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LEGITIMATE REPRESENTATION IN MEDIATION PROCESSES: CIVIL SOCIETY INVOLVEMENT IN LIBERIA AND KENYA

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MEDIATION ARGUMENTS

Legitimate Representation in Mediation Processes: Civil Society Involvement in Liberia and Kenya

Franziska Zanker*

Current research suggests that mediation processes are more likely to achieve durable peace if they are inclusive because they are then likely to enjoy the support of the entire population. One way to ensure this public support is to include civil society groups, either directly at the negotiation table or indirectly in supportive roles. This paper argues that such inclusion has a positive effect on the legitimacy of the mediation process but observes that the current literature offers little to explain how this works. The paper attempts to fill this gap in the literature by looking at the mediation processes in Liberia in 2003 and Kenya in 2008. Newly collected empirical data from these two countries is examined using a model of legitimate representation as an analytical framework. This will help explain how the involvement of civil society groups can make the conduct of mediation and the outcome of an agreement more legitimate for the affected population.

Introduction

Inclusive mediation that involves a wide range of domestic actors is said to be beneficial for peace. More precisely, it is argued that involving civil society organizations makes negotiations more legitimate, thus improving the prospect of a durable peace (McKeon 2004, 21; Belloni 2008; Jarstad & Sisk 2008, 11; Wanis-St John & Kew 2008; Lanz 2011, 238; Nilsson 2012, 21). This argument is based by some authors on normative claims (Barnes 2002; McKeon 2004; Bell & O'Rourke 2007; Belloni 2008, 199; Nilsson 2012), yet an empirical basis for the argument does exist, including a recent statistical study that considers 83 peace agreements (Nilsson 2012; see also Wanis-St John & Kew 2008). I argue that these claims and empirical findings need to be considered in more detail. Beyond the normative rhetoric that says that including civil society makes agreements more legitimate, little is known about how this actually works in practice. Nilsson (2012, 263) thus notes that her statistical findings must be complemented by an investigation into the mechanisms that may be at work. This paper considers *how* involving civil society increases legitimacy. Only when we understand this can we start offering more precise recommendations to mediators. The paper seeks to contribute to such understanding by looking at the mediation processes in Liberia in 2003 and Kenya in 2008.

On opposite sides of the African continent, Liberia was founded by former slaves in 1847, while Kenya was colonized by the British in 1888, gaining independence only in 1963. Since

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the first Kenyan multiparty elections in 1992 there has been some form of election-related violence nearly every five years – a pattern arising out of historical conflict divisions between tribes, particularly over land and unequal distribution of resources. The worst incident of post-election violence was sparked by a disputed presidential election result in 2007/8 in favour of the Party of National Unity (PNU) candidate Mwai Kibaki, contradicting earlier predictions that the Orange Democratic Movement (ODM) candidate Raila Odinga would win. Over 1,000 people died and up to 500,000 were displaced in the violence. In Liberia, on the other hand, a minority of Liberians who were descendants of former slaves, known as the ‘Congos’, ruled the country exclusively, suppressing indigenous Liberians, until a coup d’état in 1980. A further rebellion erupted in 1989. The conflict that followed took place in two stages, the first from 1989 to 1997, between various rebel groups, after which the warlord Charles Taylor was elected President, and the second from 1999 to 2003, when rival rebel groups, the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL), tried to overthrow Taylor. Although the figures are disputed (Bøås 2005; Ellis 2007, 312–16), during the 14 years of intermittent war an estimated 200,000 people were killed and 1.5 million displaced, either internally or as refugees (e.g. Dupuy & Detzel 2007, 8; Gilgen & Nowak 2011).

Despite these different conflict histories, several common factors stand out. In both cases civil society groups took part in the negotiation processes, either directly or indirectly. In both cases the final agreements were mediated by external actors and resulted in interim power-sharing arrangements. Increasingly, power-sharing is seen as an attractive option to end civil wars and resolve election crises, especially in Africa (e.g. Mehler 2009). During negotiations of such elite arrangements, those who should arguably be benefiting from peace in the first place, namely citizens, usually do not participate. It is exactly because such negotiations are inherently elite, and often externally mediated, that it has been argued that civil society groups can become valuable participants in the mediation process (e.g. Barnes 2002; McKeon 2004; Paffenholz et al. 2006; McGhie & Wamai 2011; Nilsson 2012). As stated above, the involvement of civil society is said to improve the legitimacy of the negotiations and resultant agreements and the chances of sustainable peace. The literature shows this at work in the Kenyan and Liberian negotiations (Hayner 2007; Nilsson 2009, 2012; McGhie & Wamai 2011), and they were thus considered appropriate case studies for this paper. In addition, fieldwork was conducted by the author in these two countries, providing empirical evidence for the arguments presented here.

Between June and December 2011 I conducted over one hundred semi-structured interviews in Liberia and Kenya with civil society members, government officials, administrators and politicians. In Liberia between June and August I conducted a total of 53 interviews in Monrovia and in former conflict hotspots: Gbarnga, the capital of Bong County, and Ganta, the capital of Nimba County. In Kenya between October and December I conducted a total of 54 interviews in Nairobi and in Nakuru and Eldoret in the Rift Valley Province. In addition, in each country I held six focus group discussions with market women, youth and teachers: in Gbarnga and Ganta between June and July 2011, and in Nakuru and Eldoret between October and November 2011.

The paper is structured as follows. I review the arguments for involving civil society groups in peace negotiations and then present a conceptual model of legitimate representation. I then use this model as a basis for analysing the negotiation processes in Liberia and Kenya. Using my fieldwork data from the two countries, I consider whether the involvement of civil society

made the mediations more legitimate in terms of both the process and the outcome. The final section concludes and offers some recommendations.

Inclusive mediation: A role for civil society

Creating the right environment and conditions for peace negotiations to succeed is a huge challenge. Negotiations limited to a small number of conflicting parties can in some instances be successful, allowing warring factions to come to an agreement, but a peace won by excluding other groups can come at a price. Spoilers can emerge, and more generally the population may feel left out of a process that is not really theirs (Wanis-St John & Kew 2008, 13; Donais 2009, 3). As Wanis-St John (2008, 4) has pointed out, peace negotiations must address two opposing needs – they must include the minimum number of participants or factions needed to reach an agreement, and they must obtain the broadest possible support from political parties and the population (see also Lanz 2011). Tension between inclusivity and exclusivity is inevitable in peace processes (McClintock & Nahimana 2008, 74).

