

**SITUATIONAL INCOMPABILITY OF GOOD NORMS:  
HOW AND WHY AFRICAN MEDIATORS COMPROMISE DEMOCRACY**

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**Abstract**

The African Union and the sub-regional bodies on the continent have a formal commitment to democracy. Yet African mediators and mediating organizations have often compromised democratic principles in fundamental ways. They have endorsed undemocratic power-sharing arrangements, validated undemocratic elections, annulled democratic elections, accepted the overthrow of elected leaders and governments, legitimized coup leaders and consented to amnesty for human rights abuses. This paper analyses these compromises in terms of interests, power, ethics, strategy and norms. Whereas the International Relations literature on international norms concentrates on ethically ‘good’ norms that challenge prevailing ‘bad’ norms, the paper identifies and examines incompatibilities between different sets of good norms. In situations of high intensity conflict, tensions might arise between the norms of democracy and those of peace and security, and between democratic norms and mediation norms, such that mediators have to choose between them. This situational incompatibility of positive norms poses a profound dilemma. The mediators’ willingness to compromise democracy reflects their conviction that peace and security are higher norms than democratic principles. It also flows from international mediation’s normative association with peacemaking, as opposed to democracy promotion, and from the mediation norms of consent and inclusivity, which in intra-state conflict are disposed towards negotiated agreements, power-sharing and compromise rather than outright winners and losers.

## **Introduction**

Over the past decade mediation has been a prevalent form of ending coups, civil wars and other intra-state conflicts in Africa. In most instances the mediating body was either the AU or one of the regional economic communities (RECs), such as the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC). The mediations took place in the context of continental and regional policies that promote democracy and prohibit undemocratic transfer of power.<sup>1</sup> The relevant democratic principles, as announced in the Lomé Convention of 2000, include adoption of a democratic constitution, respect for the constitution, promotion of political pluralism, democratic change of government, free and fair elections and guarantee and promotion of human rights.<sup>2</sup>

Notwithstanding these principles, African mediators and mediating organizations have often compromised democracy in their efforts to resolve a conflict. The episodes where this occurred invariably attracted local and international criticism. In the scholarly literature, however, there has been no systematic examination of this phenomenon. This paper seeks to fill that gap. It aims to identify the different ways in which mediators have compromised democracy and to explain their decisions. The compromises are categorized as follows: mediators endorse an undemocratic power-sharing arrangement; validate an undemocratic election; annul a democratic election; accept the overthrow of an elected leader and government; legitimize a coup leader; and consent to amnesty for human rights abuses.

The simplest explanation for the compromises might be that the African organizations' professed commitment to democracy is shallow or merely rhetorical. This explanation cannot be totally discounted in every case but the analysis developed in this paper presents a more complex picture. I suggest that there were five reasons for the compromises, relating to interests, power, ethics, strategy and norms. In summary, the compromises were due to the mediating organizations' political and strategic interests; their lack of power to enforce a principled democratic position; the humanitarian costs of violence, which led the mediators to prioritize peace and stability above democracy as an ethical imperative; the mediators' strategic view that peace and stability were essential preconditions for the introduction or restoration of democracy; and incompatibility between the norms of democracy and those of peace and security as well as between the norms of democracy and those of mediation.

The discussion on norms contributes to the International Relations literature on the influence of transnational norms and the processes by which they are promoted and accepted or modified.<sup>3</sup> Norms, in this context, can be understood as shared standards or expectations of appropriate behavior that are accepted by and apply to states and intergovernmental organizations.<sup>4</sup> Norms thus distinguish between legitimate and illegitimate courses of action, they evolve over time and they might be contested. The literature focuses on ethically ‘good’ norms that challenge prevailing ‘bad’ norms.<sup>5</sup> The former include, for example, the anti-apartheid movement, international humanitarian law, prohibitions on the use of certain weapons, decolonization and respect for human rights and gender equality.<sup>6</sup> The Lomé Convention and related AU and REC policies on democracy fall neatly into this characterization, intended as they are to supersede the OAU’s tolerance of unconstitutional change of government and abuse of human rights.<sup>7</sup>

I argue that the mediation cases considered in this paper reveal a different dynamic, where tensions between democracy and peace and security, and between democracy and mediation, generate incompatibilities between good norms. There is no general or intrinsic contradiction between democracy and peace and security, which can be regarded as synergistic, or between democracy and mediation, which coexist happily in many countries and have a number of common features. Yet in situations of high intensity conflict, tensions might arise that require mediators to make a choice between these norms. The choice is not between principle and pragmatism but between competing positive norms, creating a profound ethical and strategic dilemma for mediators. Their willingness to compromise democracy reflects their conviction that peace and security are higher norms than democratic principles and that the right to life stands at the pinnacle of a normative hierarchy. It also flows from international mediation’s normative association with peacemaking, as opposed to democracy promotion, and from the mediation norms of consent and inclusivity, which in intra-state conflicts are more likely to lead to negotiated agreements, power-sharing and compromise than to outright winners and losers.

The first part of the paper examines the different ways in which mediators have compromised democracy, with each illustrated by at least one case. Eleven cases in total are discussed: CAR (2003); Zimbabwe (2008); Mauritania (2008); Madagascar (2009); Niger (2009); Guinea-Bissau (2012); Mali (2012); CAR (2013); Burkina Faso (2014); Burkina Faso (2015); and CAR (2015). These cases do not show that African mediators compromise democracy in

every conflict or even in a majority of conflicts but they do reveal a pattern that warrants investigation. The second part of the paper analyses the reasons for the compromises and explores the phenomenon of situational incompatibility of good norms.

All the cases covered in the paper are examples of mediators compromising democracy. In order to test and refine the analysis, further research will compare these cases with others that did not entail such compromise. The exclusive case focus on Africa makes it impossible to ascertain whether the compromises are distinctly African or also found in other regions. However, the Conclusion provides some evidence that mediators elsewhere experience tension between good norms and in these circumstances tend to prioritize the right to life and the mediation norm of consent.

