FAUSTIAN BARGAINS: ELECTORAL VIOLENCE AND TRANSITIONAL POWER SHARING IN KENYA AND ZIMBABWE

A Thesis
submitted to the Faculty of the
Graduate School of Arts and Sciences
of Georgetown University
in partial fulfillment of the requirements for the
degree of
Master of Arts
in Conflict Resolution

By

Tyler M. Beckelman, B.A.

Washington, DC
September 25, 2012
Power sharing agreements have become an increasingly prevalent means of ending civil war and a logical institutional approach to long-term conflict management in divided societies. While existing literature has focused on the use of power sharing agreements to end protracted ethnic conflict, the negotiation of power sharing pacts to end violent electoral disputes is a relatively recent phenomenon, presenting a unique set of circumstances for the theory and practice of power sharing. This paper hypothesizes the range of factors that condition the ability of power sharing coalitions following violent elections to deliver political reform, and explores these factors in Kenya and Zimbabwe. The analysis finds that while the coalition government in Zimbabwe remains mired in political deadlock, Kenya has made unsteady progress towards reform due to the institutional design of the power sharing coalition, a history of elite cohesion and alliance building, and more effective vertical accountability mechanisms. Understanding the factors that condition the incentives of coalition governments to deliver reform following situations of democratic deadlock not only provides further specification to theories of power sharing, it also highlights useful pointers for international peace building and democratization strategies in countries experiencing violent electoral conflict.
# Table of Contents

Introduction ...................................................................................................................... 1  
I. Theories of Power Sharing ............................................................................................. 5  
II. Electoral Conflict and Transitional Power Sharing ..................................................... 8  
III. Towards a Model of Successful Post-Election Power Sharing..................................... 14  
IV. Pathways to Power Sharing in Kenya and Zimbabwe.................................................. 20  
V. Power Sharing in Kenya and Zimbabwe in Comparative Perspective ......................... 26  
VI. Conclusions .............................................................................................................. 50  
VII. References .............................................................................................................. 56
INTRODUCTION

2008 was an inauspicious year for democracy in Africa. In Kenya, an explosion of inter-ethnic violence rocked the country in late December 2007 following closely contested presidential elections and incumbent Mwai Kibaki’s unilateral declaration of victory. The fallout from the post-election violence in Kenya was severe: over 1,000 people were killed and over 600,000 displaced from their homes in intense inter-ethnic clashes that exposed Kenya’s long-simmering ethnic tensions and institutional weaknesses. Not long after Kenya’s electoral debacle, Zimbabwe’s security services, led by Robert Mugabe’s Zimbabwe African National Union – Patriotic Front (ZANU-PF) party, unleashed a brutal campaign of killing, torture, and intimidation of supporters of their primary rival, the Movement for Democratic Change (MDC), journalists, and civil society groups across Zimbabwe during their elections. In both Kenya and Zimbabwe, electoral violence ultimately gave way to ‘governments of national unity’ that placed electoral adversaries into uneasy governing coalitions. Four years later, as these governments of national unity approach the sunset of their terms, the people of Kenya and Zimbabwe look forward to their next elections with varying degrees of optimism, caution, and foreboding.

Democratic theorists have long realized that at the heart of any well-functioning democracy is the expectation that leaders will be willing to lose elections; that the will of the people will not be met with violent opposition when the tabulation of ballots does not go in one’s

---

They must be taught to accept defeat and look forward to other good things, for if no one was a loser then what would happen?

