Peace Mediation, Power-Sharing and Transitional Justice:
Challenges and Options for the EU

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About mediatEUr

mediatEUr is a new venture in international peace mediation. Our goal is to support the peaceful transformation of intra- and inter-state conflicts by using and promoting effective methods of mediation.

mediatEUr brings together a network of proven and qualified mediators and experts. We support professionals and policy makers working in this field with the latest techniques and proven methodologies, with sound knowledge of the field. We work to help the EU develop its capacities to support successful peacemaking across the world. To find out more about our work, visit www.themediateur.eu.

In partnership with the Crisis Management Initiative (CMI), mediatEUr is currently implementing a project funded by the Belgian Ministry of Foreign Affairs that seeks to strengthen institutional capacities for peace mediation, including at the EU level. This roundtable and report form part of this project.

Background

Today, power-sharing arrangements are a dominant aspect in most peace processes around the globe. International mediators and peace process supporters arguably promote power-sharing as a preferred conflict resolution tool, as is evident in international responses to ongoing conflicts in Sub-Saharan Africa, North Africa and the Middle East. The EU itself seeks to promote and support power-sharing in places as diverse as Afghanistan, Bosnia and Herzegovina, Sudan, and Zimbabwe. However power-sharing arrangements hold a number of challenges, some of them even destabilising post-agreement prospects for peace. Yet there is little advice to guide effective EU action in this area.

The expert and policymaker roundtable ‘Peace Mediation, Power-sharing and Transitional Justice: Challenges and Options for the EU’ on 10 November 2011 brought together a group of experts, policy-makers and practitioners to explore the mediation of power-sharing arrangements, and consider how these efforts have related to transitional justice initiatives in particular, in order to make recommendations to strengthen EU capabilities in these areas. This document provides a summary of discussions and charts next steps to be implemented as part of mediatEUr’s ‘Strengthening EU Capacities for Peace Mediation’ project.

Objectives of the meeting

1. Explore challenges of power-sharing arrangements in countries in and coming out of conflict, in particular transitional justice impacts
2. Review EU experiences in supporting power-sharing arrangements through specific country case studies
3. Begin consolidating good practice and concrete advice to the EU regarding peace mediation, power-sharing and transitional justice
Summary of discussions

Part 1 – Review of international experience

Dr. Katia Papagianni

Dr. Papagianni, Head of the Mediation Support Programme at the Centre for Humanitarian Dialogue, presented lessons on power-sharing mediation, from three different angles:

1. In what cases does power-sharing occur?

2. What are benefits and problems of power-sharing arrangements?

3. What options are available for mediators, third parties and the international community more broadly to strengthen power-sharing arrangements?

Power-sharing agreements are usually put in place to reduce the danger of one party dominating a political process, in a way that endangers other parties’ vital interests. Examples are Bosnia and Herzegovina, Lebanon and Burundi. This is often in response to two distinct scenarios: firstly, in cases of ethnic-based conflict with deep divisions among two or more distinct ethnic groups; and secondly, in situations of constitutional crisis, such as disagreements over electoral results. In fact many prominent power-sharing arrangements in recent years were put in place in response to electoral disputes among dominant parties (such as Kenya or Zimbabwe).

Power-sharing arrangements hold certain advantages: according to empirical research, peace agreements tend to last longer, when power-sharing provisions are included. This effect is independent of the involvement of a third party in the formulation of the agreement, or third-party security guarantees. Power-sharing also lends some legitimacy to a transitional setting, as it necessitates parties to talk, govern together and find common ground for decision-making. This makes power-sharing a natural continuation to a peace process, as it can create trust and establish normalised, political working relationships.

There are also clear disadvantages inherent in power-sharing arrangements: they can ‘freeze’ the power-balance between armed actors, blocking a natural political evolution. An example of this is Bosnia and Herzegovina, where the political landscape has remained frozen for almost two decades. Consequently, it may be difficult for new political forces to emerge, as ruling parties present in a power-sharing set-up have political incentives to prevent wider participation. Power-sharing arrangements may become ‘comfortable’ to the extent that elections are postponed for long periods, as was the case in Côte d'Ivoire. Lastly, it may become extremely difficult to take decisions, when a minority holds effective veto powers to block government decision-making. This can impede reforms and political deliberations on matters vital during the immediate transition and post-conflict period.
Dr. Papagianni proposed eight options for third parties to strengthen the benefits and weaken disadvantages of power-sharing arrangements:

1. Consider including non-combatants in the power-sharing arrangements (e.g., unarmed political groups, civil society groups or religious leaders, for example through minor ministries).

