



From Pre-Talks to Implementation:

**LESSONS
LEARNED FROM
MEDIATION PROCESSES**



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CMI INTRODUCTION



Crisis Management Initiative (CMI) is a Finnish, independent, non-profit organisation that works to resolve conflict and build sustainable peace across the globe. Our tireless mediation and peacebuilding efforts are based on the strong belief that all conflicts can and should be resolved.

As a private diplomacy organisation, CMI works to prevent and resolve violent conflict by involving all actors relevant to achieving sustainable peace. We do this by supporting regional mediation capacity and skills, by bringing together local actors and facilitating confidence-building dialogues, by strengthening the sustainability of peace through new approaches for conflict prevention, and by rapidly providing flexible mediation support at different stages of the peace process. Over the past years, CMI has built its capacity in peacebuilding and developed partnerships with local and regional actors, including the European Union and the African Union.

Founded in 2000 by President and Nobel Peace Prize Laureate Martti Ahtisaari, CMI has grown significantly in recent years. We now have a team of over 70 professionals dedicated to conflict prevention and resolution, and field offices in several regions of the world, in addition to our offices in Helsinki and Brussels. CMI has recently been recognised internationally as one of the most influential private diplomacy organisations.

The views expressed in this publication are those of the author(s) and do not necessarily reflect the views of Crisis Management Initiative (CMI).



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LIST OF ACRONYMS

AEC	Assessment and Evaluation Commission
AU	African Union
BINUB	United Nations Integrated Office in Burundi
CPA	Comprehensive Peace Agreement between the Government of Sudan and the SPLM/A
CSO	Civil Society Organisation
DPA	Darfur Peace Agreement
ECOWAS	The Economic Community Of West African States
FMLN	Frente Farabundo Martí para la Liberación Nacional
GAM	The Free Aceh Movement, Gerakan Aceh Merdeka
GoS	Government of Sudan
GoSS	Government of South Sudan
GoU	Government of Uganda
HD	Centre for Humanitarian Dialogue
ICC	International Criminal Court
IGAD	Inter-Governmental Authority on Development
LRA	Lord's Resistance Army
LURD	Liberians United for Reconciliation and Democracy
MNLA	National Movement for the Liberation of Azawad
MODEL	Movement for Democracy in Liberia
RUF	Revolutionary United Front
SLM/A	Sudan Liberation Movement/Army
SLPP	Sierra Leone People's Party
SPLM/A	Sudan People's Liberation Movement/Army

LIST OF INTERVIEWEES

The following people were either directly interviewed or otherwise consulted for this publication:

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	Vogt, Margaret Special Representative of the Secretary-General and Head of the United Nations Integrated Peacebuilding Office in the Central African Republic (BINUCA)

FOREWORD



All conflicts can be resolved. These words have been said by many conflict resolution experts - from President Martti Ahtisaari to the UN-Arab League Special Envoy, Lakhdar Brahimi, who recently reiterated this phrase when asked about the future of Syria. At CMI, we share this vision. We firmly believe that solutions can be found to even the most challenging and complex conflicts of today's world. We also believe that peace mediation has an increasingly important role in settling disputes and appeasing conflicts.

In recent years, peace mediation has become a field where more flexible methods and diverse actors are needed to complement the efforts of official state actors. Regional and sub-regional players, in particular, have gained a prominent role. With what is often robust legitimacy and good local knowhow, these regional actors have a unique position in mediating conflicts in their challenging environments. The African Union and ECOWAS, for instance, have gained extensive experience and track records in mediation and they both continue to build their capacities for addressing future conflicts.

Recent years have also seen the recognition of so-called 'private diplomacy' organisations as actors in the field of mediation. Low-profile, non-aligned actors like CMI are

Recent years have also seen the recognition of so-called 'private diplomacy' organisations as actors in the field of mediation.

often considered less threatening by conflict parties and thus have better access to situations where governmental actors cannot work. Such independent actors are nimble and flexible, which gives them the necessary

capacity and readiness to react swiftly to changing situations.

Nonetheless, let us remind ourselves that peace is easier said than done. Regardless of who is mediating, the complex nature of conflicts and mediation processes poses a multitude of challenges. When is the right time to mediate? Who should be involved? Do negotiations need strict deadlines? How detailed should agreements be? What role should a mediator have in the implementation phase? These are just some of the challenges, questions, and dilemmas that mediators need to consider.

Luckily, mediators are rarely alone. Mediators have their teams of experts, who support them in planning and carrying out peace talks. The international community also has an important role in mediation support and capacity-building. In the case of regional and sub-regional actors, the international community must resiliently support their efforts and contribute to building their mediation capacities.

For CMI, this has been a priority for many years. This publication is based on a seminar organised in the framework of our "African Union Mediation Support Capacity" project, which is a prime example of our commitment to support the development of regional actors' mediation capacities. The project, funded by the Finnish Ministry for Foreign Affairs, gives diverse and wide support to the AU's mediation efforts on the

continent. In the years to come, we will continue our work to support the important mediation efforts of regional actors around the world.

To have the best possible mediation support readily available, resources need to be invested in building the capacities of state and non-state actors alike. Mediation methods, tools, and practices also need to be further developed and professionalised. This is why I believe that this publication is extremely timely. By gathering lessons learnt from experienced mediation experts, it collects important insights and knowledge on how to address some of the questions that mediators commonly face.

Information becomes knowledge only when it's shared. Knowledge becomes wisdom when it's implemented. Let us join forces and apply our wisdom for effective peace mediation.

Tuija Talvitie
Executive Director
Crisis Management Initiative

BACKGROUND



Crisis Management Initiative (CMI), together with the AU's Conflict Management Division (CMD), and the African Centre for the Constructive Resolution of Disputes (ACCORD), established in 2009 a joint project called “*AU Mediation Support Capacity Project*”. In this project, CMI has, among other tasks, convened thematic expert meetings on issues that support the AU's efforts in peace mediation. Through these seminars, CMI has supported the creation of an AU roster of mediation experts by fostering the exchange of views and experiences among mediation practitioners, analysts, and academics from regions across the African continent.

This publication is loosely based on a report written on a seminar organised in the framework of the CMI-ACCORD-AU CMD project. The seminar gathered together African mediation experts in Addis Ababa, Ethiopia, on March 28-29, 2012, to discuss different phases of mediation and identify key lessons learnt. The seminar participants brought to the discussion hands-on experience from mediating and providing direct mediation support to several African peace processes, including those in Darfur, Sudan-South Sudan, Kenya, and Ethiopia-Eritrea.

The theoretical framework for the seminar was provided by Dr. Hizkias Assefa, an experienced mediator and professor of conflict studies at the Eastern Mennonite University, who also facilitated the discussions. The two-day seminar included rich conversation on the challenges and opportunities that mediators face when engaged in mediation efforts. Professor Assefa presented a “checklist” of key questions that mediators and their teams need to ask and dilemmas they need to consider throughout mediation processes. Through the sharing of experiences, the high-level participants then complemented this checklist by adding more factors to consider at all stages of mediation - from the pre-talks phase to the negotiations, agreement and implementation. The checklist and lessons learnt gathered at the seminar have served as the basis for this publication.

To support the information gathered at the seminar, interviews were conducted with mediation practitioners in June-September 2012. These interviews complement the previously collected information, collecting and shedding some light on the main lessons learnt of experienced mediation experts.

The first phase of the CMI-ACCORD-AU CMD project ended in 2012. A second, three-year phase was launched in the autumn of 2012. Both phases of the tripartite project have been funded by the Ministry for Foreign Affairs of Finland.



INTRODUCTION



Mediation is a dynamic process. When a mediation process begins, it is impossible to tell what it will look like in the end. Regardless of the mediators' competence, the success of mediation fundamentally depends on how well the warring parties receive and take ownership of the process. In this regard, mediation is a very limited tool. As the old English proverb goes, "You can lead a horse to water, but you can't make it drink." Similarly, a mediator can show belligerents a way out of a conflict, but it is up to the parties to be committed to the process and make way for sustainable peace.

Despite working in incredibly fluid contexts and having to respond to constantly changing situations, are there some common challenges that all mediators face? What should mediators be familiar with and what should they avoid? What makes mediation processes successful? What could future mediation practitioners learn from experienced mediators?

These are some of the questions that this publication wishes to answer. Although each conflict and thereby each mediation process is unique, there are recurring themes and lessons learnt that bear sharing. This publication intends to offer useful insights for anyone involved in mediation processes by gathering experience-based lessons learnt from international mediation practitioners. In addition to these lessons, there are some common factors that all mediators, notwithstanding the conflict they are working on, need to take into account. This publication aims to collect these factors in simple 'checklists' of factors that mediation teams ought to consider. Both the lessons learnt and the factors to consider collated in this report are meant to provide helpful food for thought to support and guide the work of mediators and their teams.

A FEW WORDS OF CAUTION ON THE PUBLICATION'S STRUCTURE, COMPREHENSIVENESS, AND CONTENT

Many brilliant books and articles have been written on mediation. Therefore, this publication does not intend to provide a holistic or fully exhaustive picture of mediation processes. Rather, it gathers some insights and lessons learnt from experienced mediation experts with the intention of sharing them with current and future mediation practitioners.

These lessons merely capture the key insights gathered through several consultations conducted for this publication. Hence, there are many important issues that have not been addressed here. For example, the topic of mandates and their weight has been largely left out of this publication. Moreover, despite their crucial role in successful mediation, gender considerations are not largely addressed here. However, gender equality and addressing gender-based violence (GBV) remain key priorities for CMI, and CMI has produced a Guidance Note on addressing GBV in mediation processes. It should thus be noted that excluding such key themes is not meant to undermine their importance or relevance to mediation.

The lessons also have a slight geographic bias. As this publication was initiated in CMI's Africa Unit and is based on an Africa-focused seminar, many - though not all - of the examples in this report come from different African peace processes.

Moreover, as is evident throughout this publication, there are quite a few long citations. The reason why this publication relies so heavily on direct quotations is that it wishes to bring out the voices of the mediation practitioners as authentically as possible.

In terms of structure, this paper has been divided into four parts that follow the four phases of mediation: the pre-talks, the talks, the agreement, and the implementation phase. Each part consists of two elements. First, a checklist of things to consider is included at the very beginning of each section. Second, these checklists are followed by lists of lessons that have been gathered from internationally-experienced mediation practitioners. These lessons learnt highlight some of the issues brought up in the checklists; that is, not all points included in the checklists are reflected on in the lessons learnt. It should be noted that these four phases are not set in stone and only represent one way of looking at the chronology of complex mediation processes. Nonetheless, we believe that, however artificial, the division of mediation into four phases offers a fresh way to look at lessons learnt shared by mediation experts.

Finally, it should be noted that the views expressed in this publication are those of the authors and do not necessarily reflect the views of Crisis Management Initiative (CMI).

From pre-talks to implementation

The most visible and famed part of mediation is the signing of a peace agreement between parties in conflict. Peace mediation is, however, a more complex series of activities, which includes various phases that both precede and follow the signing of a peace agreement.

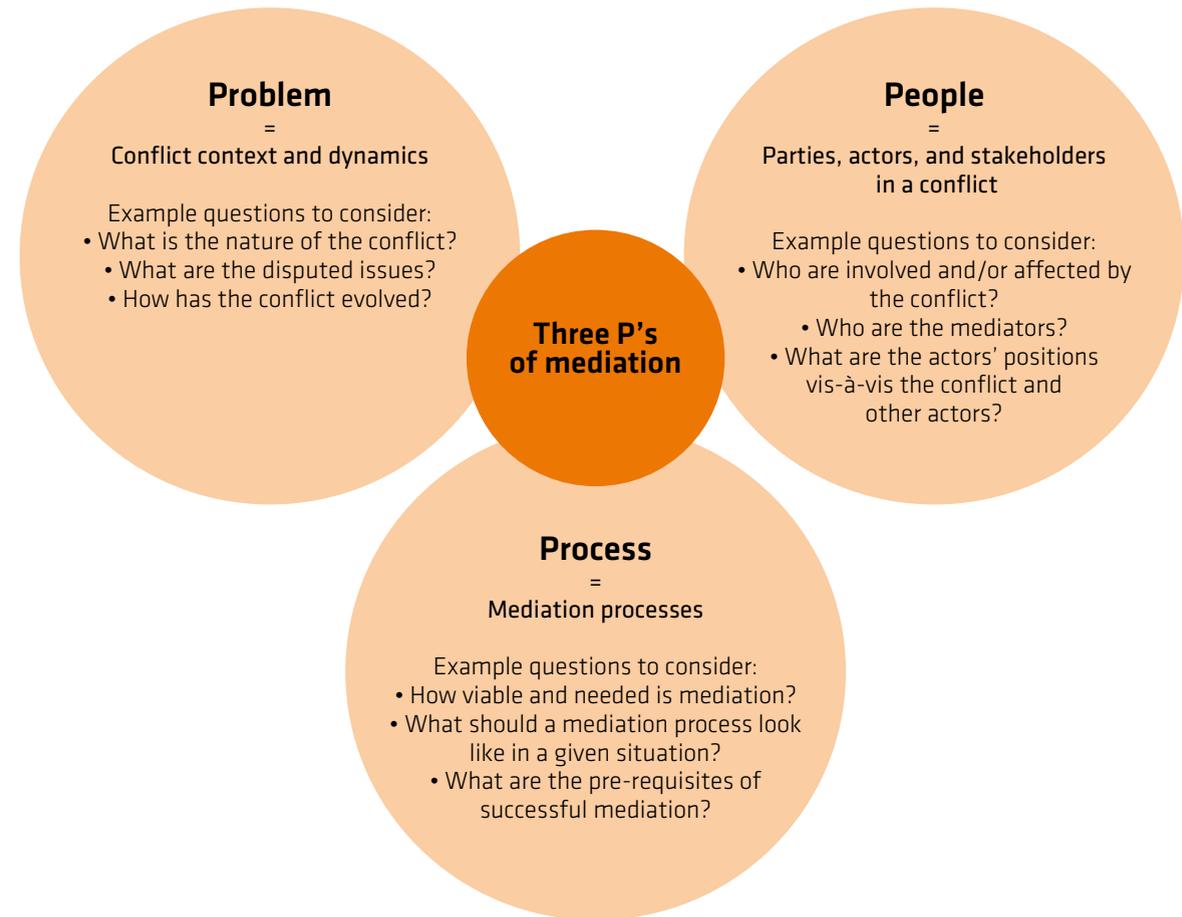
Although each situation is different, all peace processes share some common elements and phases. For the purposes of this report, mediation has been divided into four different phases: *pre-talks, talks, agreement and implementation*.¹ This division is not fixed and the four phases frequently overlap each other. Nonetheless, the division of mediation into these four phases allows for more detailed analysis of the issues and factors that mediators need to take into account in different stages of the process. Each section begins with a brief overview of what constitutes the particular phase in question, which is meant to give the reader an overall idea of the division of mediation into these four artificial phases.

Problem, People, Process

Successful mediation requires a sufficient understanding of the conflict. Among other things, the history, nature, context and relevant stakeholders of the conflict need to be analysed throughout the mediation process. In this report, the types of things mediators and their teams should consider have been categorised in three distinct areas, or the “three P’s of mediation”: *Problem, People, and Process*.²

In general terms, *problem* refers to the conflict’s context and dynamics, calling for an analysis of the conflict’s history, nature, and evolution over time. The area of *people*, in turn, considers the parties involved in and/or affected by the conflict. Finally, *process* entails analysing the mediation process itself. For example, the structure, time frame, inclusivity and the viability of the mediation process need to be carefully thought-out in the *process* area of the three P’s of mediation.

In this report, these three P’s of mediation will serve as the basis for analysing the four phases of the mediation process. It should be noted that the three P’s are fluid concepts and their relevance to each phase varies. For example, as the pre-talks phase is dominated by conflict analysis, research, and identification of core issues, it understandably puts heavy emphasis on the *problem*. In contrast, the talks phase focuses more on actual mediation activities and, therefore, gives more weight to the *process*. Notwithstanding these varying emphases put on the different P’s, the next chapters will use them to draw on concrete cases to analyse lessons learnt in each phase of the mediation process.



