2005 (I), p. 137.

<sup>304</sup> Schafer, 2007, p. 20. See also UN Security Council Resolution Res/S/2007/41 2007.

## Peace Negotiations in Sri Lanka (2002)

### Background to the conflict

Although Sri Lanka has been affected by a variety of violent conflicts in its post-independence history<sup>305</sup>, this study focuses exclusively on the most important one in terms of casualties and impact on the stability of the country<sup>306</sup>, namely the overt armed conflict that since 1983 has opposed the government of the country, mainly representing the Sinhalese population, to the Liberation Tigers of Tamil Eelam (LTTE), who claim to represent the interests of the Tamil minority.

The LTTE is believed to have formed in 1976, in response to the Tamil community's perception of a strategy of discrimination and marginalization by the Sinhalese majority, and following repeated calls for the creation of a "free sovereign secular socialist state of Tamil Eelam". The LTTE soon emerged as the predominant militant group representing the Tamil-speaking population. From the late seventies and early eighties, it started engaging in armed skirmishes with the Sri Lankan army on a significant scale<sup>307</sup>.

An ambush by the LTTE in July 1983, which killed thirteen Sinhalese soldiers, sparked anti-Tamil riots in Colombo. Both the magnitude of the reprisals, which led to the deaths of an estimated 2,000 Tamils<sup>308</sup>, the destruction of more than 18,000 Tamil homes and the displacement of at least 100,000 people, and their centrally organized form, provided the eventual trigger for the escalation of the conflict. The full-blown war that followed lasted until the conclusion of a Ceasefire Agreement (CFA) on 22 February 2002. In that period the conflict witnessed also on the one hand, the involvement of the Indian army, in 1987, in a failed attempt to solve or control the situation, and on the other hand, a very violent uprising by a Marxist and nationalist party<sup>309</sup>, in 1988, mainly representing the poor rural Sinhalese youth, against the presence of the Indian Peace Keeping Force (IPKF) on Sri Lankan soil.

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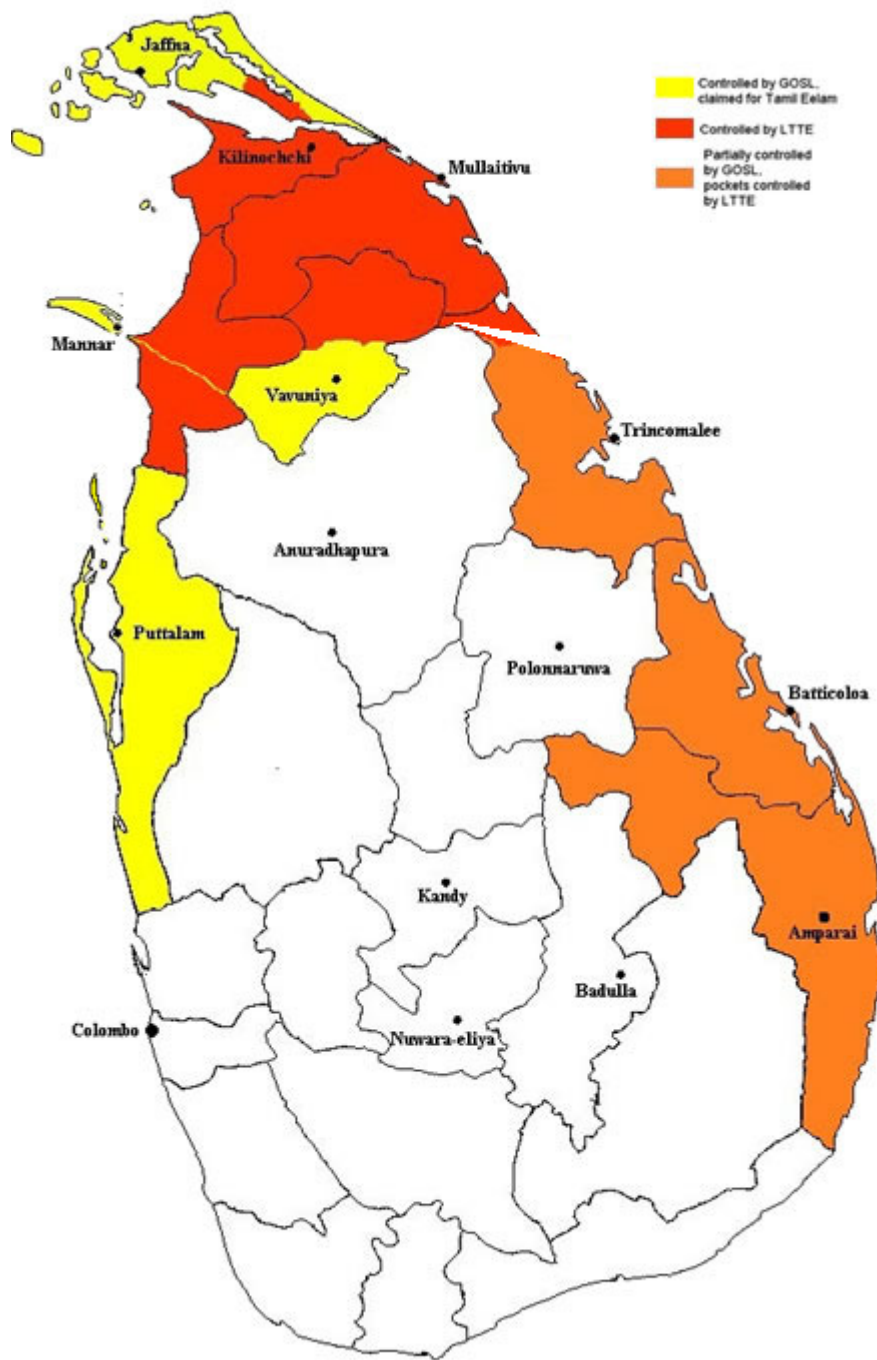
<sup>305</sup> Think about the violent insurrections of the radical *Janatha Vimukthi Peramuna* (JVP) and the military intervention of India between 1987 and 1990. For more details, see G. Frerks and M. van Leeuwen, *The Netherlands and Sri Lanka, Dutch Policies and Interventions with regard to the Conflict in Sri Lanka*, The Hague, Clingendael Institute, 2000, 113pp.