2. Define a clear ‘end point’ to power-sharing in the peace agreement, and include clearly defined milestones for a transition.

3. Insert strong implementation mechanisms in an agreement that can help overcome resistance or non-commitment from parties.

4. Make other transitional institutions outside government as inclusive and functional as possible (i.e. electoral commissions, truth and reconciliation commissions, the justice system etc.).

5. Ensure that mediation and facilitation support remain available also after the conclusion of the power-sharing agreement.

6. Support the preparation and holding of elections to facilitate the transition out of a power-sharing set-up.

7. Help resolve disagreements within the power-sharing arrangement, as usually there remain large gaps on the ‘how’ and ‘what’ of peace agreement implementation.

8. Facilitate dialogue between a power-sharing government and the opposition, as certain groups may threaten the transition with violence.

Dr. Papagianni also stressed that once a power-sharing arrangement is in place, issues of sovereignty may render it more difficult for third parties to remain engaged to the same extent as during talks. Hence options for support may also become more limited.

Laura Davis

Laura Davis, Peace and Justice Advisor of mediatEUr, briefed the participants about peace and justice issues that need to be considered in power-sharing mediation. Transitional justice initiatives address the past (seeking accountability for systemic and systematic human rights abuse), the cessation of human rights violations in the present, and preventing recurrence in the future. Transitional justice is typically pursued through prosecutions, truth-seeking, reparation for victims and institutional reform. All of this should be done with proper public engagement.
The dilemmas and challenges of negotiating justice provisions in peace agreements was the topic of the previous seminar in this series.1 Key issues of relevance to power-sharing are ensuring high quality of the justice provisions in an agreement, the implementation of the provisions, and public consultation. This presentation focussed on how power-sharing agreements may affect efforts to pursue accountability for human rights violations, regardless of whether or not the agreement contains justice provisions.

Conversely, international justice initiatives may also affect power-sharing negotiations (e.g. the International Criminal Tribunal for the former Yugoslavia (ICTY)’s indictment of Karadzic before the Dayton trials.) Indictments are important as they personalise guilt for criminal acts. But at the time of a power-sharing negotiation, not all indictments may yet have been issued, or indeed the International Criminal Court (ICC) may not be active. Finally, removing individuals does not constitute systemic change: despotism is a pattern and system of governance and removing the despot is insufficient in itself to bring about an end to despotism.

After a power-sharing agreement, elites may collude to undermine existing justice initiatives (e.g. Burundi, Bosnia, Kenya) or conspire to prevent future initiatives (e.g. Afghanistan). In other places, power-sharing may allow abusive practice to continue (e.g. Zimbabwe). A particular challenge is in the security forces, especially if former militias join the army without broad reform of the security system. This may allow human rights violations to continue, and there may be links between the security forces and organised crime (e.g. drug cultivation and trade, illicit natural resource exploitation), as well as corruption – all of which may impede efforts at accountability.

So power-sharing deals may entrench the power of abusive groups, individuals and networks within the formal (political and security) institutions of the state. And while power-sharing may address power within the formal institutions, it rarely addresses informal structures.

Institutional reform will therefore be key for transitional justice initiatives to succeed, whether these initiatives have already been agreed, or the possibility of future justice initiatives is kept open for the future. A number of case studies suggest that reform becomes more – not less – difficult with time, as impunity becomes entrenched within the political and security institutions. Early action is therefore important.

The EU is a leading supporter of justice and police sector reform, neither of which usually feature in power-sharing agreements, but which are very important for present and future justice initiatives and peacebuilding. Yet institutional reform rarely features in power-sharing agreements. While instruments exist to engage in and support institutional reform in places where power-sharing agreements are in place, these interventions are not purely technical, but also highly political, requiring engagement at both levels.