### **How African Mediators Compromise Democracy**

#### *Mediator Endorses an Undemocratic Power-Sharing Arrangement*

Power-sharing arrangements take various forms and are not intrinsically inconsistent with democracy. In some instances, though, they are undemocratic. An example of this was the power-sharing arrangement proposed by the ECOWAS mediator in the Nigerien constitutional crisis of 2009. The crisis was provoked by the illegitimate efforts of President Tandja to amend the constitution so that he could serve a third term in office. In the face of strong domestic opposition, he engineered a referendum to remove the limits on presidential terms. When the constitutional court ruled against him, he dissolved the court and parliament, and assumed emergency powers.<sup>8</sup> Tens of thousands of people flocked to protest rallies. ECOWAS asserted its commitment to democracy, denouncing Tandja's actions, suspending the country on grounds of constitutional illegality and imposing sanctions on the regime.<sup>9</sup>

ECOWAS appointed former Nigerian President Abubakar as the mediator, mandating him to facilitate dialogue aimed at creating a national consensus on resolving the crisis.<sup>10</sup> Abubakar initially demanded that Tandja revert to the constitutional status quo ante.<sup>11</sup> Tandja rejected this demand. On the basis of consultations with the government and opposition parties, Abubakar then proposed a power-sharing interim government that would prepare for elections.<sup>12</sup> Tandja would remain president, the opposition parties would select the prime minister and a mixed cabinet would be appointed by consensus. This arrangement was

unconstitutional but it captured the essence of mediation and its elements of inclusivity, compromise and consensus. As the US Embassy put it: ‘Overall, the Mediator’s proposed roadmap appears to pose a complex exercise designed to result in the protagonists’ proposals meeting halfway’.<sup>13</sup> The roadmap was a pragmatic response to Tanja’s hardline disposition and was intended to ensure stability as a platform for democratic elections. Tandja dismissed the roadmap and the impasse was broken when he was ousted in a coup.

Other cases in which mediators have supported undemocratic power-sharing arrangements include the coups in Madagascar, Guinea-Bissau and Burkina Faso (2014). All three cases are discussed below. In Madagascar and Burkina Faso, the mediators accepted that the coup leader would retain power during a period of transition to constitutional rule. They were convinced that this was necessary for the sake of stability, they lacked the power to dislodge the juntas and they knew that the coups enjoyed considerable popular support.

#### *Mediator Endorses an Undemocratic Election*

In the conflicts referred to above, the mediators accepted an undemocratic arrangement as an interim measure prior to the advent of elections. By contrast, in the case of Zimbabwe the mediating organization was willing to endorse an undemocratic election. In 2007 the SADC Summit appointed President Mbeki of South Africa as the mediator for Zimbabwe, which was becoming increasingly conflictual and repressive as the government cracked down on the Movement for Democratic Change (MDC).<sup>14</sup> When President Mugabe lost the first round of the presidential election in 2008, the state intensified its violence to such an extent that the leading candidate, Morgan Tsvangirai, pulled out of the race. The UN Security Council (UNSC) decried the violence and declared that it was impossible to hold a free and fair run-off poll.<sup>15</sup> Nevertheless, with SADC’s blessing the poll went ahead and was won by Mugabe. There was no credible international validation of this outcome. SADC’s own electoral observer team concluded that the vote did not meet democratic standards and reflect the will of the people.<sup>16</sup> Yet the Summit continued to recognize Mugabe as Zimbabwe’s head of state, effectively ratifying his subversion of the democratic process.<sup>17</sup> In 2008 Mbeki brokered a deal that created a coalition government, with Mugabe as president and Tsvangirai as prime minister.

Mbeki's endorsement of the undemocratic election was due to a mixture of ideological and strategic concerns. He had little sympathy for the MDC, which he believed to be incapable of governing Zimbabwe; he had an affinity with the ruling party, Zanu-PF, as a former liberation movement; and he feared that the army might stage a coup in the event of an MDC electoral victory.<sup>18</sup> Given these perceptions and the risk that instability in Zimbabwe would infect the entire region, Mbeki defined the goal of his mediation as stability rather than democracy, a goal that he thought could be attained through either a reformed Zanu-PF (without Mugabe) or a negotiated agreement to establish a coalition government.

### *Mediator Annuls a Democratic Election*

Whereas in Zimbabwe the mediating body validated an undemocratic election, in the Guinea-Bissau crisis of 2012 the mediator went so far as to cancel a democratic election. The crisis arose after President Sanhá died of natural causes and the parliamentary speaker, Raimundo Pereira, was appointed as the interim president. The first round of the ensuing presidential election was won by Prime Minister Gomes Júnior, representing the ruling Partido Africano da Independência da Guiné e Cabo Verde (PAIGC). The international community declared the election free and fair but the other candidates rejected the result. In the midst of this dispute, the military seized power and arrested Pereira and Gomes Júnior.

ECOWAS condemned the coup, imposed sanctions and embarked on mediation. After consulting the parties, it prepared a roadmap to end the crisis.<sup>19</sup> The roadmap cancelled the election, dismantled the government, accepted that Pereira and Gomes Júnior would be replaced and envisaged a 12-month transition leading to new elections.<sup>20</sup> The transition would be overseen by an undemocratic interim government that excluded the ruling party.<sup>21</sup> The PAIGC was outraged, insisting that the disrupted election should be allowed to continue and accusing ECOWAS of kowtowing to the junta and legitimizing the coup.<sup>22</sup> The UN and the AU both pushed for the resumption of the election.<sup>23</sup>

The ECOWAS position derived from its political and strategic interests. The coup was due to the army's antagonism toward the security sector reform program of Gomes Júnior and the presence in the country of MISSANG, an Angolan military mission that had served as a stabilization and protection force following a mutiny by Guinea-Bissau soldiers in 2010. When the junta took power it demanded the withdrawal of MISSANG. ECOWAS was

willing to accede to this demand as many of its member states objected to Angola's influence in a West African state.<sup>24</sup> The mediators therefore struck a deal with the junta, agreeing that ECOWAS would replace the Angolan mission, the junta would stand down, Gomes Júnior would not return to power, stability would be assured and fresh elections would be held.