<sup>306</sup> Another reason being that the "other" conflicts were closely related to the main one.

<sup>307</sup> G. Frerks and B. Klem, *Conditioning Peace among Protagonists: A Study into the use of Peace Conditionalities in the Sri Lankan Peace Process*, CRU Working Paper, The Hague, Clingendael Institute, June 2006, p. 9-10.

<sup>308</sup> K. Bush, *The Limits and Scope for the Use of Development Assistance Incentives and Disincentives for Influencing Conflict Situations: Case Study: Sri Lanka*. OECD-DAC, Informal Task Force on Conflict, Peace and Development Cooperation (Paris: OECD, 1999), p. 18

<sup>309</sup> The JVP (People's Liberation Front).



Source: [www.sangam.org](http://www.sangam.org)

### Governance issues of the conflict

With the due precautions, the conflict can be linked to the ethnic tensions and deep resentments existing between the Sinhalese majority (74%) and the Tamil minority (18%)<sup>310</sup>. However, contrary to the general understanding of conflict situations where ethnicity plays a major role, the whole concept of a majority vs. a minority confrontation in Sri Lanka assumes a different dimension. While the

<sup>310</sup> For a more detailed description of ethnic composition and relations within Sri Lanka, see: G. H. Peiris and K. M. de Silva, *Managing Group Grievances and Internal Conflict: Sri Lanka Country Report*, The Hague, Clingendael Institute, 2003, Working Paper 13, 133pp.

Tamils statistically are indeed a minority within the country, in a regional perspective the Sinhalese find themselves in a similar position, as they have historically felt the constant threat of a Tamil population of over 50 million living in the southern Indian state of Tamil Nadu, which at its narrowest point is separated from Sri Lanka only by a 35-kilometer strip of ocean. The historical reconstruction of the colonization of the island by migrants from the South Asian region adds controversy to the confrontation, as both groups claim primacy of arrival and settlement. In addition, ethnic affiliation cleavages have further been compounded by a parallel distinction in religious creed, with the Sinhalese embracing mainly Buddhism and the Tamil Hinduism.