- “Danny,” ethnic Kalenjin

---

1 Quoted in Njogu (2009)
favor. The use of violence by electoral losers, however, turns this precept on its head, challenging the foundational basis of any government that seeks to establish popular legitimacy through elections. To compound the problem of electoral violence, the rise of power sharing agreements as the primary means of resolving violent electoral conflicts presents the legitimate winners of elections with an unsettling Faustian bargain: they must either agree to a fundamentally undemocratic outcome in the form of a negotiated power sharing coalition, or risk a rapid slide to humanitarian crisis, economic collapse, and possible civil war. When faced with this stark choice, the risks - in terms of human and economic cost – are often too much to bear, and compel the parties to accept a mediated solution that permits the perpetrators of violence to retain a position at the seat of political power. As Morgan Tsvangirai, the leader of the MDC stated upon proceeding into negotiations with Mugabe, “the people have suffered enough” (Tendi, 2008).

While power sharing has enjoyed wide appeal as a solution for encouraging peaceful political contestation in deeply divided societies, particularly in societies emerging from civil conflict, power sharing as a result of election-related violence has received comparatively less academic and empirical examination. This fact is surprising given the rise in the use of the power sharing formula across a range of contexts, continents and countries. Like power sharing regimes that result from mediated settlements to civil wars, the agendas of power sharing regimes following violent elections are broad and complex. Not only are these coalitions expected to pick up the pieces from a brief period of intense and violent conflict, they are given a broad agenda for reform, often in a very limited time period, that aims to reconstitute the institutions of government in a manner that ensures that violence does not reoccur during the
next electoral cycle; a fact that is particularly ironic given that the very leaders who utilized violence to disrupt the democratic process are given veto power in the governing coalition.

In these contexts, the literature on power sharing following civil war, while providing a rich theoretical base for considering the factors that condition the performance of power sharing regimes, does not adequately capture the full range of issues in situations of democratic deadlock, which present a different set of circumstances and unique challenges for the task of political reform and reconciliation. This paper will thus attempt to fill this gap in the literature by developing a theoretical framework for successful power sharing regimes following flawed and violent elections. “Success” in these cases refers to governing coalitions that achieve the difficult objective of reforming governing institutions and promoting reconciliation in a manner that deepens the prospects for stable democratic contestation. This framework will then be considered in the context of Kenya and Zimbabwe, two cases of transitional power sharing following recent violent elections.

The analysis of Kenya and Zimbabwe reveals that, while many issues remain unresolved as both countries approach potential elections in 2013, Kenya was able to achieve comparatively more reforms during the power sharing than Zimbabwe, which remains mired in political acrimony despite nearly four years of inclusive governance. The most notable of these reforms in the Kenyan context is the progressive constitution negotiated by the parties and adopted in a popular referendum in 2010, a feat which continues to hold broad potential for transforming Kenya’s political system and ushering in a new era of more responsive, transparent, and rule-bound governance. This paper contends that the relative success in Kenya compared to Zimbabwe can be explained by a range of factors, including the institutional design of the power
sharing government, the history of political competition and elite cooperation in each country, and vertical mechanisms of accountability, including both internal and external influences.

This analysis, as well as the development of a more thorough framework for considering the success of post-election power sharing regimes, provides an important theoretical specification to the existing literature of power sharing. It also has important implications for the practice of international mediation in violently contested elections. While peaceful transfers of power are becoming increasingly common in states across the world, and while many of these states have made tremendous strides in improving the quality and credibility of electoral processes, electoral violence remains a persistent risk across much of the developing world, particularly in Africa. Should these situations necessitate a mediated solution; that is, should the risk of violence preclude a democratic outcome, this analysis provides useful pointers for international peace building and democratization strategies aimed at increasing the likelihood that, at the very least, the duration of the coalition government is able to achieve modest political reforms and decrease the risk of renewed violence in subsequent elections.