Various arguments are put forward for involving civil society groups in peace negotiations. But before looking at these we must consider what we mean by ‘civil society’. Most definitions propose, rather vaguely, that civil society is everything beyond the state and the (free) market (Lewis 2002, 570; Kopecký & Mudde 2003, 5; Wanis-St John & Kew 2008, 15). Put more precisely, civil society is ‘the set of voluntary organizations and groups not created by the state’ (Belloni 2008, 182). That is not to say that it is easy to define ‘civil society’, or that the boundaries between the state and civil society are always clear-cut. Moreover, civil society will often reflect the characteristics of the broader national society. As a result, civil society organizations can be divided along lines of power, ethnicity and gender (Paffenholz 2010, 414). Nonetheless, empirical findings point to a link between the involvement of civil society organizations in peace negotiations and the likelihood of durable peace (Nilsson 2012). The reasons are believed to be as follows. Perhaps most importantly, any peace process needs to be embraced by those who have to live with the consequences, namely the population, whose exclusion from such a process may otherwise alienate them (Barnes 2002; Donais 2009; see also Bell & O’Rourke, 2007). Since the entire population cannot attend peace negotiations, civil society groups become the people’s representatives and their involvement improves the prospect of ownership of both the negotiations and the outcome. Ownership of peace agreements creates ‘significant social pressure for implementation’ (McKeon 2004, 5).

However, although many argue that civil society involvement will enhance the legitimacy of the peace process and improve the prospect of peace, ‘an effort [by external mediators] to ask communities about their sense of the problems and the legitimacy of those sitting at the negotiation table ... cannot be detected’ (Mehler 2009, 472; see also Donais 2009, 4). Undoubtedly the inclusion of civil society groups is faced with numerous difficulties. For example, as Wanis-St John and Kew (2008, 21–2) point out, an *n*-party negotiation game will not facilitate cooperation between the parties; indeed, disorganization increases with the number of actors, and more parties can lead to a ‘progressive deterioration of effective communication’. In addition, even though there is a normative belief that civil society groups will be ‘civil’ and promote peaceful solutions, in societies affected by violent conflict this is not always the case. Nonetheless, it has been argued that the long-term benefits of designing

inclusive processes far outweigh the short-term gains of an exclusive process (McClintock & Nahimana 2008, 75; see also Moran & Pitcher 2004, 516; Wanis-St John & Kew 2008, 32).

As explained above, this paper aims to fill a gap in the literature that claims that civil society involvement improves the likelihood of sustainable peace because of increased legitimacy in the mediation process. The paper attempts to explain *how* this actually happens in practice. Before reviewing what happened in Liberia and Kenya, in the following section I describe the model of legitimate representation that I use as an analytical framework.

What is legitimate representation?

Before we can develop a model of legitimate representation in negotiations to end a major conflict, we need to consider what legitimacy means. Hanberger (2003, 270) defines it as the product of satisfying felt needs and solving perceived and observed local problems. In other words, legitimacy refers to citizens' support of a policy, order and regime. What does this mean for the legitimacy of peace mediations? The arguments outlined above imply that sustainable peace needs a *public* peace process. Elites, diplomats, governments and armed groups may simply not be acting in the interests of citizens (e.g. Lederach 1997, 94–5; Barnes 2002, 6; Pouligny 2009, 174–87; Ron 2010, 347, 355). There are various ways to make a peace process public, such as by providing parallel citizen forums or giving civil society groups a direct role at the negotiation table.

Understandings of legitimacy stem from democratic theory grounded in political philosophy. To date few scholars have considered the democratic theory of legitimacy in the light of peace studies, with some notable exceptions (e.g. Ron 2010). For present purposes it is helpful to consider Scharpf's two-dimensional version of democratic legitimacy, consisting of a political system's input legitimacy (authentic representation or fair proceedings with all relevant stakeholders being involved) and output legitimacy (effective policies as an outcome) (Scharpf 1997, 18–36; Boedeltje & Cornips 2004). Input legitimacy presupposes that every citizen should be able to participate in public discourses, linking political decisions (in our case mediation processes) with citizens' preferences. The guarantor of legitimacy, however, is the output side. This means a 'high degree of effectiveness in achieving the goals ... citizens collectively care about' (Scharpf 1997, 19). Input legitimacy relies on representation, since not everyone will be able to participate in political processes (Boedeltje & Cornips 2004, 6–10; Ron 2010, 356–9).

No other obstacle is more daunting than the choice of who should participate in peace processes (Ron 2010, 366). The classic definition of 'representation' comes from Pitkin (1967, 8), who explains that to represent is to 'make present again'. Paradoxically, this means making things such as opinions and voices 'present' in their actual absence. Pitkin distinguishes between 'formalistic', 'descriptive', 'symbolic' and 'substantive' representation. Formalistic representation refers to the institutional arrangements which assign to representatives the authority to represent and their accountability to those they represent. Symbolic representation is what the representative 'stands for'; in other words, what the representative means or symbolizes for those being represented, as in the case of a symbolic head of state, such as the Queen of England. Pitkin's third category, descriptive representation, considers representation to be like a mirror or a piece of art, resembling those being represented. This term is often used to describe minority representation, where the

representative should arguably be from the same ethnic minority as the community of people being represented. It is also referred to as the ‘standing for’ type of representation (Pitkin 1967, 11; Randall 2007, 83–4,101; see also Phillips 1994, 88–91; Mehler 2011, 84–5). The last category, substantive representation, refers to the activities of the representatives and whether their actions are taken on behalf of or in the interest of those being represented; essentially ‘acting for’.

Opinions vary as to which aspects of representation are most important and how to translate representation into practice. Note particularly the difficulty of identifying the groups to be represented and ascertaining whether civil society actors are indeed legitimately representing them, especially since the civil society groups do not have the calculable legitimacy of electoral politics (Bell & O’Rourke 2007, 305; see also Belloni 2008, 209).¹ Given these difficulties, a broad idea of legitimate representation should be considered, and thus I argue that three elements should form part of a model of legitimate representation in peace negotiations, combining the ideas of legitimacy and representation touched on above: *significant*, *substantive* and *accountable* representation (see Figure 1).