### *Mediator Accepts Overthrow of Elected Leader and Government*

In the majority of African coups between 2000 and 2015, the mediators sought to end the constitutional crisis through new elections rather than through the reinstatement of the ousted president and government, treating the overthrow of the government as a *fait accompli* and thereby tolerating a violation of the principle of democratic transfer of power.<sup>25</sup> The compromise of democracy was especially severe where the deposed leader and government had been democratically elected, as in Guinea-Bissau, discussed above, and CAR (2003), Mauritania, Madagascar and Mali, considered below.

In 2009 Madagascar was plunged into crisis when Andry Rajoelina toppled President Ravalomanana, who fled the country. The SADC Summit called for the unconditional reinstatement of Ravalomanana and threatened to use force if this was not done.<sup>26</sup> After making no progress, SADC shifted from a militarist posture to a mediatory one.<sup>27</sup> The first major compromise of democracy arose when the SADC mediator, former President Chissano of Mozambique, facilitated negotiations that led to a power-sharing accord for a transitional period.<sup>28</sup> Under the accord, Ravalomanana would not be reinstated.<sup>29</sup>

When the accord failed, Chissano drafted a plan that entailed another major compromise of democracy.<sup>30</sup> It allowed the coup perpetrators to contest elections and denied this opportunity to Ravalomanana, who was barred from returning to Madagascar until the new government decided that a favorable political and security climate existed. Local diplomats concluded that Chissano had capitulated to the junta.<sup>31</sup> SADC ditched him as the mediator and insisted that Ravalomanana be at liberty to contest the poll. Over the next eighteen months SADC was unable to secure the compliance of the regime. In 2012 the Summit backed down and proposed the 'ni-ni' solution, under which neither Ravalomanana nor Rajoelina would run for president.<sup>32</sup> The two leaders eventually consented. This compromise of democracy was based on a mixture of pragmatic and ethical considerations. The Summit did not have the power to override the army's opposition to Ravalomanana's return and it was deeply concerned by

warnings that Ravalomanana's homecoming would provoke violence. In these circumstances the mediators' priority was to avert violence and craft a smooth return to constitutional rule.

In 2003 Francois Bozizé, former army chief of staff of CAR, overthrew President Patassé. While the AU called for the reinstatement of the elected government,<sup>33</sup> the Economic and Monetary Community of Central Africa recognized Bozizé as head of state and this soon became the political reality.<sup>34</sup> In 2012, after the coup in Mali, the ECOWAS mediation led by President Compaoré of Burkina Faso entailed negotiations with the junta and excluded political parties and the ousted president, Amadou Touré.<sup>35</sup> The mediator and the coup leader struck a deal that encompassed the formal resignation of Touré and the formation of an interim regime prior to elections.

After President Abdallahi of Mauritania was overthrown in 2008, the AU suspended the country, imposed sanctions and called for the president and government to be reinstated.<sup>36</sup> Six months later the AU mediator, President Gaddafi of Libya, publicly dismissed this call and opposed the sanctions.<sup>37</sup> The opposition parties rejected Gaddafi as the mediator and the AU replaced him with President Wade of Senegal. But when the junta remained intransigent, the AU relented. It dropped its demand for the restoration of the status quo ante and adopted the typical posture of a mediator, seeking to 'assist the Mauritanian parties to reach a consensual and inclusive solution to the crisis'.<sup>38</sup> The agreement brokered by Wade enabled the coup leader, General Aziz, to contest and win the presidential election, a victory described by opposition leaders as an 'electoral coup d'état'.<sup>39</sup>

### *Mediator Legitimizes a Coup Leader*

The Lomé Convention prohibits coups and other unconstitutional changes of government. In 2007 this policy was reinforced through the introduction of the African Charter on Democracy, Elections and Governance, which includes a ban on coup legitimization.<sup>40</sup> The ban prohibits the perpetrators of unconstitutional action from contesting elections held to restore democracy and from holding any position of responsibility in the political institutions of their state. In several cases African mediators have ignored this ban, either by permitting the coup leader to contest presidential elections (e.g. Mauritania and Madagascar) or by recognizing coup perpetrators as leaders of an interim government (e.g. Madagascar, CAR 2013 and Burkina Faso 2014). The CAR and Burkina Faso cases are discussed below.



In 2013 the Séléka rebellion led by Michel Djotodia toppled President Bozizé in CAR. The AU suspended the country and called for the ‘complete isolation’ of the perpetrators of the unconstitutional action.<sup>41</sup> The Summit of the Economic Community of Central African States (ECCAS) initially refused to acknowledge Djotodia as president, pressing instead for the formation of a transitional national council that would designate a transitional president. Djotodia promptly set up the council, which elected him president. ECCAS then decided to recognize Djotodia as ‘head of state of the transition’.<sup>42</sup> Displeased AU officials viewed this as a transgression of the organization’s policy.<sup>43</sup> The ECCAS position, on the other hand, stemmed from regional interests in stability.<sup>44</sup> The heads of state had lost confidence in Bozizé, whose governance failures had reached epic proportions and generated acute insecurity, especially in rural areas abutting the other central African countries.<sup>45</sup> In addition, ECCAS believed that the AU stance of ‘complete isolation’ offered no way out of the crisis. Recognizing Djotodia, to whom CAR’s army chiefs had pledged allegiance, was perceived to be a viable basis for enabling a transition to constitutional order.