Key questions for the EU to consider are:

- Is there a way to include a mechanism for screening holders of senior public positions or election candidates on the basis of their individual human rights record?
- Is Security Sector Reform addressed in the power-sharing agreement? Can it be?
- What kind of SSR is feasible? Could it include screening and vetting commanders on their human rights record?
- To what extent is the public engaged in discussions on the future role of the army, police, secret police, judiciary? How can the EU support public engagement in, and ownership of, these discussions?
- How can the EU support the transition of military groups to democratic political parties?

Part 2 – Discussion

One of the concerns raised by participants, was the fact that the de facto functioning of a power-sharing agreement may require a de jure constitutional order. Especially in ethnic conflict, power-sharing to avoid violent conflict should be the second-best option after proper constitutional arrangements. In fact a distinction needs to be drawn between:

1. Ethnic-based conflicts, which may require long-term power-sharing institutions and supporting structural and governance reforms; and
2. Power-sharing arrangements between antagonists in constitutional crises such as electoral disputes, which should be short-term and transitional in nature, rather than consolidating a specific power-sharing set-up.

It was debated whether transitional justice, or other deep institutional reforms, can in fact effectively be tackled in the transitional ‘war by other means’ period. Perhaps instead, the early transition period should focus on strengthening public participation in a way that can enable transitional justice measures and other reforms later on. Similarly, third parties should not automatically assume that power-sharing arrangements in ethnic-based conflicts by necessity have to be long-term. These too could be transitional in nature, if effective multi-party democracy can take root subsequently, supported by minority rights and non-discrimination policies.

The tension between transitional power-sharing arrangements and democracy was also discussed. In Northern Ireland, for example, there is still an ongoing polarising discussion whether power-sharing precludes genuine democracy. In this regard, the EU rarely shares its own internal experiences in the context of peace processes.
Participants also discussed whether, unlike in clear ‘victor and defeated’ situations such as the end of the second world war, it is more difficult, if not impossible, to push for transitional justice when there is an effective power-balance between antagonists, none of whom have clearly been defeated or come out victorious. This situation may result in collusion between opponents against accountability measures that would affect them equally.

This was further explored in the context of the African continent, where power-sharing has become ‘an easy way out’ of disputes between opponents, and is pushed as such by third parties, perhaps at the expense of meaningful public institutional reform. In response to this problematique, participants also raised the option of ‘soft’ power-sharing measures, as an alternative to putting full-fledged power-sharing coalitions in place, for example in the form of institutional or electoral reforms to strengthen inclusive governance (e.g., promoting changes from a polarising, first-past-the-post to proportional electoral systems).

Finally, a gap was identified in the current research on and support to power-sharing set-ups, in that they miss a gender perspective. Power-analysis, which should inform third party decisions about whether or not to support certain types of power-sharing arrangements, should include gender analysis as an intrinsic part. This will provide a more accurate picture of prevailing power dynamics, and also support inclusivity and public participation. Quota systems for example may in fact block real and substantive participation of women in power-sharing set-ups: the example of Nepal’s Constituent Assembly, one of the most gender-balanced in the world, illustrates this well, in that women in the Assembly remain marginalised and excluded from the forums where the ‘real’ power-sharing debates happen.

**Part 3 – Review of challenges and options for the EU**

In part 3, participants began to explore the EU’s experience when it comes to supporting power-sharing arrangements, in light of specific country cases:

**Zimbabwe**

In 2002, the EU adopted measures against ZANU-PF, after which it adopted a policy of isolation towards the country. In 2008, Thabo Mbeki brokered a power-sharing agreement between Robert Mugabe and Morgan Tsvangirai, which included very few provisions for transitional justice, and took a very cautious approach in terms of human rights. With the entry into force of the power-sharing agreement, the EU started a new policy of re-engagement with Zimbabwe, and took the initiative to work together with institutions such as the electoral commission and the human rights commission to strengthen their effectiveness.

There have been mixed implementation records of the power-sharing agreement, despite an impressive recovery in the country. At the moment, the ‘forced marriage’ between the two
parties does not function, and political violence is still a reality. Recently, South Africa has stepped up its mediation efforts, and Mbeki has been replaced by Jacob Zuma. At the same time, a stronger regional stance is developing.