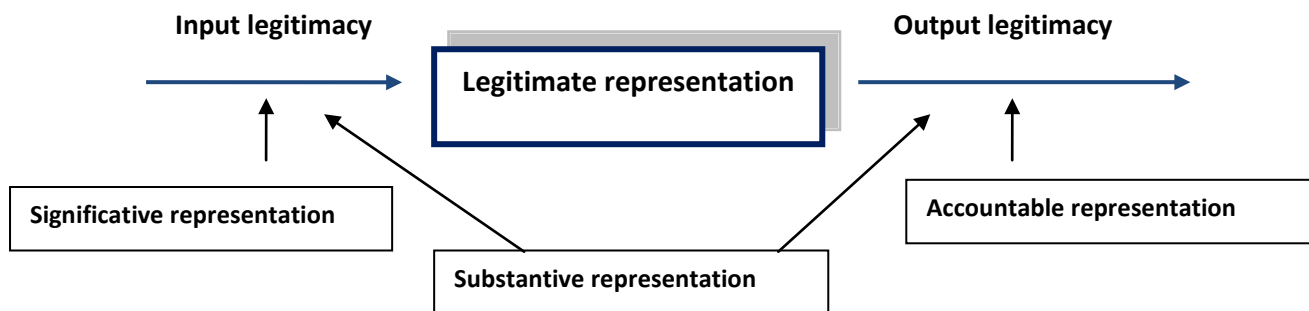


Figure 1: A model for legitimate representation: The involvement of civil society organizations in mediation processes

These three elements should be present in order to make negotiation processes and their outcomes more legitimate. First, to a certain extent the represented population should be able to identify with those representing them, and vice versa. At the very least some kind of symbolic attachment makes the representative seem legitimate to those being represented, to be seen as ‘standing for’ them. This is in line with the argument for input legitimacy as well as Pitkin’s argument for both symbolic and descriptive representation. In my model I call this *significant representation*, referring to representation that ‘makes a sign’. Signs or symbols, which could include descriptive characteristics, are important for inspiring trust in a representative. Second, the population’s actual problems and grievances of course need to be addressed, which means ‘acting in the interest of the represented’ (Pitkin 1967, 209). What Pitkin calls *substantive representation* (as do I) is important in the stages of both input and

¹ Note that this paper focuses on increased legitimacy because of involving *civil society* in negotiations. Undoubtedly political parties also play an important representative role but this is not addressed here. See Nilsson (2012, 249) for more on this.

output legitimacy. Third, if no one knows what role civil society actors played in the negotiations it is difficult to argue that their involvement made the process and outcome more legitimate. Pitkin (1967, 209) explains that a representative must act not only in the interest of those he represents but also ‘in a manner responsive to them’. During times of conflict it will no doubt be difficult to gather comprehensive data on what a population expects from a negotiation process, but at the very least civil society actors should explain their role and input to those they represent. As Ron (2010, 349) argues, the only way to know whether an agreement is legitimate ‘is through a process of reflective scrutiny by those who will be affected by the terms of the agreement’. This is linked to output legitimacy, and since it suggests the need for some form of accountability on the part of civil society actors involved in the mediation, I call this third type *accountable representation*.

In the following two sections I use my three categories to reflect on civil society involvement in Liberia and Kenya.

‘Mighty be our powers’: Civil society activism in Liberia²

The second phase of the Liberian war ended in 2003 when the Comprehensive Peace Agreement (CPA) was signed in Accra, Ghana. An initial ceasefire was signed on 17 June. This was soon broken but negotiations continued, and after 76 days the CPA was signed on 18 August 2003. The rebel groups LURD and MODEL had been unwilling to participate in the talks if Liberian President Charles Taylor remained in office, but at the beginning of the talks an arrest warrant against him was issued by the Special Court of Sierra Leone for war crimes Taylor had committed in the neighbouring country. A few weeks later Taylor went into exile in Nigeria. The CPA was signed by the Taylor government (a conflict party), LURD, MODEL and 18 political parties. Five civil society groups also signed the peace agreement as witnesses. In the initial phase of negotiating a ceasefire only the three conflict parties had been involved but later this was enlarged to include civil society actors and political parties.

The Chair of the Economic Community of West African States (ECOWAS) presented Taylor with a list of potential mediators, from whom he chose former Nigerian President Abdulsalami Abubakar. Abubakar was then formally appointed as the mediator by the International Contact Group on Liberia (ICGL), a group formed in 2002 by the UN in response to the worsening situation in Liberia. ECOWAS, along with the Inter-Religious Council on Liberia (IRCL), had previously held talks with the conflict parties in early 2003, and the parties later agreed to attend talks at the invitation of ECOWAS and the ICGL (Nilsson 2009, 21).

A National Transitional Legislative Assembly was created by the CPA, which ruled the country for two years prior to elections. The conflict parties each got 12 seats, the 18 political parties (of which at least 10 were pro-Taylor) got one seat each and seven seats were reserved for civil society leaders. Publicly owned corporations and government agencies were divided up in a similar way, and civil society representatives were thus installed as heads of several agencies.

² ‘Mighty be our powers’ is taken from the title of the book by Leymah Gbowee (2011). Unless otherwise stated, information in this section is based on the Gbarnga, Ganta and Monrovia interviews.

Civil society organizations were involved in the negotiations in a variety of ways: as official delegates, unofficial observers and pressure group activists. Those invited as official delegates were the Mano River Women's Peace Network (MARWOPNET), the IRCL, the Liberian Bar Association and members of the Liberian diaspora. Civil society groups were invited as official delegates because of the role they had played in previous conflict resolution efforts (Nilsson 2009, 22; interviews, Monrovia, August 2011). However, Taylor had been provided with a list of civil society organizations by ECOWAS, from which he could choose who could take part, thus influencing the selection of the delegates. But other groups attended anyway, even though this meant they had to travel independently outside of the official delegation and were hampered by financial difficulties and security restrictions (Hayner 2007, 28; Nilsson 2009, 42). Mediator Abubakar was said to have listened carefully to the concerns of the conflict parties throughout the negotiations, without forcing them to come to an agreement (Hayner 2007, 11). It seems that he was supportive of civil society actors being involved, in fact encouraging them to put pressure on the conflict parties to come to an agreement. As one civil society delegate explained: 'I was really involved in talking to the warring parties – I would go to their hotels. Sometimes they would suspiciously ask, "Why are you coming here? You people were sitting here and we fought, and now you want our positions?" I told them "I don't want the positions – all I want is for you to stop killing people". I was effective in talking to them. Even the mediator recognized this. He often gave me a car and said "Go and talk to your people"' (interview, Ganta, July 2011).