Ethnicity by itself, however, and the related religious identity issue, cannot be regarded as the root cause of the conflict. The pre-colonial history of the country shows in fact a record of relatively pacific coexistence between the two groups. It has been the politicization of ethnicity during British domination that has actually disrupted the previously existing balance and opened the way to political and violent confrontation. Following their well-tested “divide-and-rule” approach to public administration, the British gave indeed a clear supremacy to the Tamil in government positions. It was therefore inevitable that after independence was obtained in 1948, the Sinhalese would attempt to correct the uneven distribution of political and administrative power. As it often happens in similar processes of ethnic redistribution of power, the majority group took the upper hand and indulged in measures that eventually went far beyond the original purpose of achieving fair representation and power distribution. Since the 1950s the Sinhalese undertook a series of legislative initiatives, which tended to strongly limit the space of the Tamils and their religion in the public arena. As a result, the Tamils found themselves increasingly “under-represented in the main institutions of government, especially those of the executive branch”<sup>311</sup>. Land colonization and resettlement policies further strengthened the Tamils’ impression that they were being targeted by a grand plan of marginalization and assimilation by the Sinhalese majority, as Sinhalese farmers from the south were being resettled in the scarcely inhabited northern and eastern provinces.

As a response to those policies of marginalization and exclusion, the LTTE started in 1983 its campaign of war against the central government, with the declared objective of establishing in the northern and eastern parts of Sri Lanka a sovereign Tamil nation state.

To date, feelings of discrimination persist, with the Tamils accusing the central government of unfair redistribution practices with regard to national wealth and social services, and of an explicit strategy of exclusion of Tamils from legislative, decision making and, more broadly, public sector positions.

### **Overview of the Ceasefire Agreement (CFA)**

Having made considerable territorial gains, while at the same time facing international military support for the Sri Lankan government, war-weary constituencies and a generally unfavorable global post-9/11 environment, the LTTE declared a unilateral ceasefire in December 2000<sup>312</sup>. Diminishing popular and political support for the government’s confrontational stance, negative

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<sup>311</sup> G. H. Peiris and K. M. de Silva, *Managing Group Grievances and Internal Conflict: Sri Lanka Country Report*, p. 22.

<sup>312</sup> G. Frerks and B. Klem, *Conditioning Peace among Protagonists: A Study into the use of Peace Conditionalities in the Sri Lankan Peace Process*, p. 12.

economic growth, a change of government, and the involvement of Norway as a mediating party<sup>313</sup>, eventually convinced the Sri Lankan government to correspond to the LTTE's move, by signing to a ceasefire agreement on 22 February 2002. By the time the agreement was signed, the nineteen years old conflict had already cost 60.000 lives.

It is interesting to note that the conflict is openly defined as “ethnic”<sup>314</sup> in the text of the agreement. That explicit characterization of the nature of the conflict obviously sets the overall framework through which reciprocal grievances and claims need to be addressed. In other words, the heart of the matter, ethnic rivalry, will inevitably influence the sort of solutions and, specifically, governance-related provisions, that will be discussed and eventually agreed upon in the negotiation process. The centrality of ethnicity in the conflict and in the CFA is further confirmed by specific attention to the impact of the violence on the third biggest group in the country: the Muslims (7,5% of the population).

As to specific governance-related provisions included in the CFA, given to its nature of a ceasefire undertaken at the beginning of the peace process, the document is quite limited in substance and it only provides some general sense of direction for the subsequent negotiation process, while dealing specially with hard security measures. In particular, it prescribes a clear delimitation and respect of the two opposing parties' respective military positions and territorial control. Confidence building measures are also listed, such as abstention from hostile acts against the civilian population and the return of all public buildings to their intended use. As far as governance and public administration are concerned, other confidence building provisions that might be worthy of notice regard the rehabilitation of public infrastructure, the easing of fishing restrictions, and the re-establishment of a due process of law in the apprehension of suspected criminals.

Furthermore, the involvement of a third party, the Norwegian government, in the implementation of the CFA, is also ratified. Both the government of Sri Lanka and the LTTE accepted the principle that this Scandinavian country's government would see to the appointment of the head of a monitoring mission<sup>315</sup> that would inquire into any instance of violation of the terms and conditions of the CFA. The remaining representatives of the Sri Lanka Monitoring mission (SLMM) would be chosen from various Nordic countries.

## **The negotiation process**

### **LTTE's dominance of the Tamil political arena**

The period immediately following the CFA was utilized by the LTTE to strengthen its political posture in the country. Taking advantage of the terms of the agreement, it engaged in political activities outside its area of military control, and it established its almost total hegemony over Tamil politics in Sri Lanka. Supported by the Tamil United Liberation Front (TULF), the foremost Tamil political party of the past, it claimed exclusive right to negotiations with

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<sup>313</sup> Norway's efforts as an intermediary between the two parties at conflict had started several months prior to the ceasefire.