I. PRE-TALKS PHASE



“Preparation is critical. Proper background research, analysis, and consultations need to be done before a mediator or a mediation team can effectively take on the challenging task of mediating between warring parties.”

INTRODUCTION TO THE PRE-TALKS PHASE

Participation in mediation should happen on a voluntary basis. Mediation is bound to be unsuccessful if the belligerents who are supposed to participate in the talks do not welcome the mediator or trust the mediation process. Indeed, one of the first challenges that mediators need to tackle is building confidence between the parties and the mediation process.

Preparation is also critical. Proper background research, analysis, and consultations need to be done before a mediator or a mediation team can effectively take on the challenging task of mediating between warring parties. While the extent to which such preparation should be done may vary on a case-by-case basis, it is commonly agreed that poor preparation runs the risk of endangering the mediation process in the long run. Therefore, mediation processes ought to begin well before any talks are held between belligerents. This crucially-important preparatory phase is denominated as the 'pre-talks phase' in this report.

For mediators, the pre-talks phase thus includes not only extensive preparation and gathering of sufficient knowledge on the conflict's nature, context, and history, but also entails building confidence between the parties and the mediation process. It makes sense, then, that this phase is heavily dominated by consulting the conflict parties as well as by conducting analysis, research, and planning. The pre-talks phase calls, on the one hand, for a thorough analysis of the conflict dynamics (including the parties involved in and/or affected by the conflict), and, on the other hand, for working towards creating trust between the parties before the talks can begin.

PRE-TALKS CHECKLIST Factors Analyzed Under the Three P's of Mediation

Problem	People	Process
<ul style="list-style-type: none"> - What is the nature of the conflict? <ul style="list-style-type: none"> • Interstate/intrastate? • Political, territorial, ethnic, religious, resource- based? - What are the disputed issues? <ul style="list-style-type: none"> • Political, territorial, ethnic, religious, resource-based? - What are the sovereignty implications? <ul style="list-style-type: none"> • How receptive are national governments of foreign intervention? • What are the implications of a possible outcome to the conflict vis-à-vis national sovereignty? - History and evolution of the conflict <ul style="list-style-type: none"> • How and when did the conflict begin? • How has the conflict evolved over years? • Is the conflict stagnant, escalating or deescalating? • What is the configuration of power relations? - International factors and context <ul style="list-style-type: none"> • What is the international context? • How do international factors exacerbate/mitigate the conflict? • What is the international legal framework and how does it affect the conflict? • Are there relevant conventions/resolutions put forth by regional or international organizations? • Are there international actors already actively engaged? - Ripeness of conflict <ul style="list-style-type: none"> • How viable is mediation? How receptive are the belligerents of a mediation process? • In what stage is the conflict? Is the conflict at a stalemate? • Is the conflict ripe for resolution? • What is the level of confidence between the parties? What level of confidence is needed to initiate talks? 	<ul style="list-style-type: none"> - Parties <ul style="list-style-type: none"> • Who are the primary, secondary, and third parties? • Are there secondary parties that present themselves as third parties? • What are the parties' internal dynamics? Are there parties within parties? How fragmented/unified are the parties? • How do the parties position themselves vis-à-vis the conflict and other parties? • What are the parties' needs, interests, and concerns? • How powerful are the parties financially, politically, and socially? • What are the external pressures on conflicting parties from the international community? - Mediators <ul style="list-style-type: none"> • Who are the mediators? Which actors identify themselves as mediators and which ones actually mediate? • Are there sole mediators or mediator teams? • How were the mediators selected? • How qualified are the mediators? What is their temperament? Style? Ego? Needs? Readiness to take on the challenge of mediating? • Are there competing mediation initiatives? Do other mediation initiatives support or hamper the process? • How are the mediators perceived by the primary and secondary conflict parties? • Does the mediator have leverage over the parties/conflict situation? What type of parties? • Who mandates the mediation efforts? Is the mediator accountable to someone? What are the external pressures on the mediator(s)? • What are the mediator's interests vis-à-vis the conflict? 	<ul style="list-style-type: none"> - Appropriateness of mediation <ul style="list-style-type: none"> • Are there other competing mediation efforts? How can they be coordinated? • What are the interparty dynamics like? Do parties get along with each other? How can the goodwill and openness between the parties be increased? - Outlining the process <ul style="list-style-type: none"> • What ground rules are set for the talks? • How is the mediator's role clarified to the parties? - Confidence-building <ul style="list-style-type: none"> • Are preliminary bilateral contacts with parties needed? • What information-sharing and communication should take place between the mediator and the 'parties before the talks begin? How is confidentiality assured in pre-talks discussions? • How should the parties be prepared for the negotiations? Who prepares them? • What is the confidence level needed before the talks can begin? How should the mediator go about building confidence between the parties?

**Pre-Talks Lesson Learned #1:
Conflict parties and their interests need to be properly analysed**

Problem	
People	X
Process	

Though it might sound rather obvious, mediation practitioners emphasise that properly identifying and analysing all the parties involved in a conflict is one of the most fundamental parts of the pre-talks phase. As each party differs in the directness of its involvement in the conflict, it is essential to distinguish between parties and, more importantly, analyse their positions, interests, and demands vis-à-vis the conflict and all the other parties.

In the process of identifying primary, secondary and third parties, one must examine the internal dynamics of each party. There is a tendency for parties to present themselves as unified fronts, even if fragmentation and internal tensions exist. At the beginning of the 2012 Tuareg rebellion, for instance, the Malian Tuaregs were often presented as one unified front behind the National Movement for the Liberation of Azawad (MNLA), even though factions already existed within the Tuareg community, most notably the Front for the Liberation of the Azawad (FPA). Each party's subtleties thus need to be carefully analysed to fully grasp the overall dynamics and players of a given conflict.

Although there are many challenges with properly identifying parties and their interests, failing to fully understand their demands can impede and, in some cases, put an end to mediation processes. The latter was, for example, the case in the run-up to the Abidjan Peace Accord of 1996, which was meant to conclude the Sierra Leonean Civil War. Then Minister of Justice, Solomon Berewa, who was actively involved in both the Abidjan and Lome peace processes as the government's representative, reflects on the pitfalls of the Abidjan agreement:

*There was poor preparation from the side of the government. We did not try to understand clearly what the rebels wanted ... We didn't know that the rebels were really determined to share power with the government. They were very keen on being in the government, to share power. In the Abidjan agreement, we didn't include any provision for them to do that. Additionally, they wanted amnesty very badly and we did not give them that...In the case of the Lome Peace Agreement, we really did proper preparation. We found out what the rebels really wanted; we went to Lome prepared to meet the rebels and the rebels were able to articulate what they really wanted.*³

In Berewa's view, analysing the interests and demands of the Revolutionary United Front (RUF) and other rebel groups in Sierra Leone would have improved the chances of the Abidjan Accord in bringing about an end to the civil war. His assertion that the government of Sierra Leone learnt from the mistakes of the Abidjan Peace Accords and put more effort into understanding the demands of the rebels before going to the ultimately successful 1999 negotiations in Togo is, therefore, a particularly interesting example of the need to analyse conflict parties' demands already in the pre-talks phase.

Furthermore, in analysing the parties and their position vis-à-vis the conflict, mediators must look at their underlying interests and avoid superficial analysis par-

ticularly when it comes to self-declared mediators. The mediation practitioners who attended the CMI-organised seminar from March 28-29, 2012 in Addis Ababa noted that there are often actors who present themselves as mediators or third parties but are, in fact, secondary parties with several interests in the conflict. Stakeholders can often co-opt the language of mediation to disguise their interests in the outcome of the conflict. Using the Sudan-South Sudan border conflict as an example, Kenya could potentially become a secondary party acting like a third party. The President of Kenya, Mwai Kibaki, has suggested that his country could mediate between South Sudan and Sudan, which implies that Kenya is a third party in the border conflict. However, as a neighbouring country with plans to build oil pipelines from South Sudan, Kenya is hardly an outsider party without direct interests in the outcome of the conflict. Therefore, although a difficult task, it is always important to carefully tell first, secondary, and third parties apart.

Moreover, often what seem like benign parties might, in fact, act out of self-interest or in bad faith. When dealing with intra-state conflicts, in particular, the state or the ruling party may well order or call for peace talks merely to increase their own legitimacy and gain more international support. This was the concern with the 2008 Central African Republic pre-talks dialogue after the country's two 1998 and 2003 failed attempts to develop a sustainable path for national reconciliation. The talks between the ruling government, the opposition, and the country's rebel groups were initiated by President François Bozizé, who took great ownership over the process. He pushed for the inclusion of diverse actors in the talks, while in fact around 80 per cent of the people around the negotiating table ended up being either directly or indirectly associated with the government.⁴

Though Bozizé's call for the dialogue and the inclusion of civil society could have been considered a candid intent to reach an agreement, it more accurately resembled "window-dressing" or exploiting the talks to gain more domestic and international support.⁵ Therefore, mediation practitioners emphasise the need to always carefully analyse the underlying intentions of all parties involved in peace talks.

How should one go about analysing the parties' needs, then? Traditional desk research on the conflict's background and context needs to be done, but by far the most significant way of gathering information about the parties, their internal dynamics, and their needs is talking with them and other relevant actors. It is often helpful for a mediator to meet with conflict parties and other relevant actors informally to talk about the conflict in confidence. Only through such informal research can the mediator better grasp the finer underlying interests and demands of each party, as CMI's Adviser Col. Faye asserts:

*You must talk and converse casually with the parties and ask them for their positions on disputed issues. Talk to them about the conflict in general. You will then be able to assess what are their interests and what are the parties' standpoints, and assess if power sharing and negotiations are feasible. Such information you can only get by talking with the parties.*⁶

There are, indeed, several approaches to acquiring informal information; mediation practitioners employ techniques ranging from casual meetings and conversations to arranging so-called ‘palaver huts’ (commonly used in Liberia, for instance) and larger sessions between community stakeholders. While desk research can give mediators and their teams valuable background information, informal consultations and talks with parties can give indispensable and timely insights into the parties’ internal dynamics and their interest vis-à-vis the conflict. Such insights cannot be gathered without talking with the parties, which is why mediation practitioners underline the importance of informal talks in the pre-negotiations phase. By consulting informally not only the direct conflict parties but also community members, civil society representatives and other relevant stakeholders, the mediation team can better prepare for the negotiations process.

Pre-Talks Lesson Learned #2: The dilemma of having self-interested mediators: advantages and disadvantages

Problem	
People	X
Process	

While it is important to analyse warring parties’ demands and roles in a conflict, it is just as important to understand mediators’ background and political interests. Though neutrality is an adjective often associated with mediators, it is rare for mediators to not have any interest in the outcome of the peace process.

In some cases, the mediator’s own political agenda can be harmful and impede the process. This is especially the case if the mediator is geographically close to the process. “Local players [as mediators] can be spoilers because they have interests,” Lakhdar Brahimi asserts and continues, “To put it very, very bluntly, sometimes these players see that interest in the conflict, not in its solution.”⁷ In retrospect, the 2008 engagement of Muammar Gaddafi in the persisting conflicts between the Tuaregs and the Malian and

the Nigerien governments through his Gaddafi International Charity and Development Foundation is a fitting example of how the mediator’s own political agenda can be problematic. By getting involved in solving the conflict, Gaddafi was able to fortify his presence and authority in the region. In

other words, rather than acting out of a genuine interest to stop the fighting, Gaddafi used the conflicts to his own benefit.⁸ As the Tuareg rebellion of 2012 the MNLA demonstrate, the Gaddafi-led peace talks in Northern Mali and Niger failed to bring about sustainable stability in the region. Therefore, it is important to keep in mind that sometimes a self-interested mediator may use the conflict only to his/her own benefit.

Nonetheless, a self-interested mediator who has interests in the outcome does not always impede the process. In fact, such self-interests can make mediators more effective and committed to the overall process. There are several advantages to having so-called ‘insider mediators’ coming from the local community, as Emmanuel Bombande, the Executive Director of the West Africa Network for Peacebuilding (WANEP), noted during the April 25, 2012, CMI-European Parliament Seminar “Regional Actors as Vectors of Peace”:

Insider mediators remain after the agreement; they will be there long time after the conflict.

They [insider mediators] are committed to the outcome of mediation processes. They care about implementation and delivery. They are not mediators just because they want to be involved but because they truly care about the outcome. Insider mediators remain after the agreement; they will be there long time after the conflict.⁹

The Juba Negotiations between the Government of Uganda (GoU) and the Lord’s Resistance Army (LRA) offer an interesting example of a self-interested mediator. The vice-president of the Government of South Sudan (GoSS), Riek Machar, became involved in the process as the chief mediator because GoSS had a clear interest in eliminating the security threat posed by the LRA in the region, including in South Sudan. The South Sudanese Acholi groups, in particular, had pressurised the GoSS to address the deathly conflict in Northern Uganda. Therefore, in the Juba talks, the mediator’s direct interest in the outcome of the Northern Ugandan peace process was not hampering but, rather, conducive to the process:

The members of the GoSS, and Riek Machar in particular, were suitable mediators in the Northern Ugandan conflict for four main reasons: first, the GoSS had a strong self-interest in achieving peace between the GoU and the LRA in order to stabilize South Sudan; second, as an important regional actor, the SPLM brought political and military leverage to the table; third, the GoSS was not obliged to enforce ICC arrest warrants because Sudan has not ratified the Rome Statute; and fourth, the GoSS was an acceptable intermediary to both parties.¹⁰

It is clear, then, that the mediator’s interests in the outcome of the conflict can have both positive and negative effects. Mediation practitioners further stress that mediators who look neutral are unlikely to be that. The United Nations, for instance, is often considered an impartial broker, even though the interests of individual member states are usually reflected in the organisation’s agenda. Therefore, a proper analysis of the mediator’s as well as the conflict parties’ interests vis-à-vis the conflict and other parties must always be carried out in the pre-talks phase, for it contributes to more successful and sustainable peace processes. Such analysis should also feed into the process of deciding whom to include in the actual negotiations. These implications on the inclusivity of the peace talks will be further analysed in the “talks phase” section of this publication.

Pre-Talks Lesson Learned #3: Assure support from the international community before mediating

Problem	
People	X
Process	

It is clear that in conflict situations the parties - not the international community - must make peace. Without the commitment of the belligerents to cease hostilities and move towards peaceful coexistence, mediation efforts are likely to be in vain. Key international powers do, however, have a significant role in peace talks. In fact, mediation practitioners emphasise that one of the first things mediators should do is to assure that their mediation initiative and, more importantly, its foreseeable out-

come have the support of the international community. It is particularly important to get the backing - be it explicit or implicit - of the five permanent members of the UN Security Council. President Martti Ahtisaari accounts for the importance of their support in peace mediation in today's world:

Let us consider a hypothetical situation. If I had been asked to take on the task of representing the UN Secretary-General and the Arab League in Syria, I would have liked to carry out my own fact-finding mission. Too often the fact-finding is done after one has accepted the task. Before you accept a position, you must make sure you have the support of all the five permanent members. That is something absolutely necessary. In a case like Syria, you cannot achieve anything without the support of all the members. You have to first find out what types of solutions are available. If the permanent five members cannot find consensus, then there is no point in the mediator wasting his or her time. If you don't have the support of the international protagonists, then your mediation efforts are likely to be in vain.¹¹

It is therefore imperative that mediators begin with not only preliminary analysis of the conflict situation but also the international context and reactions of the international community to an anticipatable mediated solution. The willingness of the international community to fully support a mediation process should influence the mediation process and the approach a mediator ought to take towards the process.