The paper proceeds as follows: Section I provides a brief review of the theory and primary debates within the power sharing literature; Section II discusses the theoretical uniqueness of post-election power sharing regimes; Section III distinguishes situations of electoral deadlock from the traditional power sharing literature and develops a hypothesized model for post-election power sharing success; Section IV traces the paths to power sharing in Kenya and Zimbabwe; Section V compares the performance of power sharing regimes in Kenya and Zimbabwe in light of the hypothesized factors; and Section VI offers conclusions and recommendations.
I. THEORIES OF POWER SHARING IN DIVIDED SOCIETIES

The theoretical basis upon which current models of power sharing are derived draw heavily on Arend Lijphart’s classic theory of consociationalism. Consociational theory has had particular salience in debates about how to design democratic institutions in multiethnic societies, especially nations emerging from violent conflict and civil war. Lijphart’s seminal work, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*, describes how the Netherlands was able to achieve a measure of stability despite being a deeply divided society in terms of religion and class (Lijphart, 1968). Broadening the theory beyond the Netherlands, consociational theory posits that institutional rules guaranteeing multiple groups a stake in the decision-making process serves to mitigate conflict among leadership elites (Norris, 2008). The main institutional features of a consociation include a grand coalition executive which is inclusive of the most important segments of society, some degree of segmental autonomy, often in territorial terms, mutual vetoes on matters of vital importance to the nation, and the promotion of the principle of proportionality throughout the public sector, including the electoral system or institutions of public life, including the police, judiciary or other public sectors (Lijphart, 1977, p. 25). In consociational systems, legislative seats may also be shared through either a pre-determined formula assigning a concrete number of seats to specific groups, or through carefully designed electoral laws that aim to ensure a wide degree of representation. In these systems, consociational theory posits that party leaders will have an incentive to bargain and form coalitions with other factions in order to advance governance objectives, while power-sharing in the executive is expected to temper ethnic intolerance among elites (Norris, 2008, p.
24). In essence, consociational arrangements aim to channel the demands of distinct ethnic and religious blocs into multiethnic coalitions within governing structures, and to build over time a greater degree of tolerance and acceptance within governing institutions.

The consociational formula is often contrasted with more “integrative” or majoritarian systems that enforce moderation among competing blocs. Horowitz is the best-known proponent of integrative systems, where the necessities of building broad electoral blocs enforce moderation and cross-group cooperation (Horowitz, 1985). The integrative argument builds on a critique of the consociational formula, arguing that power sharing regimes that define participation in ethnic terms tend to institutionalize these ethnic cleavages, thereby deepening rather than ameliorating inter-group conflict (Norris, 2008). On the other hand, the higher vote thresholds required in majoritarian systems – where the winner is required to gain an absolute majority – gives politicians and parties a strong incentive to engage in “bridging,” or appealing to other identity groups, by reaching across class, gender and ethnicity boundaries (Reilly & Reynolds, 1998). As noted by Sisk, both majoritarian and consociational systems should be considered forms of power sharing: “the consociational and the integrative approaches to ethnic conflict management seek to promote governing coalitions that are broadly inclusive of all ethnic groups in deeply divided multiethnic society – the hallmark of power sharing – but advocates of these approaches sharply disagree over when and how such coalitions are formed and which specific institutions and practices better manage ethnic conflict” (Sisk, 1996, p. 6).

Lijphart’s consociational theory has burgeoned into a wide body of literature that further qualifies the types and degree of power sharing regimes, and studies the forms of institutional design that are most likely to prevent conflict and promote peaceful political contestation. Many
studies of power sharing regimes are circumspect about the ability of power sharing regimes and/or consociational governing coalitions to maintain stability over the long-term. Jarstad (2009), for example, finds that power sharing often serves to reinforce ethnic cleavages, leading to eventual instability (Jarstad, 2009). In one of the most damaging indictments of the performance of power sharing institutions, Spears (2002) finds, through an analysis of cases in Africa and Asia, that “power-sharing is a surprisingly unstable form of government that, even at the best of times, provides only a short-term reprieve from violent conflict” (p. 123).