<sup>314</sup> For the integral text of the agreement, see:

[http://www.usip.org/library/pa/sri\\_lanka/pa\\_sri\\_lanka\\_02222002.html](http://www.usip.org/library/pa/sri_lanka/pa_sri_lanka_02222002.html).

<sup>315</sup> The Sri Lanka Monitoring Mission (SLMM).

the government, preventing the process from opening to broader sectors of Tamil society. At the same time, it systematically applied a strategy of intimidation towards those Tamil political groups that would not follow its directives<sup>316</sup>.

This strategy of centralization of political power by the LTTE was confirmed by its demands to the Sri Lankan government, duly met by the latter, to be recognized *de facto* as the sole representative of the Tamils, and to be eventually awarded exclusive control over an interim administration that would be established in due course in the north-east of the country.

The creation of an interim administration in the LTTE's controlled areas was possibly the most substantive governance issue ever discussed in the negotiation process that followed the CFA. However, a diametrical opposed understanding of the actual form and contents of such an arrangement brought the discussion between the two parties to an abrupt, irreversible end. While for the LTTE it was a direct short cut to political control over the north east and a way to raise the overall debate above the practicalities of aid and security issues, for the Government of Sri Lanka it represented a conciliatory gesture that had not been thoroughly thought about, beside the general idea of offering some sort of devolution package for the sake of the negotiation process, rather than with the objective of a final political settlement in mind. The distance between the two parties in the conceptualization of the arrangement, eventually led to a further polarization of the debate, with the LTTE calling for a formal Interim Self-Governing Administration (ISGA), which would transfer most government powers to the rebel group for a period of five years. The government was therefore obliged by its political base to opt out of the debate, as the hardening of the LTTE's stance was regarded as a confirmation of previous suspicions that the rebel group was only interested in secession. As a consequence, the interim administration proposals of both parties could hardly be regarded as genuine attempts towards a democratic, pluralistic system. The ISGA's main objective was to ensure the LTTE's complete control of the territory and of its resources, with "little in the way of democratic provisions and [...] no space for the development of more pluralism". Similarly, "the government proposal, focusing on purely administrative arrangements, had no democratic elements"<sup>317</sup>.

### The LTTE's core demands

The signing of the CFA did not produce any substantial change in the historical demands of the LTTE. From a governance viewpoint, those claims were very relevant, as they advocated for the formal recognition of the Tamil population's separate identity. Translated into practical terms, this meant the right to self-determination and eventually the creation of a Tamil homeland comprising the Northern and Eastern provinces.

However, the numerous rounds of negotiations that followed the agreement produced a seeming softening of the LTTE's positions, as the rebel group, less than one year after the CFA, declared its availability to explore federalism as a possible political solution to the conflict.

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<sup>316</sup> G. H. Peiris and K. M. de Silva, *Managing Group Grievances and Internal Conflict: Sri Lanka Country Report*, p. 26.

<sup>317</sup> International Crisis Group, *Sri Lanka: the Failure of the Peace Process*, Asia Report No. 124, 28 November 2006, p. 8 and 18.

Its apparent openness to discuss other political alternatives to its historical claims, was further confirmed by its willingness to join, among others, a Sub-committee on Political Matters. The Sub-committee, however, soon collapsed, “and there was little debate on either side about what an endgame in the peace process might look like”<sup>318</sup>.

### The Tsunami: a missed opportunity

Contrary to what happened at the other side of the Indian Ocean relatively soon after the tragedy of the 2004 tsunami, where the GAM movement in Aceh reached a peace settlement with the Government of Indonesia, in Sri Lanka an interesting initial attempt “to establish a joint government-LTTE mechanism for the administration of tsunami aid in the North and East”<sup>319</sup>... was never implemented ... due to constitutional constraints”<sup>320</sup>. In addition, strong concern emerged within the government that the LTTE would try to use its access to consistent aid resources and the semi-formal institutionalization of its position within the territories, “to consolidate its political hold over the population and establish a nascent state structure”<sup>321</sup>. That failed attempt could have laid the foundations for a possible joint administration of LTTE’s controlled areas.

### Military impasse

The period following the tsunami has been to date characterized by a resurgence of violent confrontation, intercalated by short-lived attempts to return to the negotiating table. For example, the February 2006 agreement to resume direct talks was followed by explosions and rioting in Trincomalee, and by a suicide bomber attack in Colombo in April. Resumed peace talks in Geneva in October 2006 were accompanied with heavy fighting and massive internal displacement.