Civil society members were able to influence the mediation in a number of ways. The official delegates taking part in plenary sessions managed to secure positions for civil society in the interim assembly and government. Civil society actors said that it was also due to their influence in the plenary sessions that the Truth and Reconciliation Commission (Article XIII) and Independent National Commission on Human Rights (Article XII) were included in the agreement (interviews, Ganta and Monrovia, July–August 2011). Moreover, civil society delegates insisted that the interim leader be named 'Chairman', not 'President', and prevented this position from going to one of the conflict parties, instead of to a neutral person suggested by them. Civil society and political parties proposed three possible interim Chairs, from whom the conflict parties chose Gyude Byant (various interviews, Gbarnga, June 2011, and Monrovia, August 2011; Asante 2004; Hayner 2007, 13; Nilsson 2009, 41). Influence on other areas of the negotiations was said to be somewhat limited (Nilsson 2009, 42).

Nonetheless, civil society groups were able to put pressure on the conflict parties to come to an agreement. This was true even of those groups that were not official delegates. For example, Women in Peacebuilding (WIPNET) spent months prior to the peace talks protesting about the war by sitting in an open field and praying at Fishmarket, Monrovia, come rain or shine. The group managed to get a meeting with Taylor, urging him to attend peace talks. Some members also met with one of the rebel groups, LURD, asking it to commit to talks. WIPNET then sat outside the mediation venue in Accra throughout the negotiation period, having also mobilized Liberian refugee women from camps in Ghana to attend.³ The WIPNET women, who were kept up to date with what was happening inside the mediation venue by MARWOPNET, one day took the drastic measure of blocking the conference centre and threatening to undress unless the talks made progress.⁴ With hindsight,

³ Gbowee (2011, 156) notes that at one point Abubakar asked WIPNET to join the official delegates at the negotiation table but the group declined.

⁴ It is considered a curse for a 'son' to see a 'mother' naked (interview with MARWOPNET, Monrovia, August 2011; see also Hayner 2003, 12–13; Nilsson 2009, 23).

this action can be seen as a defining moment in the negotiations (Hayner 2007, 11; Nilsson 2009, 23).

Can we say that this involvement of civil society actors made the mediation process and its outcome more legitimate? I now consider this question, using the model of legitimate representation outlined above.

Significative representation: In interviews, especially those conducted outside Monrovia, it was often mentioned that certain groups of people were excluded from the negotiations. Consequently, some sections of the population were not able to identify with those purportedly representing them. A youth representative in Bong County noted that there was no youth representation at the negotiations, despite the fact that young people had been a driving force in the war (interview, Gbarnga, July 2011). Others noted that most civil society leaders present at the talks were Western educated elites from Monrovia who had no idea what was happening beyond the capital. Nobel Prize winner and Liberian peace activist Leymah Gbowee explains that groups like MARWOPNET ‘did their work at some risk to their lives and were justifiably proud of it’ but that ‘most of these groups’ members were from educated, elite backgrounds’ (Gbowee 2011, 115). Various local government officials and religious and youth leaders felt that ordinary people had not been represented, and that those civil society members who did attend the negotiations went there to get jobs. One local radio presenter in Ganta claimed: ‘They never asked the local people what they wanted – there was no local representation. What they said there, it was all right for them but not all right for some of us.’

On the other hand, the former Chairman of the IRCL explained that, through their extensive networks with imams and priests, they were aware of what was happening all over the country. He added that everyone had been affected by the war, even in Monrovia.

WIPNET seems to be fairly well known and can be seen to some extent as an example of Pitkin’s ‘descriptive representation’ (mirroring the characteristics of those you claim to represent). Not only did it represent women of all religions, it was also diverse in terms of socio-economic background because of the influx of refugees into Monrovia in the preceding months and years. The action taken by WIPNET was widely praised in interviews – the respondents felt represented by the organisation as it reflected their own identity markers (female, Christian, etc.) – and has been taken as evidence of civil society initiatives by working class urban and rural women (Moran & Pitcher 2004, 508). However, there was tension between various women’s groups, notably WIPNET, MARWOPNET and the Liberian Women’s Initiative (LWI). WIPNET repeatedly invited the other two groups to attend their protests at Fishmarket, but they rarely came. When they did come to one protest, they brought chairs with them and placed them at the front. Considering that the essence of this protest was women uniting and sitting on the field, this action was difficult to understand as anything but condescending towards the peace movement. As Gbowee (2011, 144) points out, ‘The class tensions were pronounced. They were the educated elite; we were the indigenous poor’. It seems that overall significative representation was lacking: many Liberians do not feel they were represented, at least not by the official civil society delegates.

The difficulties of achieving significative representation in order to improve legitimacy must be noted. First, since at the time of the negotiations fighting was still going on, it was difficult to get to Monrovia, let alone Ghana, the site of the negotiations. One political activist I interviewed, who had been invited to attend the talks, explained that even though a car was

sent for him he did not go because he was scared of being ambushed and therefore remained in hiding. Second, in a time of extreme poverty and violence, bare survival was more important to the population than considering whether they were being represented at the talks in Accra. Despite the overall lack of what I call significant representation, I now consider whether there was substantive representation.

Substantive representation: Most people I interviewed, ranging from government officials, humanitarian relief workers and religious leaders to market women, felt that the CPA had had a positive effect. An interviewee offered the opinion that ‘peace was brought to Liberia, which was the main thing – irrelevant if warlords were at the table or not’ (civil society actor, Gbarnga, June 2011). In focus group discussions in Gbarnga and Ganta most participants agreed that important grievances had been addressed during the CPA, and that the ones left out were less important and could be dealt with once the war was over. Civil society actors played a powerful balancing role, adding an element of urgency and a constant reminder that people were suffering and dying (Hayner 2007, 27). When civil society participants in the negotiations were asked in interviews how they ensured that they represented the Liberian people, they cited their long-standing work in peace and development, as a result of which they understood the grievances of the population. One of the focus groups came to the conclusion that even though the civil society groups present at the negotiations were exclusively from Monrovia, they were still in the best position to know ‘how we felt and suffered’. This suggests that even if the civil society representatives constituted an urban elite, they nonetheless acted in the interests of the population, representing their grievances. Some civil society groups were more capable of doing this than others, such as the IRCL, whose leaders travelled throughout the country to talk with the population (and rebel groups) even in unstable periods.