**Pre-Talks Lesson Learned #4: When to mediate?
Challenges with timing mediation processes**

Problem	X
People	
Process	X

For a mediation process to be effective, the belligerents must be receptive to the process and willing to participate in it. Such viability of mediation is often referred to as 'the ripeness of the conflict for resolution'. The notion, coined and largely developed by I. William Zartman¹², is founded on the idea that a conflict is suitable for mediation when the warring parties perceive their status quo as a mutually hurting stalemate. In the words of Zartman, "When the parties find themselves locked in a conflict from which they cannot escalate to victory and this deadlock is painful to both of them (although not necessarily in equal degree or for the same reasons), they seek an alternative policy."¹³ Foes are more likely to accept an outside mediator and come to an agreement with each other if they have reached an impasse that does not benefit them. In that sense, the concept of ripeness is rudimentarily based on cost-benefit analysis. A conflict has reached a mutually hurting stalemate when, as Álvaro de Soto puts it, "the opposing parties perceive that the cost of coming to an agreement has become less than the cost of pursuing the conflict."¹⁴ Moreover, for the conflict to be 'ripe' for resolution, the parties need to feel that there is a way out through the mediation process.

Though oft-debated and somewhat contentious, the notion of 'ripeness' continues to be relevant to mediation and conflict management. In many cases, as mediation experts point out, a mutually hurting stalemate does make conflicts more propitious towards a mediated solution. However, as the following lessons learnt demonstrate,

also unripe conflicts must be mediated and, in fact, the very idea of a conflict's ripeness can be manipulated. Acknowledging both the advantages and limitations of the term, it should be noted that the following pages use the concept of ripeness to merely analyse the difficult task of properly timing a mediation process and do not necessarily take a stance on the concept's accuracy.

Bad timing: challenges with mediating too early or too late

When a conflict is not 'ripe for resolution', a mediation initiative often - though not always - runs the risk of coming to a premature end. If one of the warring parties sees pursuing the conflict as a more viable option than seeking peace, a mediated agreement is unlikely to efficaciously end the conflict.

This was the case with the Sierra Leonean Civil War and the Abidjan Peace Accord. The accord was signed between the Sierra Leone People's Party (SLPP) and the Revolutionary United Front (RUF) on November 20, 1996, but failed to bring about an end to the deadly fighting. The conflict was not ripe for mediation, because at the time one of the parties - the RUF - did not consider military victory unfeasible. Therefore, as the former vice-president of Sierra Leone, Solomon Berewa, explains from the government side, the hostilities were resumed by the RUF:

We [the government's representatives] went to the negotiations under the false assumption that they [the rebels] were now prepared to lay down their arms and they would agree to the peace agreement. In fact, we found out that we were wrong. They were not yet prepared or ready for negotiations; they were determined to continue the conflict.¹⁵

Despite the Abidjan Peace Accord of 1996, the Sierra Leonean civil war was prolonged and the fighting between the government forces and the rebels resumed. The Abidjan Peace Accord goes to demonstrate how a conflict might not be ripe for mediation if only one of the parties considers the status quo a mutually hurting stalemate.

The ongoing Syrian conflict also speaks for the difficulty of mediating when a conflict is not ripe for resolution. When the Kofi Annan six-point plan for Syria was introduced in February 2012, the conflicting parties were yet to reach a mutually hurting stalemate. Both sides - the government of President Bashar al-Assad and the Syrian opposition - were determined to continue the fighting and did not perceive the Annan-led negotiations as the only way out of the conflict. Apart from the challenges with mediating unripe conflicts, the Syrian example also exhibits the international community's important role in ripening a conflict. Moreover, the case raises the question of ethics and whether one should try to mediate even if the prospects are not favourable. These dimensions of the international community's role and ethics are discussed further in the following lesson learnt on how ripeness can be manipulated.

You could almost pinpoint the time of the day at which the conclusion became inevitable and the conflict was ripe.

A mediated resolution is also unlikely to succeed if the warring parties judge their current situation to be bearable. The Baker Plans of the early 2000s exemplify this concept that a mediation process is likely to fail if the parties' cost of adhering to a

peace agreement is greater than pursuing the conflict. The Moroccan armed forces and the Frente Polisario liberation movement had engaged in a violent conflict over the Western Sahara since Spain withdrew from the area in 1975. James Baker, the 1997-2005 UN secretary-general's personal envoy for Western Sahara, produced two peace agreements - 2001's Baker Plan I and Baker Plan II in 2003 - in order to appease the conflict. While Baker Plan I was rejected by the Frente Polisario, Morocco in turn refused to sign Baker Plan II. In addition to not having included the warring parties in the drafting process, the Baker Plans failed fundamentally because both parties were determined to continue the conflict. Although people were suffering and the conflict posed costs to Morocco, the human and financial costs were not high enough for the parties to voluntarily commit themselves to a peace process. This acceptance of the current situation extends also beyond the direct primary parties, Frente Polisario and Morocco. As James Baker's successor Peter van Walsum observes, "A number of states with a potential role in the peace process see the status quo as a 'tolerable solution', which spares them the necessity of taking sides in the conflict."¹⁶ In other words, even a deathly and prolonged conflict can be unripe for resolution if both sides deem their situation bearable, like in the case of Western Sahara.

Benefits of properly timing mediation efforts

If a conflict has reached a mutually hurting stalemate and the warring parties see a way out through negotiations, the prospects for a mediation intervention are good. As mediation experts point out, mediating when a conflict is 'ripe' for resolution does indeed increase the chances of success.

The UN mediation process at the end of the Salvadoran Civil War of 1979-1992 is often considered a textbook example of this. The conflict, which resulted in over seventy thousand deaths, reached its mutually hurting stalemate in November 1989, when the rebel group FMLN's (Frente Farabundo Martí para la Liberación Nacional) general offensive failed to remove the ruling government. The FMLN was able to take control of all major cities of El Salvador but was unable to spark a popular insurgency. Álvaro de Soto, then the UN Secretary-General's Personal Representative for the Central American Peace Process and responsible for the UN's mediation efforts in El Salvador, describes the ripening of the conflict during the November 1989 offense, also known as the 'ofensiva hasta el tope':

They [the FMLN rebels] realised at that point that they could not take power by the force of arms - there was no military solution for them. At the same time, the government panicked and committed a couple of acts of desperation, including the murder of the Jesuit priests at the Central American University ... The November 1989 offensive made the government and the Salvadoran elites come to the conclusion that they could not defeat the guerrillas militarily ... That was the mutually hurting stalemate, the moment of ripeness. You could almost pinpoint the time of the day at which the conclusion became inevitable and the conflict was ripe.¹⁷

The conflict had reached an impasse, in which both parties had to analyse the costs and benefits of pursuing the conflict as opposed to seeking a peace agreement. As the civil war was both deathly and costly, the FMLN and the Salvadoran govern-

ment favoured the idea of beginning a mediation process to end the conflict. This situation made the UN-led mediation process viable and gave a strong footing to the peace process that ended in the successful signing of the Peace Agreement on January 16, 1992, at the Chapultepec Castle in Mexico City.

In the case of the Sierra Leonean civil war, the conflict became 'ripe' for resolution in the run-up to the Lomé Peace Accord. After the unsuccessful 1996 Abidjan talks, another peace agreement was signed in Lomé, Togo, on July 7, 1999, which finally paved the way for officially declaring an end to the eleven-year civil war in January of 2002. By 1999, the warring parties had come to realise that they were not going to win the war militarily. The mutually hurting stalemate was brought about by the prolonged fighting and culminated in the invasion of Freetown. As several Sierra Leoneans involved in the talks point out, the conflict had ripened and reached an impasse:

"Neither the government nor the rebels were going to achieve a military victory. It dawned on them." Bishop Biguzzi, Bishop Emeritus, Makeni District¹⁸

"The country was stuck. The military had accepted that they were not capable of resolving the conflict." W Yasmin Jusu-Sheriff, Former president of Mano River Women's Peace Network Sierra Leone.¹⁹

"What led to the Lomé Peace agreement particularly was the invasion of Freetown. We were all hiding under our beds like rats." Solomon Berewa, former vice-president of Sierra Leone.²⁰

In general, negotiations are bound to be more successful if the conflict has reached a high level of 'ripeness'. That is, the parties' willingness to end the conflict and perception of the mediation process as a 'way out' make a mediated resolution more attainable. Nonetheless, as discussed in the following lesson learnt, there are situations in which a mediation intervention is necessary and inevitable before the conflict is fully 'ripe' for resolution.

Pre-Talks Lesson Learned #5: Manipulating the conflict to make it more propitious towards a mediated solution

Problem	X
People	
Process	X

Naturally, there are often conflicts that arise and need to be addressed even if they are not fully ready or 'ripe' for resolution. It is then the challenge of the mediator, his/her team, and the international community to offer carrots and sticks in order to make the conflict more propitious towards a mediated solution.

One strategy a mediator can employ to manipulate a conflict is to use the international community to bring about a stalemate. The role of an international manipulator is delicate and precarious but can at times effectively make the warring parties accept the idea of a mediated solution. "US massive aid incentives to Israel and Egypt to negotiate a second Sinai withdrawal in 1975, NATO bombing of Serb positions in

"The parties' willingness to end the conflict and perception of the mediation process as a 'way out' make a mediated resolution more attainable"

Bosnia in 1995 to create a hurting stalemate, or American arming of Israel during the October war in 1973 or of Morocco (after two years of moratorium) in 1981 to keep those parties in the conflict, respectively,” Zartman argues, are all examples of an international actor manipulating the conflict so as to bring about a stalemate.²¹ More recently, the international community could potentially have a major role in ripening the Syrian conflict in order to pave the way for a mediation process. As several mediation experts argue, the disagreement in the UN Security Council over resolutions on Syria hindered the success of the Kofi Annan six-point peace plan. At the same time, by taking a firm stance on resolving the conflict, the Security Council could contribute to ripening the conflict for a mediated resolution.

Apart from using carrots and sticks, a rather dangerous and ethically questionable way of ripening a conflict is to let it mature on its own. The idea is that if warring parties

“I don’t think that without the natural disaster we would have been able to conclude the talks so fast. The tsunami created a sense of urgency among the parties”.

continue to fight long enough, they will eventually acknowledge the mutually hurting stalemate and accept a mediation process. CMI’s Adviser Colonel Mbaye Faye, former Director of Security Sector Reform at the UN Integrated Office in Burundi (BINUB) and member of the UN Mediation Support Unit’s Standby Team, asserts that in the aftermath of the 1993 Arusha Accords (which aimed to end the Rwandan Civil War), the mediation team was able to reach ceasefire agreements with rebel groups not included in the accord after the fighting had been prolonged:

*The fighting continued, and the parties were eventually worn out. Each of the parties recognised that they could not win the war. ... Sometimes you need to prolong the conflict to make all the parties realise that military victory is not possible, that even winning all would not be profitable.*²²

Often, however, letting the conflict continue will result in more deaths and human suffering, which is why the strategy of prolonging the conflict is dangerous and risky. Consequently, at times a mediation process is imperative and very much needed even if the conflict is not “ripe for resolution” in the conventional sense of the concept. In the case of the Sierra Leonean Civil War, for instance, the death toll and human suffering were increasing at terrifying rates after the failure of the Abidjan Peace Accords of 1996 and there was a strong desire to end the war as soon as possible. Due to the precarious situation, the government was willing to make greater concessions in order to reach an agreement with the rebels, as the government’s Solomon Berewa explains:

The nation was really suffering and people were suffering, so our main concern was to put an end to the conflict ... By giving them [the rebels] amnesty and power within the country, we thought we could ensure that the rebels lay down their arms and live more peacefully. Quite frankly, we were not concerned with the parties’ legitimacy at the time. We knew the rebels had done unjustifiable things, but we needed to end the conflict then and there, because we knew that the rebels were more determined to fight than the government. Had we not ended the war then and

*there, there would have been more destruction and more killings of people. That was our main concern.*²³

A rapid change in the surrounding socioeconomic or humanitarian environment can also contribute to ripening a conflict. This was the case in the 2005 President Martti Ahtisaari and CMI-led peace talks between the Indonesian government and the Free Aceh Movement (GAM). The unprecedentedly tragic 2004 Indian Ocean earthquake, which killed around 170,000 Indonesians, occurred just before the talks were scheduled to begin. The disastrous event not only made the belligerents more eager to find a mediated solution but also brought more international focus on the ongoing conflict, as CMI’s Head of Black Sea and Central Asia, Meeri-Maria Jaarva, notes:

*The tsunami was such a big tragedy for Aceh, so it made GAM more willing to begin talks with the government. Also within the government, apart from the President and the Vice-President, support for the peace talks was not extensive, but the tsunami spread the support within the government. The tsunami also affected the willingness of the international community to get engaged; particularly in the case of the EU, the tsunami made Aceh more of a priority for the EU, even though it normally focuses on its own neighbourhood ... The tsunami also had an impact on the length of the peace talks. I don’t think that without the natural disaster we would have been able to conclude the talks so fast. The tsunami created a sense of urgency among the parties.*²⁴

The financial support of the international community in the aftermath of the natural disaster also functioned as an incentive for the warring sides, particularly the GAM, to begin peace talks. “The international community donated generous sums of money to the reconstruction of Aceh,” President Ahtisaari points out, “Both sides realised that if the fighting did not end, the money could not be used; It helped us and we were able to conclude the talks in less than six months.”²⁵ Therefore, the Aceh example shows that at times a rapid change in a conflict’s surrounding environment can, in a sense, ripen the conflict towards a mediation process.

For me it is important that the negotiating parties know who I am, what I stand for, and where I draw the red lines.

When agreements are mediated in situations where the conflict is not necessarily ripe for resolution, it is important to properly identify the nature of the agreement. If the parties are not fully committed to the process, the agreement is likely to look more like a ceasefire agreement or an agreement to negotiate further. “Sometimes such haste [to conclude talks] is unavoidable simply to stop the fighting and to prevent the slaughter of thousands or tens of thousands,” Lakhdar Brahimi and Salman Ahmed assert, pointing out that “the sin in such instances is to treat agreements borne out of such haste as conclusive and comprehensive, rather than for what they are, namely elaborate ceasefire agreements or interim political arrangements.”²⁶ Therefore, notwithstanding when the mediation process is initiated, mediators need to be aware of the state of ripeness and adjust their behaviour and strategies accordingly.

**Pre-Talks Lesson Learned #6:
Honesty as a mechanism for pre-talks confidence-building²⁷**

Problem	
People	X
Process	X

“The first victim of a conflict is confidence,” notes CMI’s Adviser Col. Mbaye Faye on how mediation processes typically take place in situations where mistrust, uncertainty, and suspicion prevail.²⁸ Parties who have been at war with each other for a very long time - in some cases for decades - are commonly unwilling to sit around the same table with their opponents. Moreover, years of conflict and often years of failed attempts to mediate a solution have sometimes made the warring parties wary of new peace talks. Therefore, building confidence not only between warring parties but also between the parties and the mediation process itself is of high importance in the early stages of the pre-talks phase.

Before the formal negotiations can begin, the mediator’s first major challenge is to build the parties’ trust in him/her and the mediation process. If the parties do not consider the mediation process a sincere initiative that is there to fairly solve the problem, they are unlikely to participate in the peace talks or adhere to the brokered peace agreement. There are a few things that mediation experts recommend a mediator can do to gain the warring parties’ trust and support for the peace negotiations. First and foremost, mediators should be honest and open about their mandate and agenda when talking to the parties and inviting them to peace talks. However, being honest and open does not necessarily mean being neutral; mediators should, in fact, make their limits and principles clear to the parties. As President and Nobel Peace Laureate Martti Ahtisaari comments on neutrality, remaining honest rather than fully neutral is more important:

In mediation, you should not be neutral. If you say you are neutral, you are saying that you will come to the negotiations to listen to the parties and their views. That kind of a process can take many years, if not decades, because no one is taking the process further. My experience and practice have thus made me sensitive towards the terms “impartiality” and “neutrality.” I much prefer the term “honest broker.” A mediator must know the outcome and, to some extent, explain it to the parties. For me, it is important that the negotiating parties know who I am, what I stand for, and where I draw the red lines. This way I can honestly and openly work with each party towards finding a solution to the conflict.²⁹

Mediators are often given their mandate by an international organisation or a government, so it is important for them to reveal their ties and convince the parties that they are truly an honest broker. “A good mediator depends primarily on its acceptability by the parties,” AU Special Envoy for Guinea, Ibrahima Fall, points out, “A mediator must be neutral and that neutrality should lead to treating the parties on an equal footing, even if the mediator’s inside judgement leads him to believe that one party is right 80% and the other 20%, he has no right to show this imbalance in the mediation between the parties.”³⁰ The process will benefit from the mediator’s transparency later on in the negotiation phase:

The mediator can say a great deal and be heard when (s)he is accepted as an impartial and honest broker. An impartial and honest broker is seen to be - and is - able to work with everyone who can contribute to the peace, without creating the impression that (s)he is doing so on behalf of or actively against any one of them, or in pursuit of any agenda other than to help all the people of the country concerned attain a sustainable peace.³¹

Unquestionably, the honesty of the mediator is not only important in the early stages when the warring parties are being consulted and invited to the talks, but is essential during the talks as well. In fact, as discussed in the subsequent section on the talks phase, being honest regarding the overall goals of the peace talks is imperative and often very conducive to the process.