The collapse of the second round of talks in Geneva clearly indicated a withdrawal of the two parties to more regressive positions, where they were mainly concerned with immediate security issues. The broader debate about a political settlement and the governance components of it has been indefinitely postponed due to the complete lack of reciprocal trust and of any negotiating space. Violence was elected as the most effective means to strengthen their respective strategic positions. The only reason that has prevented both sides to declare an all-out war to the enemy is linked to potential international fall-outs of such a move. The LTTE has been indeed careful in not aggravating its status, which the global “war on terror” had already profoundly tarnished, whilst the government of Sri Lanka, along similar lines, has been cautious in not isolating itself from some of the most critical development partners<sup>322</sup>.

At the same time, the two parties seem also to have been moving backward towards a stiffening of early positions. The LTTE has been openly criticizing the international community’s support for a settlement to be reached within a united Sri Lanka, thereby defining its view in terms of territorial

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<sup>318</sup> *Ibid.*, p. 17.

<sup>319</sup> The Post-Tsunami Operational Management Structure (P-TOMS).

<sup>320</sup> G. Frerks and B. Klem, *Conditioning Peace among Protagonists: A Study into the use of Peace Conditionalities in the Sri Lankan Peace Process*, p. 13.

<sup>321</sup> International Crisis Group, *Sri Lanka: the Failure of the Peace Process*, p. 17.

<sup>322</sup> For more details, see: Center for Policy Alternatives, *War, Peace and Governance in Sri Lanka: Overview and Trends 2006*, Colombo, CPA, 2007, pp. 61.

administration and power-sharing arrangements. The Government of Sri Lanka, on its turn, has been raising doubts about its initial concession to take a merged North and East of the country as a starting point for the negotiations. Also in this case, the whole concept of territoriality, and the related power-sharing arrangements, appears to be up for negotiation again, and has become closely linked to the sudden reversals in fortune of the conflict.

### **Governance-related hindering factors to the negotiation process**

The negotiation process that followed the CFA, and that was supposed to eventually lead to a comprehensive peace agreement, apart from its first year of existence, which was characterized by relative progress, stumbled, as far back as April 2003, on a series of problems that would determine its current state of complete impasse. In that month, the LTTE decided to suspend its participation in the talks. Some of the reasons mentioned by the LTTE on that occasion, in order to motivate its withdrawal from the talks, and other governance-related factors that with hindsight are thought to have played an important role in the derailing of the peace process, would include:

- The power struggle within the central government, between the President Chandrika Kumaratunga and the Prime Minister Ranil Wickremesinghe, and its consequences in terms of the government's overall stance towards the LTTE and the negotiation process.
- As a result of the previous point, the outcome of the power struggle, which gave prominence in the negotiations to the Prime Minister and his United National Party (UNP), and which determined, on the other hand, the exclusion of the President and other key southern political elites. Such a fracture within the central government political front, obviously became a source of instability and lack of clear and long-term commitment to the peace process.
- The widespread opinion within the Sinhalese community that the concessions made by the government to the LTTE, in preparation to the CFA, were excessive.
- The exclusion of the Muslims of the Eastern Province, which account for more than one third of the inhabitants of the province, from the process, and the resulting denial of the need to meet their demands. In addition, since the 2002 CFA, attempts by the LTTE have been reported "to establish control over Muslim communities in the east and tax their business activities"<sup>323</sup>.
- The lack of an overall approach towards governance problems in the country. That is, "poverty, deprivation..., corruption and malpractices in public affairs, and upsurge in crime"<sup>324</sup>.
- The exclusion of the LTTE from donor meetings discussing reconstruction, such as the one that took place in Washington DC in 2003. Related to this point is also the broader issue of the LTTE landing on internationally endorsed lists of terrorist organizations<sup>325</sup>,

<sup>323</sup> International Crisis Group, *Sri Lanka: the Failure of the Peace Process*, p. 16.

<sup>324</sup> G. H. Peiris and K. M. de Silva, *Managing Group Grievances and Internal Conflict: Sri Lanka Country Report*, p. 28.

<sup>325</sup> For ex. in the US (1997), UK (2001) and the EU (2006).



thereby precluding its possibility to participate into international governmental meetings.