Some interviewees nevertheless criticized the negotiations because they felt that ordinary Liberians’ views had not been represented. Furthermore, most interviewees, as well as the focus group participants, felt that no local issues had been included or even taken into consideration at the negotiations, only national ones. The parliamentary representative from Ganta (2005–2011), Nohn Kidau, a civil society delegate at the negotiations, countered this by explaining that while more local (sub-national) representation might have been better, it was difficult enough getting a seat at the table for national civil society organizations. However, some respondents still noted that they felt that civil society groups present at the negotiations had not been representing the genuine interests of the people but were rather just trying to further themselves. It is questionable whether they were above politics and self-interest as they also squabbled over who would get which ministry (Pham 2004). Members of the IRCL explained they had been the only civil society group to turn down seats in the interim government, as they preferred to remain neutral.

Accountable representation: It was astounding how little the focus group participants knew about the content of the CPA, let alone the input made by civil society groups during the negotiations. For example, parliamentary representative Kidau, mentioned above, played a considerable role at the peace negotiations as a civil society representative. Her role is even internationally known, as she related her experiences to the Committee on International Relations in the US House of Representatives in October 2003. Furthermore, she set up a peacebuilding committee in Ganta to address land-related conflict after the CPA had been signed. But in the three focus group discussions in Ganta not one participant was able to name Kidau as someone who had addressed local grievances at the negotiations, let alone as

someone who had been present. Indeed, only half the discussion groups held in Liberia concluded that civil society groups had played a role at all during the negotiations. Furthermore, several groups mentioned that they were unsure who had represented them since they had not received any information. Market women from a discussion group in Ganta went so far as to suggest that although civil society actors were praying for peace they played no active role at the negotiations. This lack of knowledge was described by one civil society activist as reflecting the wider problem of a division between a literate elite and an illiterate oral society living in the rural areas.

In numerous interviews and the focus group discussions it was mentioned that there had been no nation-wide forum for discussion, even *after* the CPA had been signed. Such a forum could have ensured there was some form of accountability on the part of civil society actors, especially the official delegates. Without feedback, the grassroots population is not informed and as a result may not understand the terms of the peace agreement, nor be able to hold leaders accountable for what they have signed. Note however that there was *some* feedback. The IRCL produced copies of the CPA and handed them out to civilians nationwide. MARWOPNET held a meeting in the city hall in Monrovia, where they invited a cross-section of women, translated each provision of the CPA and discussed what steps should be taken to ensure implementation. WIPNET and LWI conducted similar events (Gbowee 2011, 168; interviews, Monrovia, August 2011). These efforts notwithstanding, knowledge about the peace agreement seemed to be extremely low eight years after the document was signed.

The Liberian case shows that despite the empirical findings and normative claims in the literature that the involvement of civil society organizations makes peace negotiations more legitimate, the mechanisms by which this is accomplished are more complex than perhaps previously imagined. On the one hand there seemed to be a high level of satisfaction with the CPA, and the final outcome, peace, was greatly appreciated. The mediator encouraged civil society actors to put pressure on the conflict parties. This means that at the very least the element of substantive representation in my model of legitimate representation seems to have been satisfied. On the other hand, significant representation seems to have been lacking, apart from perhaps in the case of WIPNET, which represented a wide range of women from different socio-economic backgrounds. Furthermore, no real accountable representation can be said to have taken place, considering the lack of knowledge about the peace negotiations I encountered among the population. Overall, the rules for which groups were invited as delegates were unclear and the mediator allowed Taylor to play a role in the choice. Lastly, outside Monrovia details about the CPA and the involvement of civil society actors as official delegates to the negotiations were little known.

I now turn to the Kenyan case for comparison.

Silencing the choirmasters: Civil society activism after the Kenyan post-election violence⁵

According to a political activist I interviewed in Nakuru, the power-sharing agreement brought peace to Kenya because the violence had political roots in the first place. The activist said: ‘People on the ground only emulate what their leaders are doing. I always say leaders

⁵ Unless otherwise stated, information in this section is based on the Nairobi, Nakuru and Eldoret interviews.

are like choir masters ... if they tell them to sing, they will sing, if they tell them to stop they will stop' (October 2011).

The post-election violence in 2007/8 was more intense than the violence in preceding years and brought Kenya to the brink of civil war. While the violence was largely between ODM and PNU supporters, or along ethnic lines, for example Kalenjin or Luo against Kikuyu, it was not exclusively so. It was also about poverty, unemployment and the manipulation of young people and criminal gangs (Lindenmayer & Kaye 2009, 3; various interviews). A multitude of early mediation efforts was seen during the violence, which quickly gained international attention. These included initial efforts by Archbishop Desmond Tutu, as well as parallel mediation by various former presidents of Tanzania, Botswana, Zambia and Mozambique. In addition there were efforts by the Ghanaian President John Kufuor (as AU Chairman) and Ugandan President Yoweri Museveni (as Chairman of the East African Community). When Kufuor's endeavours proved to be inconclusive, he wrote to former UN Secretary-General Kofi Annan asking him to take on the role of AU Special Advisor and Chief Mediator. The AU set up a Panel of Eminent African Personalities comprising Annan as Chair, former Tanzanian President Benjamin Mkapa and former first lady of Mozambique Graça Machel. Their mediation began on 22 January 2008, with the technical support of various UN bodies and the Centre for Humanitarian Dialogue.

Instead of one composite agreement, four documents known as 'Agendas' were signed as a result of the Kenyan National Dialogue and Reconciliation (KNDR) process. Agenda 1 was signed on 1 February 2008, putting a stop to the violence. It set up a commission of enquiry (later known as the Waki Commission) and mooted the possibility of a special tribunal to decide on the criminal responsibility of those involved in the violence.⁶ The second Agenda, signed a day later, addressed the humanitarian crisis that had come about as a result of the violence, namely the high number of internally displaced people. After six weeks of negotiations and a five-hour 'end game', in what was seen as a triumph of African diplomacy Agenda 3 was signed. This was perhaps the most important Agenda, setting up a power-sharing interim coalition government and creating the position of Prime Minister, given to Raila Odinga, with Mwai Kibaki remaining as President. Annan had stated that the post-election violence crisis presented both a danger and an opportunity (Lindenmayer & Kaye 2009, 1). The KNDR was therefore used as an opportunity to discuss long-term grievances. Mediated after the departure of Annan by Nigerian Foreign Minister Oluyemi Adeniji, it led to the signing of Agenda 4 on 4 March 2008. Agenda 4 addressed legal, constitutional and institutional reform, poverty and inequality, unemployment, land reform, national cohesion and unity, and accountability and impunity.