**Pre-Talks Lesson Learned #7:
Setting a clear framework to build confidence**

Problem	
People	
Process	X

Another way to build confidence between the parties (and the parties and the mediator) before the negotiations is to create a clear framework for the mediation process. That is, agreeing on the overall framework of the process before the actual talks begin can eliminate excess suspicion and build the parties’ trust in the mediator and the negotiations.

Getting the parties to agree on some rules of the game before commencing the actual talks is often propitious for confidence-building. By establishing the roles of the mediator and the parties as well as the basic rules for the future negotiations, a clear framework builds trust not only between the parties but also between them and the overall mediation process. Such framework was produced in the UN-led El Salvador talks between the FLMN and the Salvadoran government. As Álvaro de Soto points out, the process of creating a framework in the pre-talks phase functioned as a confidence-building mechanism that supported the negotiations:

I think the most important [lesson learned for the pre-talks phase] has been to establish clarity as to what the rules of the game are going to be ... In the case of El Salvador, even though by the end of January 1990 we had a formal request by both sides for the UN to take over, I nevertheless set about a shuttle between the government and the guerrillas in order to set up a framework as to how the negotiations were going to take place ... It actually helped a lot in many ways by eliminating all possible confusion and by establishing clearly what the UN could do and what were the parameters in which we could operate.³²

The framework for the Salvadoran peace talks was made official in the Geneva Agreement of April 4, 1990. Setting the rules of the game can indeed function as an effective confidence-building exercise in the pre-talks phase. Nonetheless, having clear frameworks and parameters for the negotiations should not concern the pre-talks phase only; instead, as discussed in the subsequent section on the talks phase, setting

clear ground rules and having a target goal for the process is important throughout the negotiations.

**Pre-Talks Lesson Learned #8:
Informal shuttling in order to build confidence**

Problem	
People	X
Process	X

Shuttling between the to-be negotiating parties is a rather common and effective way to build confidence between the parties before the formal negotiations commence. By talking to the belligerents informally, a mediator can show how committed he/she is to the process and persuade the parties to genuinely participate in the talks.

This was seen, for instance, in the 2005 North-South Sudan Comprehensive Peace Agreement (CPA), which was preceded by the Nuba Mountains ceasefire agreement in 2002. In the run-up to the ceasefire agreement, the US-Swiss team leading the talks shuttled between the Government of Sudan (GoS) and the SPLM/A, organising parallel talks with the two parties separately. This shuttling helped to demonstrate to the parties that peace talks were viable and contributed to building confidence before the IGAD-led process that would eventually lead to the Comprehensive Peace Agreement.³³ Thus, talking to the parties and shuttling between them prior to the formal talks is a valuable confidence-building technique that also provides the mediator more knowledge on the parties' finer demands and interests vis-à-vis the conflict.

To build the parties' trust in the mediator and the talks process, mediators often chat with the parties casually in informal settings. The 2008 Kenyan talks, led by the Kofi Annan-headed Panel of Eminent African Personalities, provide a particularly interesting example. Before the official talks, Kofi Annan brought the two opposing political leaders, Mwai Kibaki and Raila Odinga, in front of the media. The press meeting was delayed by an hour, allowing Annan to talk with the rivals more informally:

One of my first acts on the second day of my arrival [in Kenya] was to get the two leaders together in public for them to shake hands, and send a message to the people - to those groups that you think are going to kill each other: 'Here are the leaders shaking hands, so hold your horses.' ... [while waiting for the photo to be taken] I talked to them about conflicts and what's going on in Africa and trying to get them to engage in the situation in the country, and the need for them to act, but they were not ready, so I didn't push. So I talked to them about other things. Because it's like trying to arrange a marriage before they are ready.³⁴

As Kofi Annan's example shows, the gesture of talking with warring parties can build confidence even if the conflict in questions is not discussed. Kibaki and Odinga's handshake in front of the press was also a way to build the leaders' constituencies' confidence in the peace process. In other words, by bringing the leaders in public together, Annan was able to calm some of the ongoing violence and show the public that the talks were starting. Therefore, at times, it is not only important to build confidence between the parties and the mediator, but also between the public at large and the mediation process. Indeed, for the outcomes of the talks to be sustainable, the public's support is crucially needed.

**Pre-Talks Lesson Learned #9:
Desirability and feasibility of pre-talks confidence-building**

Problem	
People	
Process	X

Although confidence-building is important in the pre-talks phase, it is not always possible to build such trust and, in many cases, confidence-building is considered a part of the actual negotiation process. Indeed, in the pre-talks phase, it is not always desirable to reach for a high level of confidence between the parties at the expense of prolonging the commencement of the negotiations.

Trust should be built enough so that warring parties agree to participate in the talks, but no further agreements need to be necessarily made prior to the inauguration of the official talks. For example, it is often not feasible to reach a ceasefire agreement before the talks begin because usually at least one of the parties will want to keep up arms until a binding agreement is signed. Especially, in conflicts that occur within the boundaries of a single state, "it is rarely useful to expect that parties will cease armed pressure in advance of negotiated arrangements. In the case of the Salvadoran civil war, for instance, the UN-led team was able to convince the insurgents to give a unilateral declaration of cessation of hostilities, but no binding ceasefire agreement was signed before the talks began.

In conclusion, confidence-building - be it through honesty, informal shuttling, or setting of clear frameworks - is a vital part of the pre-talks phase and it should encompass building trust not just between the parties but between the parties and the mediator as well. At the same time, however, it is important to recognise that pre-talks confidence-building ought to aim at initiating the talks rather than solving key issues that are part of the negotiation process itself. Therefore, one must not rely too heavily on ending all hostilities and solving undisputed issues prior to the formal negotiations - after all, it is the fundamental role of the negotiations to solve those issues.

II. TALKS PHASE



“When one thinks of mediation, they often picture belligerents sitting around a table with the mediator sitting in the middle. While the stereotypic image of parties sitting around a table is not completely incorrect, peace talks are complex and vary a great deal.”

INTRODUCTION TO THE TALKS PHASE

When one thinks of mediation, they often picture belligerents sitting around a table with the mediator sitting in the middle. This image refers to probably the most famed part of mediation - the actual peace talks. While the stereotypic image of parties sitting around a table is not completely incorrect, peace talks are complex and vary a great deal. Their level can range from official track 1 talks to talks with non-state actors and marginalised groups. Some peace talks take several years, while others, like the CMI-led 2005 Aceh talks, have been completed in just a few months. Also the way the talks are structured varies from one mediation process to another. Nonetheless, the negotiations organised between warring parties is what is referred to as the so-called 'talks phase' in this publication.

During the talks phase, different forms of dialogue - from shuttle-diplomacy to proximity and direct talks - are often facilitated by mediators and their teams. There are important elements, such as logistics, agenda-setting and technical expertise, that all need to be carefully considered in this phase. Questions of inclusivity and formality must also be addressed in this phase.

TALKS PHASE CHECKLIST

Factors Analyzed Under the Three P's of Mediation

Problem	People	Process
<ul style="list-style-type: none"> - Context analysis <ul style="list-style-type: none"> • Are there changes in the context that affect the conflict? • In what ways can the initial conflict analysis be updated? 	<ul style="list-style-type: none"> - Who participates in the talks? <ul style="list-style-type: none"> • Leaders of parties, deputies or lower level representatives? • Who else participates? Civil society, marginalised groups, experts, academics? • Do the participants have a clear mandate to represent their parties? • Is there a need to bring outsiders to the talks to share their experiences? - Involvement of different tracks? <ul style="list-style-type: none"> • Are there different tracks involved? How can these tracks be coordinated? • Do these tracks have a mandate? - How to deal with spoilers? <ul style="list-style-type: none"> • Should spoilers be brought into discussions? Can spoilers be dealt with outside the mediation process? • Should a group of friends of mediations be established? What type of support could it bring? 	<ul style="list-style-type: none"> - Setting the stage and ambiance to the talks <ul style="list-style-type: none"> • What are the interparty dynamics like? Do parties get along with each other? How can the goodwill and openness between the parties be increased? - Drafting clear guidelines for the negotiations <ul style="list-style-type: none"> • How do parties engage with each other in the talks phase? • Are observers allowed in the meeting room? If yes, what is their role? • Are the discussions recorded? If yes, what happens to the recordings? - Format of the negotiations <ul style="list-style-type: none"> • How many plenary sessions are included in the talks phase? What issues should be dealt with through shuttle diplomacy? - Formality of Opening <ul style="list-style-type: none"> • What is the format of opening and opening statements? • Is the opening ceremony public or a closed-door event? What is the protocol? • Do the negotiations require a formal opening? If so, does it matter who gives the opening statement? - Guiding the mediation process <ul style="list-style-type: none"> • Are rigid deadlines or time frames needed? • Will there be one, two or more mediators? What is the division of labour among the mediators? • What are the rules for the mediator and parties using caucus? • How are the disputed issues reframed and the decisions sequenced? Should 'easy' issues be dealt with first? • How can deadlocks be broken? • How does the process reflect the desired agreement type? • How is communication with different constituencies dealt with? • How are the parties' expectations managed? - Venue and other logistics <ul style="list-style-type: none"> • Where should the talks take place? Does the selection of venue affect the impartiality of the mediation process? • How can security be assured? • Are interpreters needed? How is their impartiality assured?

**Talks Phase Lesson Learned #1:
Setting time limits: challenges with deadline diplomacy**

Problem	
People	
Process	X

Setting timelines in the talks phase is an important tool for managing the progress of the negotiations. While deadlines can speed up a process that is moving ahead at a snail's pace, artificially set timelines can jeopardise the quality of the negotiations and the brokered agreement. Therefore, as deadlines can be both conducive and harmful to the process, setting them must be done in a flexible manner.

So-called 'deadline diplomacy', in which stringent time lines are put forth, often leads to fragile peace agreements. For instance, during the initial 2005-2006 Darfur talks, the AU and UN mediators pushed too hard and fast to get the parties around the table, which resulted in a situation where people involved in the talks had no actual influence in their constituencies. The deadline diplomacy not only harmed the talks but also brought about difficulties later in the agreement and implementation phases. Due to the time pressure on the mediators, the Darfur peace talks were more focused on drafting the agreement than actually mediating between the parties, and the rushed agreement eventually contributed to the parties' lack of ownership over the agreement. The Darfur Peace Agreement was consequently signed by the Government of Sudan and only one of the rebel groups, which led to the eventual failure of the agreement. As CMI's Adviser Col. Mbaye Faye points out, similar pressure of deadline diplomacy had an impact on the quality of the 1993 Arusha accords for Burundi:

One pitfall of the Arusha agreement was that there was such a strong desire to sign an agreement fast without properly dealing with the issues at hand. The deadlines were too strict. The agreement was signed by nearly everybody - all the parties - but several of them had major reservations. These reservations were not addressed properly because the agreement had to be signed by a certain date.³⁷

❖ The deadlines were too strict.

If the core issues in dispute are not fully addressed, rushing to sign a peace agreement in order to meet a deadline is counterintuitive. Therefore, the mediation process should guide the setting of deadlines, not vice versa, because an agreement will not endure the passing of time if the major issues causing the conflict have been left unresolved.

Setting artificial deadlines also poses the challenge of undermining the legitimacy of the mediator if the deadlines are not met. If a mediator sets a deadline, he/she should be sure that the deadline can be met or at least make clear what will happen if there is a major delay. Otherwise, as De Soto points out, the credibility of the mediator may be on the line:

❖ If the deadline is not met, what then? Do we withdraw?

In El Salvador, I was constantly pressured to set deadlines to the parties, but I would always say that 'firstly, I don't have that power and, secondly, if I do that and the deadline is not met,

what then? Do we withdraw?' I stressed that I was not prepared to put at risk my credibility nor the credibility of the United Nations as a mediator. I would never set a deadline that I am not 100 per cent sure I can carry out. That would be a mistake.³⁸

Mediators must, then, always carefully evaluate the benefits and downsides of pushing the parties to come to an agreement by a certain date.

Nonetheless, there are times when deadlines can be helpful, especially if they are ones that neither the parties nor the mediator can move. In other words, deadlines can support a mediation process if they are based on real events instead of being artificially created. For example, there were two important context-specific deadlines in the UN-led Salvadoran peace process. Firstly, the then Salvadoran legislature came to an end on April 30, 1991, which meant that the parties would have to reach an agreement on constitutional reforms by that date or they would have to wait for another three years to make such reforms (as constitutional reforms required the approval of two consecutive legislatures). As a real, immovable deadline, the change of legislature on April 30 positively expedited the talks. Similarly, the end of Secretary-General Pérez de Cuellar's second term on December 31, 1991, pushed the parties to finalise the talks. The to-be Secretary-General Boutros Boutros-Ghali had made it clear to the parties that they should reach an agreement before he took office because, while the Salvadoran crisis was a high priority for Pérez de Cuellar, it would take him some time to get involved in the process. Boutros-Ghali's declaration that he should not be counted on for allowing the talks to continue posed another immovable deadline that accelerated the talks.

As always, there are exceptions. The Good Friday Agreement for Northern Ireland presents an interesting deviation from this trend that deadlines are more likely to be helpful if they are based on real steady dates rather than being artificially set. By March 1998, the George Mitchell-led negotiations had been prolonged and frustration grew amongst the negotiating parties. To speed up the process, Mitchell set a deadline - midnight on April 9, 1998 - for concluding the talks in two weeks from his announcement. There was no specific reason for choosing that particular date, but it worked; the so-called Good Friday Agreement was signed in Belfast only a few hours late on April 10, 1998. It was, indeed, an artificially set deadline that fast-tracked the talks. However, as mediation practitioners point out, the uniqueness of the Good Friday Agreement may be attributed to Mitchell's intelligent assessment of how the talks were progressing and whether reaching an agreement would be feasible in two weeks or not. A deadline was also set during the final stages of the Aceh peace negotiations when the talks were nearing their end. President Ahtisaari recalls the surprising call for a deadline that in fact arose from the parties:

During the negotiations, the parties themselves might come to you and ask if the process could be finished by a certain date. In the Aceh negotiations, the representatives of the Indonesian government asked if we could sign the agreement before the country's Independence Day on August 17. To my surprise, the GAM representatives agreed with this idea, and we were able to get the agreement signed on August 15. Despite this deadline, it should be noted that we were already far into the negotiations process when we decided on the signing date.³⁹

In conclusion, balancing deadlines between, on the one hand, moving the process forward and, on the other hand, not hampering the process is a tricky task. In general, though, mediation practitioners agree that being too strict with deadlines at the expense of endangering the quality of the mediation process, as seen in the Darfur case, should be avoided and the process itself should dictate timelines.

The outcome should be that of the parties.

Talks Phase Lesson Learned #2: Staying on course: managing expectations and clearly setting the parameters of the negotiations

Problem	
People	X
Process	X

Even before talks begin, a mediator should have some sort of an idea of the possible outcome of the negotiations. While the details of the direction where the mediator sees the process moving may not be shared publicly, the mediator should set some clear goals and even targeted outcomes for the talks.