Given these concerns, a range of studies have qualified the consociational formula, focusing on the range of factors that are likely to condition the performance of power sharing regimes. Hoddie and Hartzell find that, after conducting a large-N study of power sharing regimes and civil war recurrence, the degree of power sharing is positively correlated with lasting peace (Hartzell & Hoddie, 2003, p. 330). In perhaps the most comprehensive study on the subject to date, Norris finds that power sharing arrangements based on proportional electoral systems “increase the probability of democratic governance’s succeeding even after controlling for factors such as economic development, ethnic heterogeneity, and colonial background” (Wolff, 2010, p. 134; Norris, 2008, p. 234).

Despite the ongoing debate about the opportunities and challenges inherent in power sharing regimes, consociational formulas for ending conflict have become an increasingly attractive tool for international mediators, particularly in Africa. Mehler (2009) shows that nearly all of the major peace settlements in Africa signed from 1999-2009 contained some element of power sharing (p. 456). To be sure, much of this growth was inspired by the South African experience, where power sharing played an important role in the transition from
apartheid to majority rule (Spears, 2002). Since then, South Africa has shown a preference for power sharing as a way to bring an end to conflicts, becoming a core feature of their regional diplomacy (as will be discussed in further detail below in the context of Zimbabwe) and international mediation, particularly by regional bodies such as the African Union and Southern African Development Community (SADC). Beyond the South African experience, however, it is clear that power sharing in some form will continue to be a key feature of peace settlements, and a preferred tool of international mediators seeking to bring both an end to conflict and the consolidation of stable governance.

II. ELECTORAL CONFLICT AND TRANSITIONAL POWER SHARING

As described above, the debate over power sharing has developed a rich collection of literature and theoretical debate about the utility of power sharing in response to violent ethnic conflicts, and as an institutional remedy for conflict mediation in multiethnic societies. Comparatively little academic attention, however, has been given to whether a model used to end civil wars is suitable for dealing with the very different challenges posed by flawed and violent elections. While many of the fundamental tenets of power sharing theories are applicable to situations of flawed elections, there are important differences that have implications for both the theory and practice of power sharing. Perhaps most importantly, the legacy of a conflict – its duration, its intensity, and the particular patterns of violence – is far different in cases of violent elections when compared to protracted civil wars. The two cases discussed below, for example, had brief periods of internal unrest but, aside from their independence struggles, never experienced long-term civil conflict in the manner of Sudan or Liberia. This has implications for
a range of factors that condition the ability of actors in a coalition to work together to agree on reforms, including levels of trust, histories of political accommodation among elites, and the presence (or lack thereof) of functioning state institutions and governance arrangements.

Another important difference between cases of civil war and electoral deadlock concerns the duration of the power sharing coalition. In many cases, prescribed power sharing – often modeled around key elements of Lijphart’s consociational formula – becomes a permanent feature of political systems arising out of violent conflict. In Burundi, for example, the constitution stipulates quotas for ethnic representation in political parties in the democratically elected National Assembly (Jarstad, 2009). Coalition governments installed after violent elections, however, tend to be transitional in nature, limited to the duration of an agreed electoral cycle or some other period of time as determined during the course of peace negotiations. As will be discussed in further detail below, the governments of national unity in both Kenya and Zimbabwe have a defined timeframe, after which elections will return the central government to a place of popular legitimacy. This is not to say that transitional agreements are uncommon in civil war settlements. On the contrary, a transitional period of power sharing is often a key element of peace settlements, and is generally thought of as necessary to steer the efforts of formerly warring parties into peaceful political competition, and to minimize the chances of civil war recurrence over the long term (Sisk, 1996). As Papagianni (2008) notes, “the goal of inclusion and elite bargaining in the transitional period is to secure the engagement of key political actors in the process and to channel differences among them through agreed-upon institutions and procedures. The long-term goal is that such interaction will lead to the acceptance of such institutions by political actors” (p. 63). Violent elections, on the other hand,
present an altogether different set of circumstances. In these cases, political actors distinctly reject the democratic process through violence, turning the goal of promoting democratic learning and moderate conflict resolution practices effectively on its head, thereby altering the calculations of actors seeking to regain political advantage in advance of subsequent elections.