Civil society groups played a variety of roles in the KNDR but, unlike in Liberia, they were not official delegates to the negotiations. They supplied a mix of technical support, advocating certain positions to the mediation team and lobbying the public. A complete overview of the actions of civil society organizations is available elsewhere (e.g. Ngunyi 2008; Ibrahim Abdi 2009; Lindenmayer & Kaye 2009; Wachira et al. 2010; Kanyinga 2011; McGhie & Wamai 2011), but two coalitions of civil society groups must be mentioned. One of these was the Concerned Citizens for Peace (CCP). This group was formed on 31 December 2008, immediately after the post-election violence started. Its members engaged with the media, offered prayers for peace, held dialogue with various actors and got a leading

⁶ This was never done and thus a sealed envelope was passed to the ICC by Annan. Six people were indicted by the ICC, of whom four were confirmed on 23 January 2012. They are currently awaiting trial.

mobile phone operator to send an SMS to all its subscribers urging them to be peaceful. These activities were complemented by the Open Forum, through which the CCP developed a Citizens' Agenda for Peace which it presented to the mediators. Formed from peacebuilding community and religious groups, its main goal was for peace to return to the country. Its discussions were held in the Serena Hotel, the same place where Annan chose to conduct most of his mediation. Some meetings chaired by Annan took place next door to the CCP's meetings, allowing for close interaction between the CCP and the negotiation process (Wachira et al. 2010, 28). The CCP is said to have brought the crisis to international attention (for example by calling for the early mediation attempt by Archbishop Tutu) and to have influenced the agenda of the mediation. This was especially the case for Agenda 1 (Mwagiru, 2008 30, 51; Wachira et al. 2010, 11, 23; Kanyinga 2011, 94–101; interview, member of PeaceNet, Nairobi, November 2011).

The other coalition, called Kenyans for Peace, Truth and Justice (KPTJ), was formed by a variety of groups, including the Kenyan human rights lobby, who petitioned for accountability and justice, calling for a recount of votes. They called on the conflict parties to agree to an international mediation. Using partners like the Red Cross, they developed an accurate count of the deaths that had occurred and collected data on the violence. Resolutions proposed by the US, UK and EU used language and approaches similar to those suggested by the KPTJ. Their innovative actions included, for example, one organizational member of the KPTJ, the Kenyan Private Sector Association, meeting with Kibaki and threatening that businesses would withhold taxes unless he agreed to negotiations (interview, founding member KPTJ, Nairobi, December 2011). Like the CCP, they regularly engaged with the AU Panel. They are said to have been highly influential in forming Agenda 4 (Kanyinga 2011, 94–104).

These civil society organizations, involved on the sidelines of the mediation, are said to have created the right environment for negotiations to be held in the first place, as well as being instrumental in putting pressure on the government in the later implementation period (Lindenmayer & Kaye 2009, 7). Annan is said to have wanted an inclusive and transparent process that included civil society members (Lindenmayer & Kaye 2009, 7). This is why the Panel spent several days meeting with civil society groups to hear their concerns before the negotiations began. Annan later commented that dialogue with diverse stakeholder groups had been 'a hallmark of the mediation process' and that as a result the whole process had been 'owned' by the people of Kenya (Annan 2011; see also Lindenmayer & Kaye 2009, 8). Whether this is in fact true of the mediation process is discussed below in the light of my analytical framework.

Significative representation: In Kenya, where ethnicity or tribalism remains ingrained in society, it might seem that in order for civil society participants in negotiations to be significantly representative, and as a result legitimate, they may have to represent ethnic groups; this has been argued for Burundi (McClintock & Nahimana 2008). Yet this was not the case, or at least not openly so, in Kenya. Interestingly, the case of one of the negotiators for the ODM, William Ruto, illustrates a possible repercussion of having an ethnic representative at the table. Many respondents in the Eldoret area (where Ruto is an MP) felt that they had been represented through his involvement. However, he lost his ministerial post in the coalition government in 2009 (because of corruption allegations), which led a number of people to conclude that their ethnic group, the Kalenjin, had been left out and even victimized in the implementation period. This resentment has worsened since Ruto's

indictment by the International Criminal Court (ICC). Ruto himself denies that regional representation was important, as the grievances were the same country-wide (interview, Nairobi, December 2011).

In terms of representing the grassroots, a generally elite-driven mediation process was noted: ‘The National Dialogue was done by the top big people only ... the dialogue stopped there – no link to the grassroots was made – the leaders never came down to talk to their communities’ (interview, Eldoret, November 2011; see also Ngunyi 2008, 6; Lindenmayer & Kaye 2009, 9). Furthermore, it does not seem that civil society organizations played this role either. One grassroots activist explained that while civil society groups in Nairobi had played a role in the negotiations, those outside had been sidelined, apart from a few exceptions who took a monitoring role. Both the CCP and the KPTJ were accused of being composed of urban elites. This made people feel excluded from a process that concerned them deeply. Civil society groups at the grassroots generally took on more practical roles, like Rural Women Peace Link based in Eldoret, who initiated community dialogues for reconciliation at the height of the post-election violence. These efforts have not been systematically documented. One civil society member explained that grassroots groups lack the skills to write good funding proposals, so donor money always goes to urban elites, who in turn have no idea what is actually happening at the grassroots. Another prominent civil society actor went so far as to claim that both the civil society coalitions were divided along political lines and were simply pawns of the power stand-off taking place (interview, Nairobi, December 2011; see also Kanyinga 2011). A founding member of the KPTJ explained, however, that membership of this group was so diverse it could only have been representative. He added that in a period of such extreme urgency there was no time to consider members’ legitimacy qualifications.

The lack of representation of the grassroots may not mean that there was *no* significant representation. This is because Annan was a symbolic actor in the process. In focus group discussions in Nakuru and Eldoret, most participants claimed that the one person who made sure their grievances were included was Annan. This external legitimization of the negotiations by the mediator was explained by the fact that Kenyan society was extremely polarized. With accusations being made that civil society groups were part of the politically manipulated power game, many Kenyans did not trust these groups to represent their grievances adequately (focus group discussions and various interviews; see also Mwagiru 2008, 17; Lindenmayer & Kaye 2009, 17; Wachira et al. 2010, 22). A member of the Kenya National Commission on Human Rights explained that ‘it was impractical to expect to resolve the issue internally’ and that ‘an external framework which was legitimate to all’ had to be found (interview, Nairobi, November 2011).