Having a clear outcome in mind can often help a mediator better guide the process. With at least a vague outcome in mind, a mediator can subtly direct the talks towards the targeted result, as SRSRG Margaret Vogt affirms:

Obviously, the outcome should be that of the parties. It should be one that enjoys full consensus of the parties. But the mediator should have an idea of where the talks are heading and be able to help the parties get there and find that solution.⁴⁰

A good example of this is the 2008 Kenyan crisis, where Kofi Annan had a clear idea of what the negotiations' outcome should look like. He insisted on not organising new elections in the country, where the previous elections had triggered the conflict. Instead, he made it clear that no rerun of elections would be organised and that the parties should rather find some type of partnership or power-sharing arrangement.⁴¹ He could then focus the talks on power-sharing and partnership between the two leaders, Mwai Kibaki and Raila Odinga, instead of entertaining the idea of having a rerun of the elections.

While the mediator may often use the planned outcome to guide the talks, sometimes it is helpful to bluntly let the parties know what the outcome of the negotiations will, or at least should, be. Both in Kosovo and in Aceh, President Ahtisaari not only had a clear idea about the outcome but he also shared his view directly with the parties:

It's better to be clear and honest about the outcome. If you start something, you should know what the end result will be and how to get there. In all the processes that I have been involved in, the end result has always been clear. In Namibia, the country had to become independent through free and fair elections. In Aceh, special autonomy was the end goal. I had to tell the GAM representatives that I would walk away if they insisted on independence. I told them: "If I were you, I would not have anything to lose. During the talks, we will come together to determine what this special autonomy means, and then it is up to you to decide if it is attractive enough for you to accept it instead of independence. But we will not talk about independence during the negotiations." In Kosovo, when I started in November 2005, I travelled to the area to visit Kosovo, Serbia, Macedonia, and Albania. When I went to Serbia, I told Prime Minister Koštunica that "in light of the way you have handled Kosovar issues, you have lost the right to govern Kosovo." We knew that it was going to be an independent Kosovo, because Kosovars would not have accepted anything else. You shouldn't leave such things unsaid, even if you will face criticism. It is better to speed up the resolution than let it hang.⁴²

As these three cases - Namibia, Aceh, and Kosovo - demonstrate, being open about the outcome is also a way to manage the parties' expectations vis-à-vis the mediation process. Unless such expectations are managed, the talks are likely to face challenges and a mutually satisfactory agreement will in many cases be unachievable. In Aceh, for instance, without knowing that only the status of special autonomy is attainable, GAM might have hampered the negotiations by refusing to accept anything else but full independence.

As warring parties often have very different outcomes in mind, it is therefore imperative that the mediator has a clear idea of how to move forward, while remaining sensitive to the changing political and social environment. Developments elsewhere in the world can often affect mediation processes, which is why mediators need to also be flexible throughout the negotiations. Within the conflict country, the parties are often affected by their environment. Therefore, as UN Special Representative to Central African Republic Margaret Vogt asserts to CMI, "you must remain open, because conflicts change, the parties constantly metamorphose so you have to constantly do your research, so you know who is doing what, who represents what interests." Ever-fluctuating situations around the world can create new opportunities for the warring parties to exploit or pose other challenges to the negotiations. Thus, mediators must be tremendously flexible and yet always have a clear outcome in mind.

**Talks Phase Lesson Learned #3:
Having only one mediator stands the best chance of success**

Problem	
People	
Process	X

Having more than one mediator poses many challenges. Mediation practitioners persistently reiterate the importance of having only one mediator, who is responsible for leading the peace negotiations. As Lakhdar Brahimi notes, “If you have too many players involved and pulling left, right, and centre, the risk is that a lot of harm will be done to the process.”⁴⁴ A single mediator has clearly a more propitious position to lead peace talks than a crowd of competing mediators.

During the mediation process seminar CMI organised in Addis Ababa on March 28-29, 2012, Darfur was identified by the experts as an example of competing mediation initiatives hampering the overall peace process. In Darfur, both the United Nations and the African Union had their own mediator, which caused confusion as to who was the legitimate mediator and actually leading the process. Both organisations held separate meetings, wrote their own reports, and had different support teams, which only intensified the confusion on the ground. Although the UN and the AU were able to coordinate their initiatives and create a new framework for joint efforts, the Darfur example demonstrates the need for unified mediation. Experts thus emphasise that it is highly preferable if one organisation leads the process and has a clear mandate to do so. Lakhdar Brahimi gave an alarming as well as a positive example during a CMI-European Parliament seminar on April 25, 2012:

*Far too often, there are too many mediators. In Afghanistan, there were conferences of mediators, where some twenty mediators would get together - this is way too much. The best recent example is Kofi Annan in Kenya. He was the only mediator, who said that anyone else should act through him.*⁴⁵

To avoid confusion similar to Darfur, Kofi Annan made sure that there was only one team mediating in the 2008 Kenyan crisis. The Africa Leaders’ Forum, for instance, was in Kenya to facilitate dialogue between the conflict sides and it was important for Annan to make sure that there was only one mediation initiative. His declaration of being the sole mediator is widely considered successful, as SRSG Margaret Vogt explains:

*During the Kenyan peace process, there were several actors wanting to intervene ... One of the biggest successes of Annan was that he reached out to all the other actors to get them accept him as the lead mediator. He successfully tried to pull all the mediators together to back him. Another thing he did that was extremely important was to make contact with the leaders of all the countries that tried to get involved in the process, so the instructions went down to the ambassadors that they shouldn't even try to have individual initiatives and, if they have any ideas, they should route them through him. This helped very much.*⁴⁶

Thus, there has to be clarity as to who is in charge of the overall mediation process. Many actors are needed and their unique qualities should be utilised, but only one mediator should have the ultimate mandate to mediate between the warring parties. If there is more than one mediator, there is also the risk that parties involved in the talks engage in so-called ‘forum-shopping’. This type of shifting from one mediator to another, which can easily endanger the peace process, will be discussed in the following lesson learnt.

**Talks Phase Lesson Learned #4:
Friends of Mediation as a Means to Deal with Forum-Shopping**

Problem	
People	X
Process	X

During the talks phase, the mediator must carefully consider how to deal with spoilers. These actors, who come in different shapes and sizes, can undermine the mediation process with various types of disturbing activities.

One way ‘spoilers’ can influence a peace process is by encouraging the parties to engage in “forum-shopping” and seek a change of mediator. This is particularly common when parties get impatient with prolonged talks and when the process is not moving in their desired direction. There rarely is a lack of new mediators willing to step in. Many outsider parties wish to be included in the mediation process, and international actors are often keen on getting involved as mediators. The involvement of too many parties may cause serious problems, however. Different mediators may not have a shared understanding of the conflict dynamics and they may send mixed signals as to what is the official mediation process backed by the international community. As discussed previously, the parties on the ground are also likely to get confused as to who is leading the negotiations if there are competing initiatives.

One practical way to prevent parties from slipping into “forum shopping” follows the previous lesson learnt on having only one mediator: an explicit public declaration specifying who the sole mediator is will likely calm opportunistic attempts to engage in forum-shopping. Kofi Annan did this, for instance, both in Kenya and more recently in Syria. He made it very clear in front of TV cameras and other media that he is the sole mediator and that there will not be any competing initiatives. A message like the one Annan gave in these two contexts makes the mediator’s role clearer to all parties as well as the international community, leaving no ambiguity as to who is leading the process.

Another way to hinder “forum shopping” is to form a group of “friends of mediation” - something increasingly common in modern mediation processes that has previously been used in El Salvador, Burundi, and Kenya, for instance. When such a group is formed, the mediator normally informs the group about the status and progress of the mediation process and keeps the group members constantly updated. Forming a group of ‘friends of mediation’ can prevent outside parties from setting up a competing mediation initiative because, through the group, they are well aware of what is going on with the official process. Therefore, a key aspect of forming a ‘friends of mediation’ is to keep the group members constantly informed and updated on the situation.

**Talks Phase Lesson Learnt #5: Who should be involved?
Insights on the inclusion of rebels and civil society**

Problem	
People	X
Process	X

Who to include in the talks is an essential question every mediator needs to consider. How can one assure that the right people sit around the negotiation table? While inclusivity depends heavily on the unfolding process, mediation practitioners agree that there are a few general principles.

First and foremost, it is important to have all the warring parties included in peace talks. There is no point in brokering a deal between groups that are not the main belligerents causing the war. “Really if you want peace, you have to talk to the combatants,” Bishop Biguzzi notes, “Peace with your friends, you have already.” Therefore, in an armed intrastate conflict, for instance, all the rebel groups must be brought to the negotiations table or otherwise the mediation process is unlikely to yield sustainable results. When including non-state actors, such as rebel groups, it is important to assure that their representatives truly have a mandate to represent their group. If a representative of a rebel group does not have legitimacy in the eyes of his/her constituency, the people on the ground supporting that particular group may still feel excluded from the talks. Furthermore, excluding from the negotiations a group that has an important role in the conflict runs the risk of turning the group into a spoiler. It is in the interest of an excluded group to impede the peace talks if it cannot benefit from the negotiations’ outcome. Mediation practitioners thus stress that all direct conflict parties must be included in the talks, for them to be successful and yield an agreement that is sustainable.

If rebel groups ought to participate in the talks, what about extremist groups? Pointing to the previous principle of including all the direct warring parties, mediation experts emphasise that even extremist groups must be included if they are truly involved in the conflict. Such actors might act erratically during the talks, but they are likely to cause even more harm if they are completely excluded. Talking to extremist groups is, in fact, part of the job description of a mediator, as President Martti Ahtisaari points out:

I have made my career by talking to people that have at some points been branded as terrorists. For me, this is the only way to have a successful peace mediation process. Reaching a solution that ends a conflict means talking to all those who are parties to the conflict.⁴⁸

Sometimes, though, there are practical challenges with including extremist groups in the peace talks. Mediators’ supporters and the international community might at times prohibit extremist groups from being included. In the case of Somalia, for example, mediation practitioners note that excluding the group al-Shabaab from the negotiations has hampered the success of the country’s peace talks. Nonetheless, the designation of al-Shabaab as a terrorist group by a few members of the international community, most notably the United States and the United Kingdom, has made it difficult to include the group in internationally supported talks.

The importance of civil society is repeatedly emphasised, and rightfully so. Mediation practitioners do however need to distinguish between the actual talks and other

parallel discussions that feed into the official talks. Brokering an agreement between warring parties is already difficult, so having more parties and organisations around the table will likely broaden the agenda and complicate the talks. Although including civil society may not be strategically smart if prompt finalisation of the talks is desired, it does not mean that CSOs should be excluded completely. In fact, for an agreement to be sustainable, it must reflect the public opinion and the demands of civil society organisations.

One way to widen the talks to include civil society is to hold consultations and community meetings in parallel with official negotiations. During the Kenyan crisis, for instance, Kofi Annan consulted numerous groups outside the conflict parties directly involved in the talks. Several meetings with women and religious groups as well as other CSOs were held and their findings were fed into the track one negotiations between the warring parties. Such communal meetings and other ways of consulting the general public (e.g., palaver huts in Liberia) are necessary for assuring that the mediated outcome reflects the people’s needs, which in turn increases the agreement’s chances of success.

International civil society groups can also play an important role in peace mediation. As the 2005 Aceh peace negotiations demonstrated, sometimes non-governmental organisations, such as Crisis Management Initiative (CMI) in the case of Aceh, can in fact take a leading role in mediation processes. NGOs can, moreover, give wide-ranging support to mediation. As President Ahtisaari points out, there were several non-state actors supporting the talks in Aceh:

In Aceh, CMI obviously had a major role in the mediation process, but there were others as well. The [Olof] Palme [International] Centre organised information events for GAM representatives in Indonesia and Sweden. The Swiss Centre for Humanitarian Dialogue gave, for instance, legal advice to GAM, which had not received such support before. They both provided support crucial to the outcome of the talks. In general, it is important for mediators to remember that they cannot do everything alone and that they need wide support.⁴⁹

In other instances, international CSOs can contribute to peace processes by facilitating dialogue amongst belligerents or distinct groups in a country to support the wider peace process. In Yemen, for example, CMI has facilitated an informal nation-wide dialogue since 2011 among all key stakeholder groups, most of which have not engaged in dialogue with each other previously. Thus far, the CMI dialogue participants have produced recommendations on relevant issues for the ongoing political transition. At the core of this process is to support inclusivity of the formal national dialogue process. Thus, it is clear that there is room for civil society actors also in giving indirect support to mediation and peace processes by facilitating dialogues and helping different sides to find consensus.

At times, international civil society organisations also have a role in providing direct mediation support to regional and sub-regional organisations. For example, the publication at hand was written in the framework of a joint CMI-AU-African Centre for the Constructive Resolution of Disputes (ACCORD) project, within which CMI provides operational support to the AU’s on-going mediation efforts.

**Talks Phase Lesson Learned #6:
Confidence-building during the talks**

Problem	
People	
Process	X

All the confidence-building mechanisms addressed in the pre-talks lessons learnt - honesty, informal shuttling, and setting a clear framework - are applicable to the talks phase as well. There are, however, some additional ways in which a mediator can build confidence during the actual talks. It should be noted that in addition to the confidence-building mechanisms discussed here (and in the previous section on the pre-talks phase), there are several other ways to build trust between the warring parties. The ones discussed here are only the ones most commonly discussed by the mediation practitioners interviewed for this publication.

Helping the parties around the table to quickly reach an agreement on something, even if it is something minor, is a common way to build confidence in the early stages of negotiations. Starting with an 'easy' issue and getting the parties to agree on it shows them that the other side can be trusted and that the talks can yield concrete results. Reflecting on organising discussions between the ruling party and the opposition in the Central African Republic, SRSG Margaret Vogt affirms this approach to negotiations:

The mediator should at first be able to present softer issues that keep the parties talking so that eventually more difficult issues can be discussed. The idea is to get them to a level where they have enough confidence in each other, keep them talking until they get to the most difficult issues ... Starting from the simpler issues, and then moving up to the more difficult ones.⁵⁰

“The mediator should at first be able to present softer issues that keep the parties talking so that eventually more difficult issues can be discussed.”

In contrast, if the talks begin with tough messages and the most challenging disputed issues, they are likely to come to a quick end. Therefore, mediation practitioners often try to have the warring parties reach a consensus in the early stages on anything, even if it is something as minor as the negotiations' agenda or timeline.

Bringing an outsider to the negotiations can also help build confidence when the talks have reached an impasse. An outsider can not only reinforce the mediator's legitimacy as the conflict's mediator but also enhance the parties' trust in the mediation process. During the Kenyan crisis, Kofi Annan asked the President of Tanzania, Jakaya Kikwete, to join the talks between Odinga and Kibaki. The idea was that President Kikwete could explain to the conflict parties that, since power sharing between a president and a prime minister has worked in neighbouring Tanzania, it should work just as well in Kenya. Bringing an outsider like Kikwete to the negotiations can build confidence between the parties and help the mediator avoid imposing ideas or solutions on the parties.

Examples of Confidence-Building Mechanisms

Approach	Pre-Talks	Talks
Honesty • Mediator being honest towards the parties, and remaining honest about what he/she stands for and expects from the mediation process	X	X
Informal shuttling • Mediator going back and forth between the warring parties to listen to their expectations, positions, and demands.	X	X
Clear framework • Setting the parameters and ground rules for the talks	X	X
Starting with easy issues • Starting the talks with less contested issues in order to show that consensus is possible and that the talks can yield concrete results		X
Bringing outsiders • Having an outsider share fresh ideas with the warring parties and explaining what has been done elsewhere in similar situations		X
Venue • Physical proximity and having all the participants stay in one place can support solidarity amongst the parties		X

**Talks Phase Lesson Learned #7:
The choice of venue is critical**

Problem	
People	
Process	X

The practical choice of where peace talks are held is an important one, and one that can have major ramifications on the entire process. Therefore, mediators and their teams must carefully select a venue that suits that particular context and continuously assess the security situation. In best cases, the choice of venue can contribute to confidence-building and speed up the talks.