This fact highlights the third, and intricately related difference between power sharing to end civil wars (both in terms of whether the power sharing government is permanent or transitional in scope), and power sharing as a result of electoral deadlock. In many ways, the latter presents a more vexing paradox: leaders and groups that deliberately upset democratic processes are placed in the position of reconstituting democratic institutions; institutions that they themselves chose to compromise when faced with the prospect of a loss at the ballot box. Because the previous institutions of governance failed, these governments are expected to carry out a broad reform agenda, aimed at repairing the fractured institutions of government that failed during the period of electoral violence. As a result, the agenda for power-sharing regimes is large and complex. Not only are coalition governments expected to repair what are often badly damaged economies, they are expected, and often required, to agree on a broad array of reforms aimed at repairing dysfunctional state institutions and altering the conditions of democratic contestation in a manner that would encourage rule-bound, peaceful popular legitimation. Unlike countries emerging from civil wars, however, these countries often have more consolidated governing institutions, more functional security services, and have not felt the effects – both in economic and humanitarian terms – that civil war, particularly protracted civil war, brings upon communities. In these contexts, the process of initiating reforms can be expected to involve a much more difficult process of navigating the legacy of political
competition and entrenched interests, as opposed to building these institutions from scratch.

Recognizing these differences, a small number of authors have ventured analyses of the performance of power sharing regimes following flawed elections. Nearly all of these analyses have been roundly critical of the performance of post-election power sharing regimes, citing their inherent undemocratic character and criticizing their performance in bringing about political reform. Cheeseman (2011), for example, analyzes the performance of a range of power sharing regimes in Africa, including regimes that came about both as a result of civil war and democratic deadlock, in terms of two explanatory variables: the distribution of violence during the period of conflict, and the degree of elite cohesion prior to the conflict. After applying these variables to a qualitative analysis of six cases (Angola, Burundi, the Democratic Republic of Congo, Kenya, South Africa, and Zimbabwe), Cheeseman finds that poor relations among governing elites, most often indicated by a history of conflict or opposition, undermines the prospects for reform in power sharing regimes. In a reference to South Africa’s positive experience with power sharing and the necessity of inter-party trust in positive reform outcomes, Cheeseman (2011) notes: “while unity government has frequently generated important gains in terms of short-term peace and stability, it is hard to avoid the conclusion that when it comes to constitutional and security sector reform, power-sharing is most effective where it is least needed” (p. 359). That is, cases where there is a high degree of inter-elite trust are more likely to produce positive results, regardless of the particular institutional formations of governance. In cases of electoral deadlock, Cheeseman (2011) further notes that the move to power sharing governments sends a disturbing signal to entrenched incumbents across the continent: “the adoption of unity governments in Kenya and Zimbabwe is likely to encourage embattled incumbents across the
continent to deliberately plunge their countries into democratic deadlock with the aim of negotiating a favourable power-sharing deal” (p. 359).

LeVan, (2011) in perhaps the most thorough analysis of post-election power sharing regimes to date, finds that grand coalition governments adversely affect government performance and democratization. The key variable for LeVan concerns relationships of vertical legitimacy, which are undermined by forced inclusion in political institutions: “Political inclusion often undermines competitive elements of democratization, disrupts vertical relationships established through voting or the devolution of power, and impedes the ability to determine responsibility and therefore hold politicians accountable for their performance” (LeVan, 2011, p. 46). In many ways, LeVan’s analysis points to the anti-democratic nature of power sharing regimes that come about through negotiated, rather than popularly-determined, rules of political inclusion. His recommendations reflect these preferences, calling for sharper terms of reference for institutions to garner popular legitimacy, and more effective electoral management to ensure that the will of the people is manifest in governing institutions (LeVan, 2011, p. 47).