If the members of Kenyan civil society involved in the negotiations were an urban elite and not significantly representative, did they at least represent the population substantively?

Substantive representation: The immediate cessation of violence after Agenda 1 had been signed was widely praised in interviews and focus group discussions. In addition, Agenda 4, heavily influenced by civil society activism, especially by the KPTJ, was revolutionary. Its promise to address Kenya’s deep-rooted grievances is something seldom seen in rushed mediation processes aimed at stopping intense violence. Annan himself, according to one civil society respondent, acknowledged that if had not been for the ‘vibrancy’ of Kenyan civil society, the political deadlock would have lasted a lot longer, with deadly repercussions. Indeed, civil society members gave substantial help to the AU Panel’s secretariat which,

along with the mediators, was at times struggling to understand the complexities of the Kenyan power struggle.

The Open Forum convened by the CCP was open to anyone who wanted to attend. It was held only in Nairobi but the goal of creating an inclusive process was evident. The involvement of civil society groups improved the legitimacy of the mediation, according to a Commissioner of the newly created National Commission on Integration and Cohesion, as these groups exhorted Kenyans to rally round the process (interview, Nairobi, December 2011).

Only a few issues were deemed by focus group participants to have been left out of the negotiations, such as the rape of women, the lack of access to food, and the unavailability of airtime (mobile phone credit). The participants thought these issues had been left out because the actors in Nairobi were unaware of the full spectrum of repercussions occurring in the conflict hotspots. However, most of the participants felt that the main grievances leading to the post-election violence had been addressed in the process, especially through Agenda 4.

It should be noted, however, that the *implementation* of Agenda 4 is another matter. While a sophisticated Constitution was promulgated in 2010 after a national referendum, the implementation of this and other elements of Agenda 4 (such as the creation of a Land Commission) has been slow. The impact of the KNDR at the community level, where tribalism and discrimination are still very much present, has been limited.

A major problem that undermined the substantive representation of Kenyan civil society groups was the political polarization, especially between the two coalitions, and this was also reflected in their activism. The CCP focused on a return to peace, while the KPTJ argued that this was the moment to address more deep-rooted problems. While to some degree these approaches were complementary, the division also meant that the agenda setting was at times fragmented, with the coalitions even at times being in competition with each other (Mwagiru 2008, 51–2; see also Ngunyi 2008, 4; Kanyinga 2011, 103). One civil society member added that the lack of coordination between the groups also led to a duplication effect, to the detriment of certain issues which were neglected.

Accountable representation: In contrast to the Liberian focus groups, those in Kenya were able to identify specific details about the negotiations. Several factors explain this. Notably, the Kenyan violence was short-lived, resulting in a much stronger infrastructure remaining in place. The Kenyan media, widely available even in rural areas, discussed and analysed the KNDR process in detail. Annan made sure that awareness of the KNDR was raised, commissioning over 20 reports on the status of implementation. In addition he has convened three major follow-up conferences, the last of which, held in Nairobi in December 2011, was open to the media and streamed live online. It was hoped that the vernacular radio stations and social media platforms would reach Kenya's grassroots (Kofi Annan Foundation 2012, 7). Opportunities provided by the Waki Commission and the Truth, Justice and Reconciliation Commission also allowed for the participation of all Kenyans. The fact that the KNDR was more recent than the Liberian peace negotiations perhaps also explains why the Kenyans were more aware of the agreement in their country than the Liberians were of theirs.

However, focus group participants explained that while they felt satisfied that there had been a return to peace as a result of the KNDR, no real dialogue has been held at the grassroots

level. An interviewee observed that ‘political elites can accommodate each other – the victims and perpetrators never had that platform’ (interview, Nairobi, December 2011). Many interviewees said that nationwide discussions should have been held during the KNDR so that they could have been kept informed about what was happening.

Peacebuilding activities conducted by civil society groups have proliferated, raising awareness of the impact the groups had in the negotiations and continue to have in the current implementation period. Government activities such as creating district peacebuilding committees complement these efforts. However, such programmes are struggling in practice, largely because of funding problems. In addition, there is no coordination between the civil society groups involved in implementation efforts. Bitterness has sprung up over the increase in the number of workshops: ‘They are running from one hotel to another – eating good food, getting transport and sitting fees, but they are forgetting the youngsters’ (interview, civil society actor, Eldoret, November 2011).

In rural areas knowledge about the KNDR is still lacking. One civil society member explained the ignorance thus: ‘When I go to rural areas, people will ask me what is Agenda 4’ (interview, Eldoret, November 2011). Civic education campaigns took place in the run-up to the referendum for the new Constitution, but these were extremely partisan. Since then, civic education campaigns concerning the KNDR and Agenda 4 are still lacking.

In summary, significant representation seems to have been fulfilled to an extent not because the civil society groups involved reflected the grassroots but because Annan had an external legitimizing effect on the proceedings. Civil society groups were, however, able to influence the mediation process through substantive representation, most notably through what was called Agenda 4. Nonetheless, competition and polarization were rife within the civil society sector, making its actions less effective. Finally, knowledge about civil society’s role in the negotiations and about the KNDR was found to be fairly widespread, meaning that there was some accountable representation. However, many civil society groups had been discredited to some degree by their uncoordinated activity in the implementation period.

Conclusion

The academic literature suggests both as a normative claim and on the basis of empirical findings that involving civil society actors in peace negotiations makes the process more legitimate and improves the prospect of durable peace. Scholars have looked to advise mediators on how they should involve civil society groups (e.g. Wanis-St John & Kew 2008, 12). This paper has aimed to bolster their recommendations by considering how such involvement can actually improve the legitimacy of negotiations. Using a model of legitimate representation, I have shown that while in some ways civil society actors did enhance the legitimacy of negotiations in Liberia and Kenya, in others they failed to do so.

In terms of what I have called *significant representation*, the Kenyan case showed that legitimacy does not necessarily stem from the input of national civil society groups. In this case it was the mediator, Kofi Annan, who was seen as highly legitimate symbolically even though he did not represent any of Kenya’s ethnic or political groups. The national civil society groups involved in the mediation process were not really seen as representing the grassroots. The Liberian mediation showed some level of significant representation,

particularly in the case of the women's group WIPNET, but most of the official delegates from civil society lacked symbolic significance for those they were purportedly representing. President Taylor was able to choose which civil society groups could participate officially in the negotiations and it is unclear what rules were followed when deciding which groups to invite. The Liberian case showed that a mediator should give plenty of thought to whom to invite, and especially to finding a way to encourage legitimate groups that have not been officially invited to get involved, since they can have an important positive impact on the legitimacy of negotiations in terms of significant representation.