- The formulation of development policies at the central level of the state that would not take into due consideration the LTTE's perspectives and demands. In this respect, it is relevant to consider the international actors' role in guiding the Sri Lankan government towards the formulation of such policies. In particular, the Poverty Reduction Strategy Paper framework, proposed by the IMF, has provided the Sri Lankan government with a normative tool that bypassed the grievances originating in the North East of the country.
- The power struggle within the LTTE itself, which profoundly destabilized the rebels' own position in the negotiations.
- The choice by both parties for an ambiguous position as to a strategy towards peace. Both the LTTE and the Government of Sri Lanka seem indeed unwilling to commit themselves to a definitive peace process and appear instead to have chosen for an approach whereby their negotiating stance is exclusively determined by the concurrent evolutions of the conflict.
- Recent political developments in Colombo, such as President Rajapaksa's apparent disregard for the Constitution, the continuing politicization of key democratic institutions and of the judiciary in particular, the concerted attacks on civil society and voices of dissent, and the growing culture of impunity, which have further damaged the already abysmally low level of the LTTE's trust in the central government.

### **Potential “lessons learned” for the international community**

Based on the previous list of hindering factors that eventually led to the current failure of the negotiation process, it is possible to identify a sample of issues that the international community could prioritize when dealing with the Sri Lanka conflict from a governance perspective.

- The importance of establishing a peace process that is truly comprehensive and does not only respond to the demands and power struggles of the two main parties in the conflict. The omission of taking into account and including in the process the whole diversity of the ethnic landscape of Sri Lanka has clearly limited from its very beginning the possibility for the peace process to become broadly accepted and sustainable. Basic governance-strengthening processes, such as the establishment and implementation of society-wide consultative mechanisms, the creation of (or the willingness to create) a multi-party political system, and open discussion on decentralization or autonomy arrangements, were all fundamentally absent from the negotiations. The subsequent escalation and fragmentation of the conflict can be undoubtedly connected to this gap. In particular, as mentioned before, the centralizing tendencies of the LTTE and the dominating role of violence in Tamil society, severely limited the democratic space within the Tamil polity. Dissidents or opponents to the LTTE's overall strategy were marginalized either by direct co-optation or intimidation, or could

simply not raise their calls for democratic solutions above the noise caused by the dominating violent discourse.

- The excessive reliance by the UNP government, in the period between 2002 and 2004, on its economic reform program, and the support it enjoyed from the donor community. Such an emphasis on the economic side of the peace dividend, on the one hand failed to address the political demands of the LTTE, and on the other hand it ended by alienating also the political support of considerable sections of the Sinhalese community, who appeared preoccupied with loosing some of its traditional privileges.
- The need to look at the very same nature of the LTTE movement and its apparent lack of a clear vision for the future. This point relates to initial promises by the Sri Lankan government to the LTTE, to award the rebel movement full responsibility for an interim administration in the north-east. Without a prior radical process of internal reform and democratization, with full respect of the rule-of-law as one of the leading principles, the LTTE would be in no legitimate position to hold any institutional role in a post-settlement Sri Lanka. On the contrary, formal endorsement of its structure and operational methods would provide other groups within society with sufficient reasons to oppose any such arrangement and perhaps even resort to violent means. At the same time, the LTTE's unwillingness or incapacity to move beyond the rhetoric of an independent Tamil state, and to formulate viable alternatives for a transitional political process, poses unsurmountable obstacles to a furthering of the negotiations. The Sinhalese majority and even India will hardly accept any such demand as a starting point for a constructive peace process. The LTTE has never elaborated a blueprint that could explain in detail how the structural foundations of such a new state entity would look like and, as a matter of fact, the only assumptions that can be made about this longed for, independent state are based on the current, extremely authoritarian and repressive governance style of the LTTE in its controlled areas.
- Need for Security Sector Reform (SSR). The lack of civilian oversight on the military's actions should be another area of particular relevance for the international community. The initial mistake of not adequately consulting the Sri Lankan military during the drafting of the CFA, has placed them in a position whereby the search for unrestrained revenge against LTTE's terrorist attacks has taken the place of a civilian-controlled military response to armed confrontations. Besides, military power has been concentrating in a fewer hands, with the police being assigned a subordinated role and the Defense Ministry clearly emerging as the main power holder in the country's overall security sector. The process has been further compounded by a militarization of humanitarian issues. As a consequence, general trust in the military has decreased, especially among ethnic minorities, and is expected to decrease even further as the military approach gains an undisputed position in the general handling of the conflict.

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