To be sure, while these articles have made important contributions, a number of concerns limit their utility for both the theory of power sharing regimes, and the practical application of peace-making strategies in situations of democratic deadlock. For one, many of these analyses may be premature, particularly in light of the fact that they were written during the middle of the tenure of the governing coalitions they so roundly criticized. As such, the analyses may miss important events that have occurred later in the duration of these coalitions. For instance, would Cheeseman still maintain his view that “power sharing governments are unlikely to pursue constitutional reforms” after witnessing the successful adoption of a progressive constitution in
Kenya in 2010 (discussed in further detail below)? While many of the predictions contained in these analyses may stand the test of time, it may also be too early to completely close the book on the performance of post-election power sharing coalitions, particularly when such important events are excluded from the conversation. Conversely, the successes that become evident later in the duration of power sharing governments may point towards more nuanced or contingent conclusions about the particular variables and factors that are able to compel reforms within otherwise imperfect institutional arrangements.

Second, and related to an acknowledged desire on the part of the authors to ensure theoretical parsimony, the above analyses fail to take into account many important variables that condition the success of post-election power sharing regimes, and the incentives that parties within these governing coalitions have to pursue reforms and reconciliation. For instance, little attention is given to the role of outside mediators and guarantors of the agreements, not to mention the international community more broadly, a fact that is particularly surprising given that, as discussed below, these influences play an important role in focusing the agenda and pressuring the parties in the governing coalition. Another missing variable in studies of post-election power sharing regimes concerns the role of civil society and other domestic demands for reform. While the ability of civil society activists and citizen preferences to affect policy change and hold governments accountable is an area of considerable debate, at the very least the role of civil society and media – and the particular nodes of influence in each case – merits further exploration in terms of the particular factors which condition power sharing success. Finally, these analyses leave out important considerations related to the process of national healing, reconciliation and transitional justice, the unfolding of which has important implications not only
for national-level perceptions, but also the actions of elites, particularly when mechanisms of international jurisprudence, such as the International Criminal Court (ICC), become involved.

III. TOWARDS A MODEL OF SUCCESSFUL POST-ELECTION POWER SHARING

In light of the shortcomings in the existing literature on post-election power sharing regimes noted above, the following analysis will venture a more comprehensive set of hypothesized variables, building on the applicable tenets of consociational theory and further specifications determined through qualitative and quantitative analysis, that are likely to condition the performance of post-election power sharing regimes. Any analysis concerned with evaluating the performance of power sharing coalitions that result from democratic deadlock must begin with the question: what constitutes success for a post-election coalition government? Certainly, the absence of violence in subsequent elections is a critical factor. However, successfully concluding a transitional period says very little about whether and how the transitional power-sharing government was able to alter the conditions that previously compelled electoral violence or improved the quality and performance of democratic institutions in a given country.

A more probing question would thus be: did the power sharing regime affect political competition in such a way to render political competition less violent? Put differently, did the coalition government address the underlying factors that compelled electoral violence in the first place? This question raises a number of important quandaries, not only in terms of whether subsequent elections are violence-free, but whether the political system in a given country has undergone more transformational change that would dis-incentivize the use of violence and
encourage the channeling of grievances through rule-bound institutions. While the task of reforming a political culture goes well beyond small institutional fixes, within the prescribed time period of most transitional power sharing agreements, this analysis recognizes transformational change may be too tall an order. Indeed, a more likely expectation is that in prescribed periods of power sharing, political reform and changes in governance practices are likely to fall somewhere between the wholesale and the cosmetic. This expectation is not surprising, particularly in light of the fact that violent incumbents continue to control the reins of power in post-election coalitions, albeit with built-in checks to the exercise of authority. As a result, the agenda for each reform coalition will be largely context specific, and will depend on the scope and issues that compelled electoral violence in the first place. Despite these caveats, it is possible to identify a range of reforms and contingent generalizations about which changes – both institutional and otherwise – are most likely to more fundamentally alter the nature of the political system, and the incentives that face elites when choosing to work within, or outside, the rules of electoral contestation.