After the Burkina Faso coup in 2014, the AU demanded that the army step aside and hand power to a civilian authority within two weeks, failing which suspension and sanctions would come into effect.<sup>46</sup> President Sall of Senegal led an ECOWAS mediation that resulted in the adoption of a charter for a civilian-led transition and the selection of Michel Kafando, a retired diplomat, as interim president. The AU decided that its demands had been met and that suspension and sanctions would not apply.<sup>47</sup> Immediately thereafter, Kafando appointed one of the coup leaders, Lt Col Zida, as interim prime minister and he in turn appointed other officers to the cabinet.<sup>48</sup> Contrary to the AU’s determination, the army had not transferred power to civilians but had done a power-sharing deal with them.<sup>49</sup> ECOWAS supported this deal in the interests of stabilizing civil-military relations and the wider political arena.<sup>50</sup>

#### *Mediator Endorses Amnesty for Human Rights Abuses*

The parties to a violent conflict will naturally want to be protected against prosecution for human rights abuses and other serious offences. In order to win their cooperation, ensure stability and end the crisis, mediators have been willing to concede to this. Thus President Compaoré endorsed an amnesty for the coup perpetrators in Mali,<sup>51</sup> contrary to the position adopted by the AU.<sup>52</sup> President Sall did likewise in the counter-coup by the presidential guard

in Burkina Faso in 2015.<sup>53</sup> This, too, contradicted the stand of the AU.<sup>54</sup> According to Sall, the amnesty was required for stability and national reconciliation.<sup>55</sup> In 2015 President Sassou-Nguesso of Congo Brazzaville, the ECCAS mediator for CAR, tried to halt ongoing fighting between the Djotodia and Bozizé forces by organizing secret peace talks; these led to an amnesty agreement, contrary to the stance of the UNSC.<sup>56</sup>

### **Why African Mediators Compromise Democracy**

Compromises of democracy by mediators and mediating organizations have occurred with sufficient frequency to suggest that, aside from the specific reasons in each case, there may also be general causes. I argue that these causes relate to interests, power, ethics, strategy and norms. The analysis that follows discusses these factors in terms of the interests of the regional mediator; pragmatism due to weakness; normative incompatibility between democracy and peace and security; and normative incompatibility between democracy and mediation.

#### *The Interests of the Regional Mediator*

In many countries domestic mediators who tackle family, labor and commercial disputes have only a detached, professional interest in the disputes and their outcomes. The African mediating organizations, on the other hand, are far from being disinterested peacemakers. They incorporate the maintenance of peace and security into their constitutive mandates, and repeatedly engage in mediation and preventive diplomacy, because they and their member states have collective and national interests in neighborhood conflicts and their resolution.

The primary collective motivation for peacemaking is regional stability. Major intra-state conflicts have negative consequences for adjacent countries, including the flow of violence, weapons, rebels and refugees across borders. Regional bodies have a political and economic interest in containing and ending such destabilization. They do not have an equally strong collective interest in democracy. Although their charters may include respect for democratic principles, this orientation is not shared by all member states, some of which are undemocratic. In terms of interests, then, stability is far more important than democracy. States are bound to be more concerned about unstable neighbors (whether or not democratic) than about undemocratic neighbors (as long as they are stable). The political inclination of the lead mediators is also a relevant consideration, with some of them less enthusiastic about

democracy than others. In the conflicts discussed above, the mediators included presidents Compaoré, Gaddafi, Sassou-Nguesso and Tandja, all of whom came to power via a coup.<sup>57</sup>

### *Pragmatism Due to Weakness*

The fact that the African organizations generally prize stability above democracy has not meant that they eschew democratic tenets when crises erupt or that they compromise democracy lightly. A striking feature of the compromises identified in this paper is that they were almost always preceded by the African organizations' assertion of a principled democratic position, often backed by suspension and sanctions.<sup>58</sup> After the unconstitutional action in CAR (2003), Mauritania, Niger, Madagascar, CAR (2015) and Burkina Faso (2015), the AU or REC initially demanded the restoration of the status quo ante. In the case of Madagascar, SADC went so far as to threaten the use of force if this demand was not met. The initial assertion of a principled position, accompanied by coercive measures, constitutes strong evidence that the democratic policies meet the definition of norms as 'shared standards or expectations of appropriate behavior' and are not just rhetorical.

The mediating organizations diluted or abandoned their principled position because, short of using military means, they did not have the power to enforce it. Their coercive measures did not constitute compelling leverage. The AU's response to the Mauritanian coup exemplifies this constraint. In the months following the overthrow of the government, the AU incrementally stepped up pressure on the junta: on 7 August 2008, the day after the coup, it condemned the seizure of power and called for the re-establishment of the democratic institutions; in September it threatened the coup perpetrators with sanctions and isolation; in November it set a deadline for the imposition of sanctions and warned that it would seek endorsement from the UNSC; and in February 2009 it decided that the sanctions would enter into force.<sup>59</sup> But in May, having failed to budge the junta, the AU replaced its tough and principled stance with a mediation strategy that ended up compromising democracy.<sup>60</sup>

The attribute of weakness here derives not from the material capabilities of the African organizations and their member states but from their choice of strategy. Whereas the external deployment of force can have a decisive impact in determining winners and losers in civil conflicts (e.g. the NATO intervention in Libya in 2011), mediation entails the application of soft power and, as discussed below, is geared towards a consensual process and outcome. In

the absence of significant hard power, the mediators may be unable to compel intransigent parties to adhere to the Lomé Convention and related policies. In this sense, mediation is a manifestation of the maxim ‘politics as the art of the possible’. The relative weakness of the African organizations is heightened when the AU and a REC take different approaches to a conflict (e.g. CAR 2003, Madagascar, Guinea Bissau, CAR 2012 and Burkina Faso 2015).<sup>61</sup>

#### *Normative Incompatibility between Democracy and Peace and Security*

When African mediators enter a high intensity conflict, they are concerned not only with the democratic norms espoused in the policies of the AU and the RECs. They are also confronted with the imperative of stabilizing the situation and preventing or terminating violence. We have seen that it is not uncommon for them to prioritize stabilization at the expense of democratic principles. There is no inherent contradiction between the norms of democracy and those of peace and security; indeed, the African policies assert that peace, security and democracy are mutually reinforcing.<sup>62</sup> Nevertheless, in situations of extreme conflict, the norms might be in tension such that a choice has to be made between them.