Security should always be one of the main criteria used for selecting a venue. It is important to assure that the parties can engage in the discussions freely without fearing for their personal security. Moreover, organising peace talks in an insecure location takes away some of the energy that could have otherwise been put into the talks, because a lot of effort is needed for assuring the security of the parties and the mediation team. As SRSO Margaret Vogt points out, sometimes the solution is to organise the talks elsewhere, even outside the country:

You should take the parties back to the conflict area, so they get a reality check

For practical reasons like security, you might have to remove the talks from the conflict environment so you can hear them [the parties] in a neutral environment and enable them to engage. Otherwise, the main issue would be securing the venue.⁵¹

The importance of removing peace talks from the conflict situation is rather understandable in interstate conflicts, where holding the talks on one side of the conflict would arguably be unjust and put one side in danger. Nonetheless, considering practical security issues is just as important in intrastate conflicts. Non-governmental parties are often faced with threats to their security within their own countries. For instance, as CMI's Head of Black Sea and Central Asia, Meeri-Maria Jaarva, describes, this was the case with the Free Aceh Movement (GAM) and the Aceh peace talks in 2005:

The fact that the venue was outside Indonesia in Finland was particularly important for GAM as most of their representatives were living in exile without the possibility to travel to Indonesia.⁵²

Moving the talks abroad does, however, have its challenges as well. In the case of Aceh, the Indonesian government was reluctant to hold the talks elsewhere because it did not want to internationalise the conflict. The government's fear was that if the talks were held abroad, the conflict would become an international matter rather than a domestic issue that the government should deal with on its own. The neutral and non-governmental nature of the mediator, President Martti Ahtisaari, and his team, CMI, was imperative in this context and helped to reduce fears of intentionally internationalising the conflict.

Although removing peace talks away from the conflict zone is sometimes necessary for security reasons, mediators need to be careful not to let the peace talks detach themselves from the realities on the ground. In other words, the peace talks must not

become an external matter that is completely out of tune with what is happening in the conflict. As SRSO Margaret Vogt notes, the mediation team should continuously assess from the viewpoint of security whether the talks could be brought back to the conflict zone:

My own take is that as soon as possible, or at least at different levels during the process, you should take the parties back to the conflict area, so they get a reality check. Even if you feel the need to take them out of the country to begin the talks, after a while you should have one or two sessions within the conflict zone, because they need to first of all bring the results of whatever they are agreeing back to the people and, secondly, they need to assure that whatever they are discussing reflects the priorities and needs of the people on the ground. Otherwise, they will sign an agreement that reflects the interests of the leadership but is completely delinked from the needs of the people. So my own recommendation in situations like this is to, as much as possible, have the opportunity for those involved in the negotiations to go home and have some discussions on the ground, so the people in their communities are also seeing that the parties are talking with each other.⁵³

Furthermore, the choice of venue can optimally have a major positive impact on confidence-building. Creating a relaxed atmosphere is often conducive to honest talks. Therefore, in many cases, the more informal the venue is, the more likely the parties are to openly engage in negotiations. When Kofi Annan led negotiations in Kilaguni, Kenya, the venue was informal and the people around the table did not wear ties or full suits. Similarly, during the Lomé talks for Sierra Leone, the choice of venue and logistical arrangements was smart in light of confidence-building. Having all the parties stay in the same hotel and eat lunch in the same restaurant allowed for more informal interactions that built confidence between the belligerents. The different sides involved in the Lomé talks recall the intimacy and informality of the venue as having a great impact on building trust between the two sides:

"President Eyadema of Togo was the head of ECOWAS. So that's why we all went to Lomé. We were staying at the same hotel, Le Deux Février, and at times you would meet Foday Sankoh on the lift, you'd meet the government officials, and the religious leaders." Bishop Biguzzi, Bishop Emeritus, Makeni District.⁵⁴

"In fact, I was on the same floor with Foday Sankoh. We established some type of camaraderie. We could talk on matters that we could not talk in the conference hall." Solomon Berewa, former Vice-President and Attorney-General of Sierra Leone.⁵⁵

"The informal aspect is critical. With time, we started sitting down and eating together, going for lunch together and dinner, and that helped." Pallo A. Bangura, negotiator for the RUF and AFRC team.⁵⁶

The choice of venue can, then, support the actual talks process by building much-needed trust and solidarity between the warring parties. Overall, building confidence between the parties around the negotiation table is vital for successfully reaching an agreement that will last well beyond the signing ceremony.

III. AGREEMENT PHASE



“It is important to understand that the peace agreement is always just a beginning of a peace process. If the mediation process has been successful, it should give the parties the necessary building blocks to start working towards a peaceful society.”

INTRODUCTION TO THE AGREEMENT PHASE

It is important to understand that the peace agreement is always just a beginning of a peace process. But it is the beginning that enables the process to begin. If the mediation process has been successful, it should give the parties the necessary building blocks to start working towards a peaceful society.

Martti Ahtisaari⁵⁷

The signing of a peace agreement is usually celebrated enthusiastically and witnessed by the world's media. However, as we have discussed earlier, there is a lot of work that goes into the mediation process before an agreement can be reached between warring parties. Moreover, the agreement process itself is particularly complex. How detailed should an agreement be? What issues should be included in the agreement? What is agreed on implementation and monitoring? These are all questions that must be considered throughout the process of drafting and signing an agreement - a process that we refer to here as the 'agreement phase'.

This phase requires important skills to finalise peace accords, design appropriate mechanisms for implementation, and organise suitable ceremonies to politically inaugurate, acknowledge and launch the agreement into action. Careful attention must be given to the scope of the agreement, its inclusivity, and also its flexibility. Mechanisms for monitoring and implementation should also be considered in this phase.

AGREEMENT PHASE CHECKLIST

Factors Analyzed Under the Three P's of Mediation

Problem	People	Process
<ul style="list-style-type: none"> - Issues included in the agreement <ul style="list-style-type: none"> • What issues are agreed upon? • How comprehensive should the agreement be? What is left outside the agreement? 	<ul style="list-style-type: none"> - Inclusivity of the agreement <ul style="list-style-type: none"> • Who approves the agreement? • Are the perspectives and demands of unrepresented stake holders included in the agreement? • Are secondary and third parties included in the official agreement? - Guarantors <ul style="list-style-type: none"> • Who are the guarantors and watchdogs for the agreement? • What is their role? - Openness <ul style="list-style-type: none"> • To what extent should the general public be informed of the agreement before it is signed? 	<ul style="list-style-type: none"> - Voluntary agreement? <ul style="list-style-type: none"> • Did the parties reach an agreement voluntarily? • Did they co-generate the agreement? - Scope of the agreement <ul style="list-style-type: none"> • How comprehensive should the agreement be? • Is the agreement an agreement to talk, a ceasefire agreement, a cessation of hostilities, transitional agreement, or a comprehensive agreement? - Flexibility of the agreement <ul style="list-style-type: none"> • How rigid should the agreement be? • Can the agreement be amended after it has been signed? Is there room for any further mediation? - Mechanism for implementation <ul style="list-style-type: none"> • What is the agreed format and time frame for implementation? • Who implements? • Who funds implementation? - Mechanism for monitoring <ul style="list-style-type: none"> • What is the agreed format for monitoring? • Who monitors? • What are the consequences of non-implementation/non-compliance? Is a sanctioning system established?

Agreement Phase Lesson Learned #1:
Scope of the agreement: Is less more?

Problem	X
People	
Process	X

In general terms, there are two traditional ways to approach the scope of peace agreements. The “nothing is agreed until everything is agreed” school of thought refers to the idea that a peace agreement should not be signed until it includes all the issues in dispute. In other words, there will be no peace agreement until all outstanding issues are settled. Conversely, the second school of thought promotes a Kissinger-like style of agreeing on smaller components of the conflict, step by step, rather than trying to reach a full, comprehensive agreement.

Both approaches to peace agreements have their pros and cons. A clear challenge with trying to include all disputed issues in a peace agreement is making the conflicting parties agree on such a wide spectrum of issues. It is always easier to find consensus on fewer issues. There can often be one issue that divides the parties even if everything else has been agreed upon; therefore, it might be more conducive to reach agreement on all the other issues and leave the disputed one for future settlement. Indeed, it is often better to focus on the core issues under dispute rather than trying to reach an agreement on all possible areas of conflict, as Solomon Berewa of Sierra Leone asserts:

If the parties trust each other, they can solve disputes after the signing of the agreement.

The success of a peace agreement does not depend on how comprehensive it is. The main issues have to be properly addressed - that is the main thing. The key issues must be addressed. Once you get those key issues fixed, then the other issues do not

necessarily have to be addressed in the agreement itself. If the parties trust each other, they can solve disputes after the signing of the agreement.⁵⁸

Focusing on the most fundamental issues only is particularly appropriate in situations similar to that of the Sierra Leonean civil war, where the desire to end the deadly conflict was strong and the focus was not so much on the details of a particular agreement.

Apart from the difficulty of reaching agreement on all rather than few issues, implementation poses another challenge with the “all or nothing” approach. Logically, the more things there are in an agreement, the more things need to be implemented. As President Martti Ahtisaari argues, a more condensed agreement is also easier to implement:

A peace agreement has to be as simple as the instructions you get for home appliances. In fact, a peace agreement should be simpler. It is important as a mediator that you prevent the parties from adding too much to the deal. You must also realise that you cannot solve all the problems in a society during peace talks. The Aceh agreement is good in this sense; it focuses only on a few fundamental issues and creates a framework for democratisation that makes it harder for old disputes to re-emerge.⁵⁹

Looking back at the “National Accord and Reconciliation Act” agreement brokered by Kofi Annan and the African Union Panel of Eminent Personalities during the 2007-2008 Kenyan crisis, some mediation practitioners feel that there were too many components included in the agreement. Notwithstanding clear successes, the implementation process, especially the establishment of the Truth, Justice and Reconciliation Commission (TJRC), has been challenged by the vastness of the 2008 agreement. In addition to having many components to implement, mediation practitioners point out that the scrutiny of the international community is intensified with more exhaustive agreements. That is, the international community will judge the success of the implementation process according to all the components agreed upon in the agreement. More comprehensive agreements thus make it also more difficult to satisfy the international community.

Sometimes the situation does, however, call for very detailed and comprehensive agreements. In the case of the Annan plan for Cyprus, the conflicting parties themselves explicitly called for consensus on all issues before moving forward with the accord. The UN had identified some 70 pieces of federal legislation that should be agreed upon as part of the comprehensive peace agreement, but the newly-elected Cypriot leader Tassos Papadopoulos insisted that nothing should be left for negotiation after settlement and unification. Therefore, the mediation team was forced to find agreement on over 190 pieces of federal legislation - a meticulous task that required a lot of external help but was eventually finalised. Although the plan was eventually rejected in a referendum on April 24, 2004, it demonstrated how at times the conflict context may dictate the need for a comprehensive agreement.

Just like the “all or nothing” approach to peace agreements, the “step by step” method has its limitations as well. If major outstanding issues are left unsettled, they might threaten the recently achieved peace. Excluding important components from a peace agreement can jeopardise the entire agreement's sustainability. In essence, the more you leave things open or leave things for future negotiations, the riskier it is. This has been the case with the Comprehensive Peace Agreement (CPA) between the Government of Sudan and the SPLM/A in which various issues, ranging from border demarcation to the sharing of oil revenues, were left open. As we have witnessed, the fact that a number of issues were not included in the agreement has only resulted in an escalation of tensions between the governments of Sudan and South Sudan, requiring further negotiations.

In conclusion, a mediator must properly analyse the situation in order to make a good assessment of what level of detail a particular agreement requires. While some situations call for more comprehensive agreements, there are situations where agreeing on fewer things is more viable. Leaving out important issues (like border demarcation in the CPA) from the agreement does, however, run the risk of prolonging or merely postponing the conflict.

Agreement Phase Lesson Learned #2: Flexibility vs. rigidity of agreements

Problem	
People	
Process	X

The notion of flexibility with regard to peace agreements raises many questions. How rigid should a peace agreement be? How much can a peace agreement be amended after it has been signed, if at all? These are some of the questions that mediation practitioners need to think about when progressing peace talks towards signing a peace agreement. Many mediation experts point out that while agreements should be respected, at times there needs to be some room for future discussions and amendments.

Having a strictly fixed peace agreement can cause difficulties in the long run. The Eritrea-Ethiopia border conflict and the 2002 ruling of the Eritrea-Ethiopia Boundary Commission, established under the Algiers Agreement, is an interesting case to consider in terms of the agreement's flexibility. Although the Commission's ruling on the division of territory was set to be binding and final, Ethiopia revoked the verdict a few months later and called for a new commission - an act that has later been reversed. Mediation practitioners at CMI's Mediation Process Seminar organised in Addis Ababa on March 28-29, 2012, pointed to the Eritrea-Ethiopia case as an example of a markedly rigid agreement because it did not allow further negotiations and forbade cross-border trade and market. In such cases, opening some parts of an agreement (e.g. cross-border traffic) might be in the interest of the conflicting parties and an entry point towards a more sustainable security.

Nonetheless, peace agreements should include some core aspects that cannot be amended. The 'soul' of the agreement, as many mediation experts refer to it, should not be changed through future amendments. Power-sharing arrangements or the cessation of hostilities, for instance, are often parts of an agreement that cannot be amended without changing the agreement's overall spirit. Moreover, any amendments to a peace agreement must be made on a fully voluntary basis and unilateral amendments should not be recognised. All the parties must agree to come back to the negotiation table before a peace agreement can again be opened up for discussion.

It is often useful to put in place a dispute resolution mechanism that can not only solve differences that may arise in the future but also oversee possible amendments of the original peace agreement. The framework of such a mechanism should be agreed upon already in the agreement so that it can straightaway become a functional structure for resolving disputes. These dispute resolution mechanisms can take several shapes and forms; at times, such as in the case of El Salvador, the United Nations has taken this role in the implementation phase, while in other situations (e.g. the Sudan-South Sudan Comprehensive Peace Agreement and the Assessment and Evaluation Commission), new institutions have been created. These dispute resolution mechanisms, which are fundamental if agreements are to be amended, are further discussed in the subsequent sections of this publication.

Agreement Phase Lesson Learned #3: Informing the public of the agreement as a form of in-country leverage

Problem	
People	X
Process	X

Even though it is usually feasible to include only a few actors in a mediation process, there are other ways to involve the general public and other actors in the process even if they are not formally sitting around the negotiating table. These methods, like parallel communal meetings and palaver huts, were discussed earlier on in the pre-talks and talks phase lessons learnt. They do, however, have another function; consulting and informing the public of an agreement proposal can often be a useful type of in-country leverage in the agreement phase.

First and foremost, as a peace agreement will influence the lives of the general public, it is only logical that the general public needs to be informed of its content. Raising the public's awareness of the agreement's content may, moreover, contribute to making the parties sign the agreement and to holding them accountable for its implementation. For example, in the run-up to the 2011 Darfur Peace Agreement, a conference was organised to bring together CSOs, IDPs, the Sudanese government, people's representatives, rebel factions and representatives of the international community. The participants were given the possibility to be informed of what was in the agreement proposal and to express their opinions and ideas. The IDPs, for instance, found out that the agreement would work to bring an end to IDP camps - something that made them more receptive to the overall agreement. The conference participants from civil society and the general public were supportive of the agreement, which became a type of leverage over the parties around the negotiating table. It was, in other words, difficult for the rebel parties not to sign the agreement when the people they were supposed to represent were advocating the signing of the peace agreement. The process of bringing the people vis-à-vis the parties and the peace agreement also contributed to the people's ownership over the peace process. With more information on what was agreed, people could better demand their representatives to implement the agreement.

“It is extremely important to keep some aspects away from the media, but at the same time it is important to use the media to reaffirm the decisions that have already been taken.”