The Zuma mediation produced a roadmap towards elections last year, but the elections have still not taken place. Controversies about the composition of the electoral commission, for example, have hindered further developments.

In response to regional developments, the EU has aligned its approach with South Africa. At the moment, restrictive measures remain in place under Art. 96 of the Cotonou Agreement, as well as CFSP measures (arms embargo, visa ban, freeze of assets). Here, the EU is facing a dilemma between using these measures in response to progress or lack thereof; or proactively encouraging and promoting reforms. Restrictive measures are criticised in-country, and ending them may in fact give more leverage to regional actors to monitor and encourage implementation of the agreement. At the same time, there is public pressure from civil society in Europe demanding a stronger EU stance on Zimbabwe. Therefore, the question was raised whether the EU should or should not have been in favour of the initial power-sharing agreement; and whether in fact it can play an 'impartial' role, given its own interests and clear position on the conflict, and evident differences of opinion on the conflict among Member States.

Sudan and South Sudan

The Comprehensive Peace Agreement (CPA) expired 9 July 2011 with the independence of South Sudan. But there are still a number of outstanding issues to be negotiated and resolved that have power-sharing and wealth-sharing dimensions (e.g. the oil revenue issue, border demarcation, the status of Abyei, citizenship, etc.). These issues are currently being negotiated under the Mbeki Panel. While the EU is not directly involved in ongoing mediation efforts, it supports the process diplomatically, as well as through technical mediation advice.

Power-sharing arrangements are often identified as an integral part of future solutions to such outstanding issues in Sudan and South Sudan. This includes domestic power-sharing in Sudan, in particular to bring in marginalised groups in the peripheries, such as Southern Kordofan and Blue Nile; as well as resolving the Darfur conflict. The EU supports a comprehensive, inclusive constitutional reform process that would include all disenfranchised groups in Sudan. In this regard, the ongoing fighting in Southern Kordofan and Blue Nile between the Sudanese Armed Forces and SPLM/North is extremely worrying. The EU makes it clear to the parties that there can only be a political solution to the conflict; and the Mbeki Panel is trying to get parties to return to the so-called popular consultations that were set out in the CPA.

As for South Sudan, there are numerous ethnic groups and tribes whose interests need to be accommodated in the new political set-up. The new government in Juba is seen as a fairly balanced one, reflecting efforts by President Salva Kiir to find a sort of power-sharing
accommodation among the various factions in the country.

In Darfur, a key challenge is to bring the main armed groups to the negotiating table. The Doha agreement was a step in the right direction, but efforts need to be made to bring in other groups in order to ensure the sustainability of any resulting agreement.

The EU has to continue engaging with Khartoum while being very clear on its messaging and considering what incentives and disincentives it has. However the ICC indictment of al-Bashir has put limits on the EU’s ability to engage politically with Khartoum.

**Afghanistan**

The relationship between Afghanistan and Pakistan is central to the current conflict inside Afghanistan. While not a power-sharing conflict as such, it does have implications for power-sharing within Afghanistan and therefore illustrates the significant role and influence neighbouring countries can bring to bear on power-sharing arrangements inside a country.

Turkey plays an important role as a mediator and regularly convenes Afghan and Pakistani leaders for tripartite summits. A 6th tripartite summit took place on 1 November and was an important element in re-establishing trust prior to the regional Istanbul Conference on 2nd November, as relations between Afghanistan and Pakistan had become particularly tense following the assassination of the Head of Afghanistan’s High Peace Council, Professor Rabbani, in charge of the reconciliation process.

The Istanbul Conference itself brought Afghanistan’s regional partners and the international community together with the aim to address regional security issues and agree confidence building measures. The Conference was a first step in this direction (and follow-up meetings for 2012 have been agreed), but it also revealed that there is not enough trust yet for binding mechanisms among partners.

Meanwhile internal reconciliation efforts have been put on hold since the murder of Rabbani, as President Karzai now has turned to Pakistan for negotiations and vowed that no direct negotiations would take place unless the ‘Taliban establish an official representation’. At the time of writing, Karzai had called a tribal gathering for 16/17 November, a consultative, ‘Traditional Loya Jirga’ to seek a renewed endorsement of the reconciliation process. While the Afghan public remains deeply divided over the prospect of peace and power-sharing with the Taliban, the EU has expressed support to the Afghan-led reconciliation process.