The Madagascar coup illustrates this tension. While SADC initially demanded that the ousted president be reinstated unconditionally, it came to accept that this demand was prolonging the crisis and likely to provoke violence. It consequently adopted the ‘ni-ni’ solution, which cemented the unconstitutional ousting of an elected president. In response to accusations that SADC had betrayed its democratic mandate,<sup>63</sup> Seychelles President James Michel, who had hosted some of the mediated talks, maintained that the Summit had ‘recognized the risk of violence and instability in relation to the eventual return of former President Ravalomanana’ and was convinced that its solution offered ‘the best route towards ensuring peaceful elections’.<sup>64</sup> Michel added that SADC had a duty to protect not only democratic principles but also the lives of the people of member states.<sup>65</sup>

Similar reasoning prevailed in the Burkina Faso coup in 2015. The AU insisted that the coup perpetrators should be held accountable for their actions, which included the killing of protestors.<sup>66</sup> Yet the ECOWAS mediation led by President Sall crafted an agreement that granted amnesty to the perpetrators and flouted a constitutional court decision on eligibility to contest elections. The agreement was denounced by the deposed president, political parties and civil society.<sup>67</sup> Sall defended the compromises on the grounds that they were vital for stability and that ‘our role is to put an end to the escalation of things in order to prevent the

country from descending into violence'.<sup>68</sup> The bottom line was that the outbreak of violence would shift the conversation from elections and the number of voting polls and ballots to weapons and the number of dead and injured persons.<sup>69</sup>

Where mediators have to choose between adhering to democratic principles and ensuring peace and security, there is no obvious or general solution. Instead, the tension poses an acute dilemma. On the one hand, compromising democracy has a number of severe downsides: it usually favors the 'bad guys' and prejudices the 'good guys'; it undermines the African organizations and their avowed commitment to democracy; it weakens the democratic norms and may set a precedent that reduces the organizations' influence in future cases; it discredits the mediator and the mediated outcome; and it may lay the seeds of future instability and conflict. On the other hand, the absence of peace and security may entail large-scale loss of life and destruction of communities, property and infrastructure; deepen divisions between adversarial groups and make the conflict more intractable; and obstruct the introduction or restoration of democracy through free and fair elections.

Given this array of negative ramifications and the peculiarities of every conflict, the resolution of the democracy versus peace dilemma is not automatic or a foregone conclusion. The costs and benefits of alternative options have to be weighed up and, as observed earlier, the AU and the RECs have often reached different conclusions in particular conflicts. Where the mediators compromised democracy, they tended to view the competing norms as existing in a hierarchical relationship with peace and security at the apex. The normative rationale for this has several strands. First, peace and security are necessary conditions for the exercise of the right to life, which is the most fundamental right, as well as for the exercise of all other rights. Peace itself can be construed as a human right.<sup>70</sup> Second, peace and security are preconditions for the introduction or restoration of democracy through free and fair elections. The protocol governing the AU Peace and Security Council posits a causal relationship whereby democracy is essential for enduring peace, security and stability,<sup>71</sup> but the reverse also applies since violence and instability impede or preclude the exercise of democratic rights. Third, the severity of the humanitarian repercussions may be much greater if violence is rampant than if democratic principles are compromised. Fourth, the challenge of averting or stopping violence is immediate, urgent and certain whereas the impact of compromising democracy may be a longer term and less predictable matter. Fifth, it may be comparatively

easier for a society to recover from a compromise of democracy than from large-scale violence. A compromise of democracy, unlike death, can hopefully be overcome.

This rationale for favoring peace and security is reinforced by the normative character of international mediation as conceived and practiced by the UN and the African organizations. Although mediation can be undertaken in any context, for any purpose and with diverse normative orientations, in the case of the UN, the AU and the RECs it is associated principally with peacemaking.<sup>72</sup> This is not to say that democratic aspirations are irrelevant. The African organizations view democracy as a foundation for long-term peace and security and they expect their mediators to comply with their policies on human rights and related issues. Nonetheless, their mediators are first and foremost peacemakers and not democracy or justice activists. Finally, the normative rationale for prioritizing peace and security above democracy is strengthened by the fact that this is consistent with the collective and national interests of the African organizations and their member states.

#### *Normative Incompatibility between Democracy and Mediation*

International mediation has a distinct logic and collection of norms. It can be defined as ‘a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements’.<sup>73</sup> The purpose is not to enable one of the disputants to win but rather to broker a deal endorsed by all sides.<sup>74</sup> Consent is a definitional norm, distinguishing mediation from non-consensual forms of conflict management and resolution. Without the parties’ consent to both the process of mediated negotiations and the resultant agreements, there is no prospect of a viable settlement. Inclusiveness is another critical norm in seeking a lasting settlement to a civil conflict. To the greatest extent possible, the participants in mediation should include all domestic parties with a sizable constituency as well as all parties with the capacity to block a successful outcome.<sup>75</sup> The necessity for the parties to make compromises is arguably another core norm of mediation, albeit not widely recognized in these terms, because a settlement is unlikely to be achieved if the parties maintain an uncompromising maximalist posture.