While it is important to inform the public of peace agreements, it is also necessary to maintain confidentiality during negotiations. Leaking a draft agreement too early to the public can hinder the peace process greatly. Parties might disown the agreement completely if it is leaked to the public ahead of time. The negotiations for the Comprehensive Peace Agreement between the Sudan People's Liberation Movement (SPLM) and the Government of Sudan, for instance, took a few steps backwards when a draft agreement was leaked before it had even reached the parties. Therefore, the mediator has to carefully consult all the parties to find the right time to share draft agreements with the general public, as affirmed by SRS Margarete Vogt:

Mediation has become so public in recent years. Discreet mediation efforts are almost impossible nowadays. However, a good mediator needs to carefully calibrate which aspects of the mediation should be shared with the public and when. It is extremely important to keep some aspects away from the media, but at the same time it is important to use the media to reaffirm the decisions that have already been taken.⁶⁰

In summary, while mediators have to be careful not to leak too much information to the media or the general public ahead of time, they can use informing the public about the benefits of an agreement as in-country leverage to push the parties towards an agreement.

**Agreement Phase Lesson Learned #4:
Risks with excessively focusing on the agreement**

Problem	
People	
Process	X

As important as it is to reach an agreement, a signed peace accord is of little worth if it is not implemented. Putting heavy emphasis on reaching an agreement and ignoring discussions on how the agreement should be realised will likely lead to its failed implementation.

Therefore, the entire peace process will often benefit from including clauses on implementation in the peace agreement. Mechanisms for carrying out the accord must be detailed or, otherwise, there are likely to be problems when the time comes to put what was agreed into practice. The 2006 Darfur Peace Agreement (DPA) between the Government of Sudan and the Minawi faction of the SLM/A is an example of an agreement that failed due to its lack of focus on implementation. The parties were heavily persuaded to sign the agreement, but thorough provisions were not made for the agreement's implementation. It was no surprise, then, that the agreement was never enacted; the parties had somewhat unwillingly signed the agreement and, as there was no agreement on how to move forward from the signing, the implementation process never took off.

An agreement should therefore include provisions for its own implementation. If possible, the division of labour must be made clear so that each party knows what is expected of them in the post-agreement phase. If there are no such details on implementation, the signing of the agreement is likely to be followed by quarrels over the interpretation of how the agreement is put into practice. Therefore, concrete next-steps must be laid out to assure the agreement's proper implementation.

Mediation practitioners further point out that in many cases it is important to establish a mechanism for settling future disputes between the parties. These mechanisms need to be impartial organs that can objectively resolve disputes and oversee any future amendments to the agreement. The mechanism can be a newly-created institution and, as long as impartiality is adhered to, it can be either domestic or international. In the case of El Salvador, for instance, the level of mistrust within the country was so high that the parties agreed that only the UN could resolve future disputes. This provision for the UN's role in the post-agreement phase was made clear already in the April 4, 1990, agreement that clarified the basic framework for the negotiations. In other instances, such as that of the CPA and the Assessment and Evaluation Commission (AEC), new institutions

have been created to assure implementation and resolve disputes arising during implementation. In the 2005 Memorandum of Understanding (MoU) signed by GAM and the Government of Indonesia, a dispute settlement mechanism was explicitly included in the agreement. The MoU states that potential disputes will be settled by the Head of the Aceh Monitoring Mission (AMM) in dialogue with the parties and, in cases where the disputes cannot be resolved by the Head of the Mission, the Chairman of the Board of Directors of Crisis Management Initiative will make a ruling that is binding on the parties.

IV. IMPLEMENTATION PHASE

“The implementation phase requires continued dialogue and monitoring as well as setting up new institutions and reforming existing ones to serve the post-conflict country in question. This phase is extremely challenging as expectations are often high but the peace itself remains fragile.”

INTRODUCTION TO THE IMPLEMENTATION PHASE

Too often we mistake the signing of a peace accord with the arrival of peace. In reality, an agreement is likely to be one step in a long-term process of delivering on reconstruction and the development of a healthy state and society. The work of a mediator and the signing of a peace agreement must be understood as being only one part of a much deeper process starting with conflict prevention and continuing through to peacebuilding. A peace agreement is only a beginning and, without implementation, it does not guarantee appeasement of a conflict. This process of putting a peace agreement into practice after it has been signed is what constitutes the 'implementation phase'.

The implementation phase requires continued dialogue and monitoring as well as setting up new institutions and reforming existing ones to serve the post-conflict country in question. This phase is extremely challenging as expectations are often high but the peace itself remains fragile. Lack of proper planning for the implementation phase or simply poor implementation regularly cause mediation processes to fail. Therefore, no peace agreement is complete without thorough, systematic implementation. In the implementation phase, mediators and their teams must assess what their own role and that of the international community should be after the signing of a peace agreement. They also must address questions of power asymmetries and guarantors of peace.

IMPLEMENTATION PHASE CHECKLIST

Factors Analyzed Under the Three P's of Mediation

Problem	People	Process
<ul style="list-style-type: none"> - Context analysis <ul style="list-style-type: none"> • Are there changes in the context that affect the conflict? • In what ways can the initial conflict analysis be updated? • How does the evolving context affect the agreement and its implementation? • Has the implementation been taken over by other events, such as new emerging conflicts? 	<ul style="list-style-type: none"> - What are the challenges with implementation in terms of the new relations developed among the parties after the agreement? <ul style="list-style-type: none"> • Implications on the legitimacy and functions of the mediator/s? - Actors <ul style="list-style-type: none"> • Have new actors emerged? Have factions splintered from signatory actors? • Do the parties need capacity-building for implementation? 	<ul style="list-style-type: none"> - Making local actors the guarantors of the agreement <ul style="list-style-type: none"> • Can local actors act as watchdogs and guarantors of the agreement? - Engagement of mediator(s) during implementation phase <ul style="list-style-type: none"> • Should the mediator remain engaged during the implementation period? Do the conflict parties call for the mediator's longer engagement? - Involvement of the international community <ul style="list-style-type: none"> • How should the international community be involved during the implementation phase? • Can the international community act as guarantors of the agreement? - Dispute resolution mechanisms <ul style="list-style-type: none"> • Does the agreement include reference to dispute resolution mechanism during the implementation phase? What is the format of this mechanism?

**Implementation Phase Lesson Learned #1:
Mediator's engagement after the signing of a peace agreement**

Problem	
People	X
Process	X

Signing a peace agreement is an expression of good intentions, but it only becomes real after it has been implemented and realised on the ground. Peace agreements truly come into existence when people begin to see the positive effects of peace. The primary responsibility of the actual implementation stays in the hands of the conflict parties. However, one of the major dilemmas that mediators face after the signing of a peace agreement is the question of to what extent they should remain engaged during the implementation phase.

Ultimately, the mediator should work towards making him/herself scarce by gradually pulling out. Sometimes the answer comes from the parties themselves. The mediator's continued engagement can be seen as patronising, which can lead the parties to request the mediator to leave the implementation to the former belligerents. Thus, in principle, mediation practitioners emphasise that the implementation process should be left to the parties and not to the mediator. Referring back to the old English proverb, the mediator should lead the conflict parties to the solution, but it is up to the parties to adhere to the agreement and put it into practice.

Ending the mediator's official role as a mediator does not mean putting a definite end to the mediator's involvement. In El Salvador, the UN was asked by the parties to remain engaged throughout the implementation process to ensure that the agreement is put into practice. In turn, in the case of the Comprehensive Peace Agreement between the Sudan People's Liberation Movement (SPLM) and the Government of Sudan, the accord was structured so as to cease the mediator's involvement after the signing of the peace agreement. However, the agreement did not end the Inter-Governmental Authority on Development's (IGAD) role in the implementation phase as a guarantor of the agreement. As a member of the Assessment and Evaluation Commission (AEC), IGAD had an active role in monitoring and supporting the implementation of the CPA. In other cases, the parties ask or even insist on the mediator's continued engagement. During the Aceh peace process, the parties wanted the mediator to stay involved in an advisory role in the implementation phase. Provisions in the MoU were made for the mediator's and the European Union's, as well as the six contributing ASEAN countries', role in the immediate post-agreement phase, even though the mediator was to have an explicitly reduced role in the implementation phase. While provisions were made for the European Union's active role in the post-agreement phase as part of the Aceh Monitoring Mission (AMM), the mediator's role was reduced to one of last resort dispute settler. It was agreed in the Helsinki MoU that the mediator should intervene only in cases where disputes regarding the MoU's implementation could not be resolved within the AMM. Not a single issue was referred to President Ahtisaari for decision during this time. Everything was solved in Aceh, as it should have been, as recalled by President Ahtisaari:

In the very beginning of the Aceh talks, I made it clear that neither I nor CMI would participate in the monitoring mechanism set up after the signing of the agreement. An NGO should not take a role like that. I think it is better to have governmental representatives be monitors because it is difficult for the parties to misbehave before representatives of foreign governments. That is why I suggested that the European Union be involved in addition to half a dozen ASEAN countries. Getting another regional actor on board was important for GAM, who remained wary of only neighbouring countries monitoring the agreement. The Aceh Monitoring Mission (AMM) worked very well in this role. In the end, it was important for me to make clear that implementing the agreement was not the mediator's job but that of the parties.⁶¹

The final Memorandum of Understanding (MoU) signed by GAM and the Government of Indonesia included provisions for the establishment of an Aceh Monitoring Mission (AMM) by the European Union and the ASEAN contributing countries. According to the mediator's wish, the AMM did not explicitly include a role for the mediator, whereas the to-be established dispute settlement mechanism did. The MoU states that potential disputes will be settled by the Head of the Aceh Monitoring Mission (AMM) in dialogue with the parties and, in cases where the disputes cannot be resolved by the Head of the Mission, the Chairman of the Board of Directors of Crisis Management Initiative will make a ruling that is binding on the parties.

The added value of the mediator's engagement is that he/she has the best knowledge of the process and the parties. The mediator can therefore answer the parties' critical questions on how the agreement should be implemented and, in turn, push the parties to adhere to the agreement's finer details. Hence, even if a mediator is not fully engaged in the day-to-day implementation process, he/she should make him/herself available for regular consultations.

Implementation Phase Lesson Learned #2: Mediators and other international actors as guarantors and watchdogs of implementation

Problem	
People	X
Process	

If confidence is scarce during the earlier stages of mediation, it is likely to be so during the implementation phase as well. Mediators and the international community play a big role in assuring that parties adhere to a peace agreement and properly implement its articles. In particular, they can push the parties to implement the agreement in a timely fashion.

Guarantors and watchdogs can be of various sizes and have different political weights. In some cases, it is useful to establish a new organisation to oversee the implementation process. The CPA between the SPLM and the Government of Sudan included the establishment of a new institution, the Assessment and Evaluation Commission (AEC), to assure the agreement's proper implementation. The AEC was formed by IGAD and representatives from both conflict sides as well as from Italy, the Netherlands, Norway, the United Kingdom and the United States. The United Nations, the African Union, the European Union, and the Arab League were given observer status in the AEC. Funded by the international community, the AEC was tasked to monitor and sup-

port the implementation of the agreement and to conduct a mid-term evaluation of the unity arrangements established under the CPA. The AEC has been able to push the parties to adhere to the CPA and implement the agreement. One very concrete example of the Commission's ability to push the implementation process forward was ensuring that, despite the conflict parties' concerns, the national referendum was held on the date agreed upon in the CPA. In the case of Aceh, a similar monitoring mechanism, the Aceh Monitoring Mechanism (AMM), was established by the European Union and the ASEAN contributing countries with the mandate to monitor the implementation of the commitments taken by the two sides in the agreement. The AMM and its Head of Mission had also a stipulated role in the settling of potential disputes arising from the implementation of the agreement.

In fragile situations, the international community is often pushed into taking a heavy role as a guarantor of peace. Especially after deadly, prolonged civil wars, when a country is tremendously unstable, it is particularly helpful if the international community becomes a heavyweight guarantor. In Liberia, for instance, the situation was very fragile when the 2003 agreement was signed between the Government of Liberia, the Liberians United for Reconciliation and Democracy (LURD), and the Movement for Democracy in Liberia (MODEL). Consequently, the United Nations Security Council established the United Nations Mission in Liberia (UNMIL) to support the implementation of the ceasefire agreement and the peace process. In the immediate years after the signing of the agreement, UNMIL has had a tremendously important and big role in securing stability and basic security in the country.

Sometimes, mediators and the international community can take a much lighter role as guarantors and watchdogs of implementation. An interesting example of a mediator's cautious engagement during the implementation phase is Kofi Annan's involvement after the signing of the agreement in Kenya. He held annual follow-up meetings with the conflict parties and various civil society groups to discuss the progress of implementation. He also hired a private research organisation - South Consulting - to monitor the implementation closely and report directly back to him.⁶²

The level of involvement on the part of the mediator and the international community also depends on finances. Bringing military, police, and civil officials to monitor an agreement's implementation, as in Liberia, is costly and therefore not always feasible. Mediators as well as the international community have limited resources and, at times, the available resources dictate the level of involvement.

Furthermore, the pre-existence of official institutions affects the level of involvement required. In general, the more institutions are already in place, the less outsider involvement is needed. For example, in South Africa and Kenya, there were several institutions already in place, which speeded up the implementation process significantly. Conversely, in South Sudan, the absence of institutions has hindered the implementation process and more focus is needed on institution-building.

Implementation Phase Lesson Learned #3: Asymmetry of the conflict parties to implement the peace agreement

Problem	
People	X
Process	

When it comes to implementing peace agreements, it is important to recognise that parties rarely have equal capacities and resources to commit to the peace process.

In intrastate conflicts, the government's side is often stronger than that of the rebels or guerrillas. If the peace agreement creates artificial new structures in such situations, it is important to assure that the weaker side has enough resources to commit to the new structure. Furthermore, financial imbalances must be taken into account in order to assure peaceful implementation. The international community may need to support the weaker side so that it can meet the provisions and demands laid out in the agreement.

International monitoring of implementation plays an important role in post-conflict situations where major power asymmetries exist. The presence of international observers and monitors reduces the risk of the more powerful party taking advantage of the power imbalance to its own benefit. In fact, wary of the power asymmetry, the weaker party often demands the presence of the international community to assure proper implementation. For example, this was the case in Aceh, where the clearly weaker party, the Free Aceh Movement (GAM), insisted on the involvement of the European Union in the implementation phase.

Capacity-building plays an important role in situations where power asymmetries exist. The international community can often help the peace process by building and supporting the capacities of the former conflict parties to implement the agreement. NGOs, in particular, were helpful in bridging the gap between GAM and the Government of Indonesia, as recalled by President Ahtisaari:

In the case of Aceh, the diverse support given to GAM by non-governmental organisations and foreign advisers clearly reduced the imbalance caused by the power asymmetry. You cannot, however, reach a fully perfect balance in a situation where a government is involved, because a government has always more resources.⁶³

In another example, the need for more capacity-building has been evident in the ongoing negotiations between the governments of Sudan and South Sudan where, especially on the South Sudanese side, more capacities are needed not only for the talks but, more importantly, for implementing what is agreed. Mediation practitioners emphasise that the international community and non-governmental actors, in particular, are of key importance and can have a major role in balancing these power asymmetries.

CONCLUSION



Diverse conflicts call for diverse mediation processes. There is no one-size-fits-all mediation model that can be applied to all conflicts, which is why it is imperative that mediation efforts reflect the uniqueness and idiosyncrasies of each conflict.

Although there is no universally applicable style of mediating, similar issues need to be considered in all peace and mediation processes around the world. Many of these similarities were highlighted by the experts consulted for this publication. This report has, in turn, attempted to put these issues, factors, similarities, and differences in easy-to-read checklists.

Moreover, despite each conflict's uniqueness, there are lessons to be learned from each conflict. Such lessons might not be directly replicable in other conflict situations, but they provide valuable insights into the different phases of mediation. Through the sharing of experiences and lessons learnt, mediators can become better prepared to assess the need for possible mediation efforts and also improve their capacity to carry out such interventions.

Information becomes knowledge only when it is shared. This old saying also applies to mediation.