Transitional justice, remains elusive, as warlords have gained a strong foothold in the Afghan post-2010 political landscape, and impunity reigns in the absence of a fully functioning formal justice system. The recent electoral cycle (2009 and 2010 parliamentary and presidential elections) have further exposed the lack of resolve to address these issues, as vetting of candidates was discarded early on. The international community appeared to be overly lenient.

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throughout the process and has seen its credibility damaged when it comes to upholding values.

Afghanistan is illustrative of how transitional justice efforts, in the absence of systems in place to administer them effectively, can do more harm than good. Given decades of several conflicts and affected generations, there are in fact widely diverging views on who is a perpetrator, who a victim, and who should as a result be included in transitional justice efforts, or excluded from the political mainstream. ‘Power-sharing’ so far has meant putting individuals and groups into power with an active interest in a weak justice system and lack of accountability for past crimes.

The EU, like others in the international community, has been supporting justice sector reform in Afghanistan since 2007. This however technical and financial support cannot become fully effective in the absence of Afghan political will to address institutional reform and establish effective justice mechanisms, including accountability for past and present crimes.

Part 4 – Discussion and charting next steps

Subsequent discussions stressed one commonality among these cases, namely the effect that the EU’s own positions and interests in any one conflict or region has on its ability to effectively support power-sharing and transitional justice. In Palestine for example, the EU effectively ‘excluded itself’ from supporting power-sharing and reconciliation between Fatah and Hamas, by not recognising Hamas. The EU was however more successful in indirectly supporting future power-sharing, by helping build Palestinian state institutions and a civilian police. Caution was also expressed that in current conflicts like Syria and Libya, where the EU is stepping up efforts, the discussed approaches and examples of power-sharing arrangements may not apply.

Participants then highlighted the following learning-points, outstanding questions and potential next steps from the discussions:

Learning points

- The role of other players in power-sharing arrangements and their impact on the EU’s effectiveness requires more attention in future discussions.

- Knowledge of already existing initiatives can therefore help strengthen the EU’s positioning.

- Better and more holistic power-analysis should inform third party support to power-sharing arrangements.

- Power-sharing arrangements need to be seen in a wider context of options as one among many; priority should be respect for the constitutional order.
Power-sharing dynamics change over time, therefore third-party support to it should similarly adapt.

There is a need to also look at tracks 2 and 3 in the context of power-sharing arrangements and transitional justice.

Open questions

- If transitional governments can constitute obstacles for successful transitions, what is the implication for EU support?
- When should the EU therefore decide not to support specific transitional power-sharing arrangements, and on the basis of what criteria?
- What are state-structures that enable or conversely disable power-sharing?
- How can the EU support inclusiveness and legitimacy in power-sharing arrangements?
- What should inform sequencing decisions for transitional justice, and how can they be negotiated? How deal with transitional justice in situations where it may exacerbate conflict further?
- Given that the ICC’s work is increasingly affecting power-sharing negotiations, is it time that the EU developed its own criteria for engagement rather than rely exclusively on an external body, which may or may not be active in particular cases, for reasons outside the EU’s control?
- Given the emerging role of Turkey as peace mediator in its region, how can the EU best reach out and work with Turkey on these issues?
- Where the EU is in fact seen as an ‘actor’ in the conflict and can therefore not mediate, how can it best draw on outside bodies’ support to help mediate and support a constructive role for the EU?
- How can the EU’s own internal expertise and experience be drawn on more effectively in its peace process support?

Next steps

Participants suggested the following next steps to be taken by the project, building on these first discussions:

- Deepen the existing background paper on the topic with content from discussions held at the meeting.
- Continue the initiated dialogue with regional divisions of the EEAS to further explore what
type of support is needed in specific contexts.

- Draft a guidance note with principles and questions that can guide EU support to power-sharing arrangements and transitional justice, building on the discussions during the roundtable.

- Explore how subsequent events can best bring in and review EU-internal experience, e.g. on Northern Ireland or Cyprus.
Annex 2 – Participants’ List

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