These norms are not merely idealistic desiderata. They are frequently incorporated into the mediation mandates issued by regional organizations. For example, the ECOWAS mediator in the Niger constitutional crisis was mandated to ‘convene immediately a meeting of Nigerien

stakeholders... to re-establish political dialogue aimed at creating national consensus on the way forward'.<sup>76</sup> When the AU undertook mediation in Mauritania, it aimed to help the parties 'reach a consensual and inclusive solution to the crisis'.<sup>77</sup> Similarly, when SADC launched its mediation in Madagascar it called for an 'inclusive dialogue among the Malagasy political actors' and 'urged the Malagasy people to take active ownership' of this dialogue.<sup>78</sup>

Mediation is hardly inimical to democracy: consensual and inclusive decision-making is integral to that political system, and mediated negotiations have given birth to many new democracies. Nevertheless, tensions between the norms of democracy and mediation loom large in conflicts over an unconstitutional change of government or retention of power. The provisions in the African Charter that govern these situations are prescriptive, peremptory and coercive, indicating emphatically what the outcome should be rather than leaving this to be negotiated freely by the disputant parties. There is a vast difference between stipulating a predetermined outcome and forging a consensual one, between excluding certain of the protagonists and mediating an inclusive agreement, between an inflexible political stance and encouraging compromises, and between enforcing and facilitating a solution.

Faced with these tensions, the mediations discussed in this paper were based on two strategies, both of which entailed compromises of democracy. First, the mediators facilitated consensual agreements that included short- or medium-term power-sharing deals (e.g. Niger, Zimbabwe and Burkina Faso 2014), amnesties for human rights abuses (e.g. Burkina Faso 2015 and CAR 2015) and decisions on eligibility to contest an election (e.g. Madagascar). Second, in the case of the coups, the mediators bargained directly with the coup leaders, making concessions to them in order to get them to step down (e.g. Mali, Mauritania and Guinea-Bissau). The concessions usually included the mediating organizations' acceptance that the ousted president and government would not be returned to power.<sup>79</sup>

## **Conclusion**

This paper has investigated the ways in which African mediators and mediating organizations have compromised democracy when trying to resolve a major conflict. They have annulled democratic elections, legitimized coup leaders and endorsed undemocratic power-sharing arrangements, undemocratic elections, amnesties for human rights abuses, and the overthrow

of elected governments and leaders. A general explanation for this pattern is that the mediators prioritized peace and stability above democracy. Their motives were based on a combination of interests, power, ethics, strategy and norms.

The salience of African norms relating to peace and security, democracy and mediation was apparent at different levels: in the policies of the AU and RECs, setting out their commitment to democratic principles and to the maintenance of peace and security; in the resolutions of the AU Peace and Security Council and similar forums of the RECs, which consistently applied these policies to major conflicts, usually resorted to coercive measures against the perpetrators of unconstitutional action, and sometimes espoused the mediation norms of consent and inclusivity; and in the statements of the mediators when justifying their decisions to compromise democracy. The compromises of democracy were due in part to incompatibility between the norms of democracy and those of mediation and peace and security. This situational incompatibility of good norms posed a dilemma for which there was no simple or obvious solution.

The paper has focused exclusively on African mediations but there is evidence that mediators elsewhere have experienced tension between different norms and have prioritized the right to life and the mediation norm of consent. In a study conducted by swisspeace, international mediators were canvassed about their attitudes towards the growing normative agenda of international mediation.<sup>80</sup> This agenda is encapsulated in the *United Nations Guidance for Effective Mediation*, issued by the UN Secretary-General in 2012.<sup>81</sup> The *Guidance* declares that ‘peace agreements should end violence and provide a platform to achieve sustainable peace, justice, security and reconciliation’.<sup>82</sup> The mediation goals thus cover both short-term and long-term peace. The mediators interviewed by swisspeace agreed that mediation should ideally result in sustainable peace. But when the situation required a hard choice between the short-term and long-term goals, stopping the killing was paramount.<sup>83</sup> The mediators were therefore willing, for example, to compromise justice for the greater benefit of stability. Stability and peace would preserve the right to life and lay the basis for the protection of other rights. As one mediator put it, ‘by far the most important human rights violations [are] the killings. So if you stop the killings, you would also drastically improve the human rights climate’.<sup>84</sup> Ending the violence would also lay the basis for the longer term endeavor to build a sustainable peace through processes of reconstruction, reconciliation and constitution drafting, which take place after the mediation has been concluded.



The mediators interviewed by swisspeace were averse to being norm advocates on democracy, transitional justice and gender equality.<sup>85</sup> They argued that they only had partial influence on the content of negotiated agreements. They could facilitate, cajole and encourage but not impose or control. In accordance with the mediation norms of consent and ownership, which are emphasized in the *United Nations Guidance*, the heavy work in determining political and governance norms for the post-conflict society should be done by the negotiating parties. While mediators could help the parties to resolve the conflict in a manner consistent with democracy, they should not be overly rigid or principled. If they pushed too hard for norms that were not supported by the parties, there was a risk that the parties would look for another mediator.

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## NOTES

<sup>1</sup> For example, OAU, 2000, *Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government*; AU, 2002, *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*; AU, 2007, *African Charter on Democracy, Elections and Governance*; SADC, 2001, *Protocol on Politics, Defence and Security Co-operation*; and ECOWAS, 2001, *Protocol on Democracy and Good Governance, Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security*.

<sup>2</sup> OAU, 2000, *Declaration*.

<sup>3</sup> See Martha Finnemore and Kathryn Sikkink, 1998, 'International norm dynamics and political change', *International Organization* 52(4): 887-917.

<sup>4</sup> Khagram, Sanjeev, James Riker and Kathryn Sikkink, 2002, 'From Santiago to Seattle: Transnational advocacy groups and restructuring world politics', in Sanjeev Khagram, James Riker and Kathryn Sikkink (eds), *Restructuring World Politics: Transnational Social Movements, Networks, and Norms*, Minneapolis: University of Minnesota Press, pg. 14.