Four Phases of Mediation

Checklist of Factors to Consider Under the Three P's of Mediation

Problem	People	Process
<p>PRE-TALKS</p> <ul style="list-style-type: none"> - What is the nature of the conflict? <ul style="list-style-type: none"> • Interstate/intrastate? • Political, territorial, ethnic, religious, resource-based? - What are the disputed issues? <ul style="list-style-type: none"> • Political, territorial, ethnic, religious, resource-based? - What are the sovereignty implications? <ul style="list-style-type: none"> • How receptive are national governments to foreign intervention? • What are the implications of a possible outcome to the conflict vis-à-vis national sovereignty? - History and evolution of the conflict <ul style="list-style-type: none"> • How and when did the conflict begin? • How has the conflict evolved over the years? • Is the conflict stagnant, escalating or deescalating? • What is the configuration of power relations? - International factors and context <ul style="list-style-type: none"> • What is the international context? • How do international factors exacerbate/mitigate the conflict? • What is the international legal framework and how does it affect the conflict? • Are there relevant conventions/resolutions put forth by regional or international organisations? • Are there international actors already actively engaged? - Ripeness of conflict <ul style="list-style-type: none"> • How viable is mediation? How receptive are the belligerents to a mediation process? • In what stage is the conflict? Is the conflict at a stalemate? • Is the conflict ripe for resolution? • What is the level of confidence between the parties? What level of confidence is needed to initiate talks? <p>TALKS</p> <ul style="list-style-type: none"> - Context analysis <ul style="list-style-type: none"> • Are there changes in the context that affect the conflict? • In what ways can the initial conflict analysis be updated? <p>AGREEMENT</p> <ul style="list-style-type: none"> - Issues included in the agreement <ul style="list-style-type: none"> • What issues are agreed upon? • How comprehensive should the agreement be? What is left outside the agreement? <p>IMPLEMENTATION</p> <ul style="list-style-type: none"> - Context analysis <ul style="list-style-type: none"> • Are there changes in the context that affect the conflict? • In what ways can the initial conflict analysis be updated? 	<p>PRE-TALKS</p> <ul style="list-style-type: none"> - Parties <ul style="list-style-type: none"> • Who are the primary, secondary, and third parties? • Are there secondary parties that present themselves as third parties? • What are the parties' internal dynamics? Are there parties within parties? How fragmented/unified are the parties? • How do the parties position themselves vis-à-vis the conflict and other parties? • What are the parties' needs, interests, and concerns? • How powerful are the parties financially, politically, and socially? • What are the external pressures on conflicting parties from the international community? <ul style="list-style-type: none"> - Mediators <ul style="list-style-type: none"> • Who are the mediators? Which actors identify themselves as mediators and which ones actually mediate? • Are there sole mediators or mediator teams? • How were the mediators selected? • How qualified are the mediators? What is their temperament? Style? Ego? Needs? Readiness to take on the challenge of mediating? • Are there competing mediation initiatives? Do other mediation initiatives support or hamper the process? • How are the mediators perceived by the primary and secondary conflict parties? • Does the mediator have leverage over the parties/conflict situation? What type of parties? • Who mandates the mediation efforts? Is the mediator accountable to someone? What are the external pressures on the mediator(s)? • What are the mediator's interests vis-à-vis the conflict? - Who participates in the talks? <ul style="list-style-type: none"> • Leaders of parties, deputies or lower level representatives? • Who else participates? Civil society, marginalised groups, experts, academics? • Do the participants have a clear mandate to represent their parties? • Is there a need to bring outsiders to the talks to share their experiences? <p>TALKS</p> <ul style="list-style-type: none"> - Involvement of different tracks? <ul style="list-style-type: none"> • Are there different tracks involved? How can these tracks be coordinated? • Do these tracks have a mandate? - How to deal with spoilers? <ul style="list-style-type: none"> • Should spoilers be brought into discussions? Can spoilers be dealt with outside the mediation process? • Should a group of friends of mediations be established? What type of support could it bring? 	<p>PRE-TALKS</p> <ul style="list-style-type: none"> - Appropriateness of mediation <ul style="list-style-type: none"> • Are there other competing mediation efforts? How can they be coordinated? • What are the interparty dynamics like? Do parties get along with each other? How can the goodwill and openness between the parties be increased? - Outlining the process <ul style="list-style-type: none"> • What ground rules are set for the talks? • How is the mediator's role clarified to the parties? - Confidence-building <ul style="list-style-type: none"> • Are preliminary bilateral contacts with parties needed? • What information-sharing and communication should take place between the mediator and the parties before the talks begin? How is confidentiality assured in pre-talks discussions? • How should the parties be prepared for the negotiations? Who prepares them? • What is the confidence level needed before the talks can begin? How should the mediator go about building confidence between the parties? <p>TALKS</p> <ul style="list-style-type: none"> - Setting the stage and ambiance to the talks <ul style="list-style-type: none"> • What are the interparty dynamics like? Do parties get along with each other? How can the goodwill and openness between the parties be increased? - Drafting clear guidelines for the negotiations <ul style="list-style-type: none"> • How do parties engage with each other in the talks phase? • Are observers allowed into the meeting room? If yes, what is their role? • Are the discussions recorded? If yes, what happens to the recordings? - Format of the negotiations <ul style="list-style-type: none"> • How many plenary sessions are included in the talks phase? What issues should be dealt with through shuttle diplomacy? - Formality of Opening <ul style="list-style-type: none"> • What is the format of opening and opening statements? • Is the opening ceremony public or a closed-door event? What is the protocol? • Do the negotiations require a formal opening? If so, does it matter who gives the opening statement? - Guiding the mediation process <ul style="list-style-type: none"> • Are rigid deadlines or time frames needed? • Will there be one, two or more mediators? What is the division of labour among the mediators? • What are the rules for the mediator and parties using caucus? • How are the disputed issues reframed and the decisions sequenced? Should

Problem	People	Process
<ul style="list-style-type: none"> • How does the evolving context affect the agreement and its implementation? • Has the implementation been taken over by other events, such as new emerging conflicts? 	<p>AGREEMENT</p> <ul style="list-style-type: none"> - Inclusivity of the agreement <ul style="list-style-type: none"> • Who approves the agreement? • Are the perspectives and demands of unrepresented stakeholders included in the agreement? • Are secondary and third parties included in the official agreement? - Guarantors <ul style="list-style-type: none"> • Who are the guarantors and watchdogs for the agreement? • What is their role? - Openness <ul style="list-style-type: none"> • To what extent should the general public be informed of the agreement before it is signed? <p>IMPLEMENTATION</p> <ul style="list-style-type: none"> - What are the challenges with implementation in terms of the new relations developed among the parties after the agreement? <ul style="list-style-type: none"> • Implications on the legitimacy and functions of the mediator/s? - Actors <ul style="list-style-type: none"> • Have new actors emerged? Have factions splintered from signatory actors? • Do the parties need capacity-building for implementation? 	<ul style="list-style-type: none"> • 'easy' issues be dealt with first? • How can deadlocks be broken? • How does the process reflect the desired agreement type? • How is communication with different constituencies dealt with? • How are the parties' expectations managed? <ul style="list-style-type: none"> - Venue and other logistics <ul style="list-style-type: none"> • Where should the talks take place? Does the selection of venue affect the impartiality of the mediation process? • How can security be assured? • Are interpreters needed? How is their impartiality assured? <p>AGREEMENT</p> <ul style="list-style-type: none"> - Voluntary agreement? <ul style="list-style-type: none"> • Did the parties reach an agreement voluntarily? • Did they co-generate the agreement? - Scope of the agreement <ul style="list-style-type: none"> • How comprehensive should the agreement be? • Is the agreement an agreement to talk, a ceasefire agreement, a cessation of hostilities, transitional agreement, or a comprehensive agreement? - Flexibility of the agreement <ul style="list-style-type: none"> • How rigid should the agreement be? • Can the agreement be amended after it has been signed? Is there room for any further mediation? - Mechanism for implementation <ul style="list-style-type: none"> • What is the agreed format and timeframe for implementation? • Who implements? • Who funds implementation? - Mechanism for monitoring <ul style="list-style-type: none"> • What is the agreed format for monitoring? • Who monitors? • What are the consequences of non-implementation/non-compliance? Is a sanctioning system established? <p>IMPLEMENTATION</p> <ul style="list-style-type: none"> - Making local actors the guarantors of the agreement <ul style="list-style-type: none"> • Can local actors act as watchdogs and guarantors of the agreement? - Engagement of mediator(s) during implementation phase <ul style="list-style-type: none"> • Should the mediator remain engaged during the implementation period? Do the conflict parties call for the mediator's longer engagement? - Involvement of the international community <ul style="list-style-type: none"> • How should the international community be involved during the implementation phase? • Can the international community act as guarantors of the agreement? - Dispute resolution mechanisms <ul style="list-style-type: none"> • Does the agreement include reference to a dispute resolution mechanism during the implementation phase? What is the format of this mechanism?

NOTES



1. Division of mediation process into pre-negotiation, negotiation, agreement and implementation phase has been used, among others, by the Center for Humanitarian Dialogue. In some cases, the negotiation and agreement phases are bundled together under the negotiations phase (e.g. USAID, Swiss Peace).
2. Hizkias Assefa, "Mediation as a Process in the African Context" (seminar discussion, Addis Ababa, March 28–29, 2012).
3. Solomon Berewa, interview with the author on July 17, 2012.
4. Damiano Sguaitamatti, "Central African Republic, Inclusive Political Dialog (Pre-talks only)," in *Unpacking the Mystery of Mediation in African Peace Processes*, ed. Simon J. A. Mason (Zürich: CSS and swisspeace, 2008), 28.
5. Ibid.
6. Col. Mbaye Faye, interview with the author on July 18, 2012.
7. Lakhdar Brahimi, interview by Elina Lehtinen, CMI, April 25, 2012. Available at: <http://vimeo.com/43127135>
8. Annika Åberg, "North-Mali and North-Niger, Libya Engagement," in *Unpacking the Mystery of Mediation in African Peace Processes*, ed. Simon J. A. Mason (Zürich: CSS and swisspeace, 2008), 59.
9. Emmanuel Bombande, quoted from CMI-EU Parliament Seminar, "Regional Actors as Vectors of Peace: What role for the EU?," April 25, 2012.
10. David Lanz, "Northern Uganda, Juba Negotiations," in *Unpacking the Mystery of Mediation in African Peace Processes*, ed. Simon J. A. Mason (Zürich: CSS and swisspeace, 2008), 62.
11. Martti Ahtisaari, interview with the author on December 28, 2012.
12. See, for instance: Zartman, I. W. and Berman, M., 1982, *The Practical Negotiator*, New Haven, Yale, University Press; Zartman, I. W., 1985/1989, *Ripe for Resolution: Conflict and Intervention in Africa*, New York, Oxford University Press.
13. I. William Zartman, "The Timing of Peace Initiatives: Hurting Stalemates and Ripe Moments," *The Global Review of Ethnopolitics* 1 (2001): 8.
14. Álvaro de Soto, interview with the author on July 26, 2012.
15. Solomon Berewa, interview with the author on July 17, 2012.
16. Peter van Walsum quoted in Jonathan Litscher, "Western Sahara, The Baker Plans," in *Unpacking the Mystery of Mediation in African Peace Processes*, ed. Simon J. A. Mason (Zürich: CSS and swisspeace, 2008), 90.
17. Álvaro de Soto, interview with the author on July 26, 2012.
18. CMI video documentary "Invisible Negotiators"
19. Ibid
20. Ibid
21. Zartman, "The Timing of Peace Initiatives," 15
22. Col. Mbaye Faye, interview with the author on July 18, 2012.
23. Solomon Berewa, interview with the author on July 17, 2012.
24. Meeri-Maria Jaarva, interview with the author on August 27, 2012.
25. Martti Ahtisaari, interview by Elisabeth Rehn, Elisabeth möter, Yle Fem, September 24, 2012.
26. Lakhdar Brahimi and Salman Ahmed, *In Pursuit of Sustainable Peace: The Seven Deadly Sins of Mediation* (New York: New York University Center on International Cooperation, 2008), 9. Available at: http://www.cic.nyu.edu/peacekeeping/docs/archive/2008/brahimi_7sins.pdf
27. Note that this section deals with lessons learned on confidence-building in the pre-talks phase. The subsequent section on the talks phase includes more lessons learned on how to build confidence between the warring parties during peace talks.
28. Col. Mbaye Faye, interview with the author on July 18, 2012.
29. Martti Ahtisaari, interview with the author on December 18, 2012.
30. Ibrahima Fall interviewed by CMI. 'Mediating in Africa' DVD.
31. Lakhdar Brahimi and Salman Ahmed, *In Pursuit of Sustainable Peace*, 7.
32. Álvaro de Soto, interview with the author on July 26, 2012.
33. Simon J. A. Mason, "Sudan, North-South Comprehensive Peace Agreement," in *Unpacking the Mystery of Mediation in African Peace Processes*, ed. Simon J. A. Mason (Zürich: CSS and swisspeace, 2008), 72.
34. Kofi A. Annan in Martin Griffiths, *The Prisoner of Peace: An interview with Kofi A. Annan* (Geneva: Centre for Humanitarian Dialogue, 2008), 9. Available at: <http://www.hdcentre.org/files/Kofi%20interview%20%283%29.pdf> 7, 4.
35. Álvaro De Soto: "Ending Violent Conflict in El Salvador." In *Herding Cats: Multiparty Mediation in a Complex World*, edited by Chester A. Crocker, Fen O. Hampson, and Pamela Aall, 345–387. Washington, D.C.: United State Institute of Peace Press, 1999. 381
36. Laurie Nathan, "Towards a New Era in International Mediation," *Policy Directions* (May 2010).
37. Col. Mbaye Faye, interview with the author on July 18, 2012.
38. Álvaro de Soto, interview with the author on July 26, 2012.
39. Martti Ahtisaari, interview with the author on December 18, 2012.
40. Margaret Vogt, interview with the author on August 29, 2012.
41. Kofi A. Annan in Martin Griffiths, *The Prisoner of Peace: An interview with Kofi A. Annan* (Geneva: Centre for Humanitarian Dialogue, 2008), 4.
42. Martti Ahtisaari, interview with the author on December 18, 2012.
43. Margaret Vogt, interviewed by CMI. *Mediating in Africa* DVD.
44. Lakhdar Brahimi, interview by Elina Lehtinen, CMI, April 25, 2012. Available at: <http://vimeo.com/43127135>
45. Lakhdar Brahimi, quoted from CMI-EU Parliament Seminar, "Regional Actors as Vectors of Peace: What role for the EU?," April 25, 2012.
46. Margaret Vogt, interview with the author on August 29, 2012.
47. CMI video documentary "Invisible Negotiators"
48. Martti Ahtisaari, "Striving for Peace: A Question of Will" (speech, Minneapolis, MN, March 5, 2010), CMI <http://www.cmi.fi/material/speeches-and-articles/268-twenty-second-annual-nobel-peace-prize-forum.html>
49. Martti Ahtisaari, interview with the author on December 18, 2012.
50. Margaret Vogt, interview with the author on August 29, 2012.
51. Ibid.
52. Meeri-Maria Jaarva, interview with the author on August 27, 2012.
53. Margaret Vogt, interview with the author on August 29, 2012.
54. CMI video documentary "Invisible Negotiators"
55. Ibid.
56. Ibid.
57. Martti Ahtisaari, "Striving for Peace: A Question of Will" (speech, Minneapolis, MN, March 5, 2010), CMI <http://www.cmi.fi/material/speeches-and-articles/268-twenty-second-annual-nobel-peace-prize-forum.html>
58. Solomon Berewa, interview with the author on July 17, 2012.
59. Martti Ahtisaari, interview with the author on December 18, 2012.
60. Margaret Vogt, quoted from CMI-EU Parliament Seminar, "Regional Actors as Vectors of Peace: What role for the EU?," April 25, 2012.
61. Martti Ahtisaari, interview with the author on December 18, 2012.
62. The Kenya peace agreement implementation monitoring reports can be found from <http://south.co.ke/NationalAccord.aspx?View=All Reports>
63. Martti Ahtisaari, interview with the author on December 18, 2012.

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The image features a vibrant orange background with a close-up, artistic view of dandelion seed heads. The seeds are dark and radiate from a central point, creating a fan-like pattern. The lighting is soft, highlighting the delicate structure of the seeds.

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