When it came to *substantive representation*, both cases showed that involving civil society seems to increase the legitimacy of the mediation and improve its outcome. Grievances were seen to be addressed, for example by the formation of a Truth and Reconciliation Commission in Liberia and the very comprehensive Agenda 4 in Kenya. However, the Kenyan case shows that civil society groups can work in an uncoordinated, even politically polarizing manner. It is up to the mediator then to weigh up the different inputs from these groups, just as is done with conflict actors.

In terms of *accountable representation*, the Liberian case showed that, despite some efforts, the actions taken by civil society during the negotiations – especially by official delegates – were not widely known. So while civil society actors may have been acting in the interest of the population, the population was largely unaware of this. In Kenya there was much more awareness of the mediation process and of the role played by civil society groups. Annan made sure that awareness of the KNDR was raised through reports and conferences. The civil society groups themselves had done less to inform the general population about the role and impact they had in the negotiations, and some groups had been discredited because of their uncoordinated implementation work.

Two additional issues must be raised. First, the types of civil society involvement in the two cases were different. Notably, in Liberia some civil society groups were official delegates in the negotiations, whereas in Kenya none were, yet in both cases they achieved substantive representation. For example, the IRCL, an official delegate, was able to ensure that the Chairman of the transitional government in Liberia did not come from one of the warring factions. In Kenya the KPTJ was able to lay the foundations for Agenda 4 even though it did not participate directly in the negotiations.

Second, an issue not addressed in this paper is the suggestion in the literature that the less democratic the country, the more important the role for civil society actors in the negotiation process (Wanis-St John & Kew 2008, 14; Nilsson 2012, 262). This is understandable, as often the conflict parties have lost all claims to legitimacy. However, plausible though this may sound it would be hard to demonstrate in practice because the less democratic the country, the less likely it has a responsive and effective civil society. Further, at the time of their respective peace agreements, Kenya ranked higher in terms of democracy than Liberia,⁷ yet my finding was that the efforts of civil society groups were more divisive and polarized in Kenya than in Liberia. This shows that the effects of democracy rankings are far from obvious and that hypotheses based on them may therefore be misleading in practice.

⁷ According to Freedom House, which measures civil liberties and political rights on a scale from 1 (most free) to 7 (least free), Kenya scored 3.5 (partly free) in 2008 when the agreement was signed. In Liberia the rating in 2003 when the agreement was signed was 6.0 (not free). See Freedom House (2012).

The present research has shown that civil society groups involved in a mediation process, whether directly or indirectly, can make a positive contribution to some aspects of legitimacy. Primarily, this can lead to a more balanced agreement, such as the inclusion of Agenda 4 in the KNDR in Kenya or the formation of the interim government in Liberia. This suggests there will be *substantive representation* where civil society groups act in the interests of the aggrieved population. I found that *significant representation*, in which I include the types of representation that Pitkin (1967) describes as ‘descriptive’ and ‘symbolic’, was lacking in both cases, albeit to a lesser degree in Kenya, where the mediator was perceived to play an important symbolic role. The final element that makes the mediation process more legitimate in my model of legitimate representation (see Figure 1) is public knowledge of the involvement of civil society groups in the mediation, in other words *accountable representation*. I found more knowledge about the peace agreement in Kenya than in Liberia; indeed, I was surprised how little knowledge Liberians had about the agreement and the role civil society had played, especially since the CPA is often cited as an example of civil society involvement improving legitimacy and having positive repercussions for sustainable peace (Dupuy & Detzel 2007; Hayner 2007; Wanis-St John & Kew 2008, 30; Nilsson 2009).

In both cases the involvement of civil society groups contributed to certain elements of legitimacy. However, both cases also showed that the findings in the literature cited at the beginning of this paper need to be made more nuanced. It was not the inclusion of civil society groups per se that improved the legitimacy of peace negotiations in Liberia and Kenya; rather, it was *who they represented, the grievances they presented and the information they disseminated*. I would argue that these three types of representation are the methods by which civil society groups can promote legitimacy. In neither of the countries I studied were all three types of representation present. Future research must consider how these different types of legitimate representation affect durable peace.

Using my model of legitimate representation to consider the role of civil society groups in mediations in Kenya and Liberia I was able to make a number of observations that can serve as a basis for the following recommendations:

Significant representation:

- Mediators can have a strong symbolic effect on mediation, especially if civil society is partisan and polarized. International mediators should therefore try to include in their team important regional figures who may hold particular legitimacy for the population in the conflict area. A positive example of this was the mediation by the Panel of Eminent African Personalities after the Kenyan post-election violence.
- Mediators should try, if possible, to encourage non-urban grassroots groups to get involved in the proceedings. This will make a wider section of the population feel that they have been represented.
- Mediators should try to raise funds for civil society groups to attend proceedings in a non-official capacity as this is one way they can have a positive impact. Otherwise, as was the case in Liberia, groups will be obliged to raise funds independently in order to take part, which may not always be possible (see also Hayner 2007, 29).
- Mediators should reflect on the criteria they use to decide which civil society groups to invite. If the choice of civil society groups is subject to the wishes of the conflict

parties, mediators should also try to make space for unbiased groups to attend (Hayner 2007, 27; Nilsson 2009). This can improve the overall significant representativeness of civil society groups.

Substantive representation:

- Mediators should encourage official civil society delegates to make inputs in plenary sessions and non-official delegates to suggest which long-term grievances need to be addressed and how this can be done.
- Mediators should encourage civil society participants in negotiations to put pressure on the conflict parties to take the proceedings seriously and act on them in a timely manner. A positive example of this was the encouragement Abubakar gave to civil society members to talk to conflict parties in the Liberian negotiations.
- Mediators should try to take into consideration the political and social polarization of different civil society groups. Just as they give conflict actors an equal voice, they should try to balance sometimes opposing but equally important positions held by civil society.

Accountable representation:

- Mediators should place more emphasis on the legitimacy to be gained from involving civil society actors after an agreement has been signed. They should encourage these actors to communicate their role to the population afterwards. This will also make civil society groups more accountable to the people they claim to represent.

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