<sup>5</sup> Jeffrey Checkel, 1998, 'The constructive turn in International Relations theory', *World Politics* 50(2): 324-348 at 339.

<sup>6</sup> [Add references].

<sup>7</sup> Williams, Paul, 2007, 'From non-intervention to non-indifference: The origins and development of the African Union's security culture', *African Affairs* 106(423): 253-79.

<sup>8</sup> For an overview of this crisis, see David Zounmenou and Reine Loua, 2011, 'Confronting complex political crises in West Africa: An analysis of ECOWAS responses to Niger and Côte d'Ivoire', *ISS Paper* 230, Institute for Security Studies, Pretoria.

<sup>9</sup> ECOWAS, 2009, 'ECOWAS leaders call for suspension of legislative elections in Niger, want new transition authority in Guinea', press release 111/2009, 17 October; and ECOWAS, 2009, 'ECOWAS suspends Niger from membership of organisation', press release 113/2009, 21 October.

<sup>10</sup> ECOWAS, 'ECOWAS leaders call for suspension'.

<sup>11</sup> US Embassy, 2009, 'Tandja talks after Yar'Adua's intervention', embassy cable, 16 November, para 3, accessed at [https://wikileaks.org/plusd/cables/09ABUJA2062\\_a.html](https://wikileaks.org/plusd/cables/09ABUJA2062_a.html).

<sup>12</sup> US Embassy, 2010, 'Niger: ECOWAS mediator proposes road map for Niger; government and opposition respond', embassy cable, 19 January, accessed at <http://www.scoop.co.nz/stories/WL1001/S01247/cablegate-niger-ecowas-mediator-proposes-road-map-for-niger.htm>.

<sup>13</sup> US Embassy, 'Niger'.

<sup>14</sup> Laurie Nathan, 2012, *Community of Insecurity: SADC's Struggle for Peace and Security in Southern Africa*, Farnham: Ashgate, pp. 70-6.

<sup>15</sup> UN Security Council, 2008, 'Security Council condemns violent campaign against political opposition in Zimbabwe; regrets failure to hold free, fair election, in Presidential Statement', press release, UN Doc. SC/9369, 23 June.

<sup>16</sup> SADC Electoral Observer Mission, 2008, 'Preliminary statement presented by the Hon. José Marcos Barrica on the Zimbabwe presidential runoff and House of Assembly by-elections held on 27 June 2008', Harare, 29 June.

<sup>17</sup> SADC, 2008, 'Final communiqué', 28<sup>th</sup> Summit of SADC Heads of State and Government, Sandton, 17 August.

<sup>18</sup> The assessment offered here is based on my discussions with colleagues in the South African Presidency and Department of Foreign Affairs, 2001-2007. See also International

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Crisis Group, 2007, 'Zimbabwe: A regional solution?', *Africa Report* 132; and Brian Raftopoulos, 2010, 'The Global Political Agreement as a "passive revolution": Notes on contemporary politics in Zimbabwe', *The Round Table* 99(411): 705-718.

<sup>19</sup> ECOWAS, 2012, 'Final communiqué', Extraordinary Summit of ECOWAS Heads of State and Government, 3 May.

<sup>20</sup> International Crisis Group, 2012, 'Beyond turf wars: Managing the post-coup transition in Guinea-Bissau', *Africa Report* 190; and ECOWAS, 'Final communiqué'.

<sup>21</sup> International Crisis Group, 2012, 'Beyond turf wars', 3-4.

<sup>22</sup> PAIGC, 2012, 'PAIGC communiqué on ECOWAS coup in Guinea-Bissau', 11 May, accessed at <https://groups.yahoo.com/neo/groups/theafricanobserver/conversations/topics/12366>.

<sup>23</sup> International Crisis Group, 'Beyond turf wars', 11-12.

<sup>24</sup> *Ibid.*, 12-13.

<sup>25</sup> Laurie Nathan, 2016, 'A survey of mediation in African coups', Social Science Research Council, New York, forthcoming.

<sup>26</sup> SADC, 2009, 'Communiqué', Extraordinary Summit of Heads of State and Government, 30 March.

<sup>27</sup> SADC, 2009, 'Madagascar', communiqué of Extraordinary Summit of Heads of State and Government, 20 June.

<sup>28</sup> *Accord Politique de Maputo*, 8 August 2009, Maputo.

<sup>29</sup> See Laurie Nathan, 2013, 'A clash of norms and strategies in Madagascar: Mediation and the AU policy on unconstitutional change of government', *Mediation Arguments* 4, Centre for Mediation in Africa, University of Pretoria.

<sup>30</sup> SADC Mediation Team, 2011, '*Feuille de Route pour la Sortie de Crise à Madagascar*', 20 January.

<sup>31</sup> Charlotte Larbuisson, 2011, 'Madagascar: From crisis to transition', 16 May, note 15, accessed at <http://www.crisisgroup.org/en/regions/africa/southern-africa/madagascar/ops/madagascar-from-crisis-to-transition.aspx>.

<sup>32</sup> SADC, 2012, 'Communiqué', Extraordinary Summit of Heads of State and Government, 8 December, para 8.4.

<sup>33</sup> AU, 2003, 'Communiqué', 90<sup>th</sup> Ordinary Session of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution at Ambassadorial Level, 17 March.

<sup>34</sup> International Crisis Group, 2007, 'Central African Republic: Anatomy of a phantom state', *Africa Report* 136: 15-17.

<sup>35</sup> International Crisis Group, 2012, 'Mali: Avoiding escalation', *Africa Report* 189: 24-5.

<sup>36</sup> AU, 2008, 'Communiqué', 144<sup>th</sup> meeting of the Peace and Security Council, 7 August; and AU, 2008, 'Communiqué', 151<sup>st</sup> meeting of the Peace and Security Council, 22 September.

<sup>37</sup> 'Abdallahi "must accept deal"', *News 24*, 15 March 2009, accessed at <http://www.news24.com/Africa/News/Abdallahi-must-accept-deal-20090315>.

<sup>38</sup> AU, 2009, 'Communiqué', 186<sup>th</sup> meeting of the Peace and Security Council, 6 May.

<sup>39</sup> 'All is rather easily forgiven: A coup-maker becomes a civilian president', *The Economist*, 23 July 2009.

<sup>40</sup> AU, African Charter, art 25(4).

<sup>41</sup> AU, 2013, 'Communiqué', 363<sup>rd</sup> meeting of the Peace and Security Council, 25 March.

<sup>42</sup> 'Regional leaders recognise C. African rebel chief', Reuters, 18 April 2013, accessed at <http://www.reuters.com/article/2013/04/18/centralafrican-chad-idUSL5N0D54S320130418>.

<sup>43</sup> Martin Welz, 2014, 'Briefing: Crisis in the Central African Republic and the international response', *African Affairs* 113 (453) at 606.

<sup>44</sup> *Ibid.*

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- <sup>45</sup> International Crisis Group, 2013, 'Central African Republic: Priorities of the transition', *Africa Report* 203: 8-12.
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- <sup>50</sup> Author's interviews with AU and ECOWAS officials, Addis Ababa, January 2015.
- <sup>51</sup> [Add reference].
- <sup>52</sup> AU, 2012, Communiqué, 316<sup>th</sup> meeting of the Peace and Security Council, 3 April.
- <sup>53</sup> ECOWAS, 2015, 'Final communiqué', Extraordinary Session of the Authority of Heads of State and Government, 22 September.
- <sup>54</sup> AU, 2015, 'Communiqué', 544<sup>th</sup> meeting of the Peace and Security Council, 18 September.
- <sup>55</sup> ECOWAS, 'Final communiqué'.
- <sup>56</sup> 'The friendless mediator', *Africa Confidential*, 19 February 2015.
- <sup>57</sup> Nathan, 'A survey of mediation in African coups'.
- <sup>58</sup> A clear exception in this regard was SADC's tolerance of abuse of human rights and the rule of law in Zimbabwe. See Nathan, *Community of Insecurity*, pp. 70-6.
- <sup>59</sup> AU, 2008, 'Communiqué', 144<sup>th</sup> meeting; AU, 2008, 'Communiqué', 151<sup>st</sup> meeting; AU, 2008, 'Communiqué', 163<sup>rd</sup> meeting of the Peace and Security Council, 22 December; and AU, 2009, 'Communiqué', 168<sup>th</sup> meeting of the Peace and Security Council, 5 February.
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- <sup>63</sup> For example, 'Coups can still pay', *The Economist*, 15 October 2009.
- <sup>64</sup> 'SADC Summit of Heads of State: President's hopes high for Madagascar's future', *Seychelles Nation*, 21 August 2012, accessed at [www.nation.sc/index.php?art=28544](http://www.nation.sc/index.php?art=28544).
- <sup>65</sup> 'President Michel addresses SADC Summit of Heads of State and Government', *Seychelles Nation*, 20 August 2012, accessed at [www.nation.sc/index.php?art=28528](http://www.nation.sc/index.php?art=28528).
- <sup>66</sup> AU, 2015, 'Communiqué', 544<sup>th</sup> meeting of the Peace and Security Council, 18 September.
- <sup>67</sup> 'Growing opposition in Burkina Faso to regional peace deal', Agence France-Presse, 21 September 2015, accessed at <http://news.yahoo.com/growing-opposition-burkina-faso-regional-peace-deal-133455672.html>; and 'Burkina president voices reservations about proposed post-coup deal', Agence France-Presse, 21 September 2015, accessed at <https://www.enca.com/africa/burkina-president-voices-reservations-about-proposed-post-coup-deal>.
- <sup>68</sup> ECOWAS, 2015, 'Final communiqué', Extraordinary Session of the Authority of Heads of State and Government on the Political Crisis in Burkina Faso, 22 September.
- <sup>69</sup> Ibid.
- <sup>70</sup> Philip Alston, 1980, 'Peace as a human right', *Security Dialogue* 11(4): 319-329.
- <sup>71</sup> AU, 2002, *Protocol Relating to the Establishment*, Preamble.
- <sup>72</sup> [Add UN Charter and other references].
- <sup>73</sup> UN, 2012, *United Nations Guidance for Effective Mediation*, New York, 4.
- <sup>74</sup> I. William Zartman & Saadia Touval, 2007, 'International mediation', in Chester Crocker, Fen Hampson & Pamela Aall (eds.), *Leashing the Dogs of War: Conflict Management in a*

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<sup>75</sup> UN, *United Nations Guidance*, 11-13.

<sup>76</sup> ECOWAS, ‘ECOWAS leaders call for suspension’.

<sup>77</sup> AU, ‘Communiqué’, 186<sup>th</sup> meeting.

<sup>78</sup> SADC, ‘Madagascar’, 20 June 2009.

<sup>79</sup> Nathan, ‘A survey of mediation in African coups’.

<sup>80</sup> Hellmüller et al, *The Role of Norms*.

<sup>81</sup> UN, *United Nations Guidance*.

<sup>82</sup> *Ibid*, pg. 20.

<sup>83</sup> Hellmüller et al, *The Role of Norms*, pp. 8-9.

<sup>84</sup> Quoted in Sara Hellmüller, Julia Federer and Mathias Zeller, 2015, *The Role of Norms in International Peace Mediation*, swisspeace and NOREF: Bern, pg. 9.

<sup>85</sup> Hellmüller et al, *The Role of Norms*, pp. 11-13.