First, post-election power sharing regimes generally aim to refashion the social contract between a government and its people, as well as the structure of governance itself, most often in the form of a new national constitution. This task is very similar to the process of realizing a new constitution in situations emerging from violent conflict, though important differences are worth mentioning. In contrast to cases of protracted civil war, countries experiencing electoral conflict often have a long history of attempts – successful or unsuccessful – at constitutional reform. Kenya, for example, has embarked on a number of attempts to revise its constitution over the past few decades, most notably in 2005 when the constitutional draft supported by
President Kibaki was shot down in a popular referendum (Mutua, 2008). For post-election power sharing regimes, the process of agreeing on a new set of institutional rules and structures of governance is seen as a crucial test of the viability of the reform coalition. When, in most cases, the constitution is put to a national referendum, it becomes one of the most important steps for reestablishing a government’s popular legitimacy, and for involving civil society and citizens in the reform of the political system, much like the task of developing a new constitution for countries emerging from civil conflict (Sisk, 1996; Papagianni, 2008; Norris, 2008). Depending on the scope of the constitution and its particular contents, the process of constitutional reform can be transformational, fundamentally altering the nature of political competition in a given country, or marginal, providing little change from previous constitutions or rules, depending on the outcome of inter-party bargaining and the content of particular constitutional drafts.

Second, and intimately related to the process of constitutional reform, post-election coalition governments are often charged with reforming key elements of the political system and various arms of governance to be more inclusive, responsive, and/or functional. This task is particularly salient when considered in terms of the security services, especially those with partial or partisan leanings or affiliations. Reform should not be limited to the security services, however. Judicial reform also often plays a formative role in post-election coalition efforts, not least since the judiciary’s failure in the previous period of violence is often a precursor – or accelerant – to conflict. Other targets of reform may include bloated or unresponsive civil services, and commissions that oversee important issues, such as the distribution and administration of land tenure rights. This feature of post-election power sharing builds on Hoddie and Hartzell’s conclusion about the reach of power sharing, noting that the higher degree
of power sharing exists within governing institutions, the greater the chances that these institutions will endure (Hartzell & Hoddie, 2003).

Third, coalition governments are often charged with advancing mechanisms for national reconciliation and healing, in an effort to address the legacy of violence that occurred during the previous election (or prior). Most often, this process of national healing takes the form of national dialogues or truth and reconciliation commissions. In Africa, these processes are often modeled, at least on paper, after the successful South African Truth and Reconciliation Commission. In some cases, however, international jurisprudence plays a role in the post-election situation. As will be discussed in more detail below, the ICC process has had tremendous implications on the course of Kenya’s particular transition, both in terms of the prospects for governance but also on the actions and behavior of key actors within Kenya’s political system, some of which remain under ICC indictment.

Finally, coalition governments must also embark on the task of rebuilding trust in democratic processes, and ensuring that subsequent processes are free from political manipulation. This task of governing coalitions is especially relevant in cases of power sharing in response to democratic deadlock, as a key driver of electoral violence often centers around the real or perceived manipulation of electoral results. Most commonly, building trust in electoral processes requires coalition governments to reconstitute the rules and structures of electoral management bodies, agreeing on procedures to shield these institutions from political influence and appointing commissioners that can be expected to prepare for subsequent electoral processes with a higher degree of integrity than previous contests. Electoral reforms may also involve changes to the legislation governing electoral procedures, and/or constitutional adjustments to
the rules governing electoral eligibility, ethics and integrity, and procedures for addressing electoral irregularities.

In light of the above tasks facing post-election power sharing regimes, what are the factors most likely to condition the ability of the coalition regime to successfully achieve such a broad agenda? This section lays out a range of hypothesized variables that are likely to condition the performance of post-election power sharing regimes.

**Factor 1: Institutional Design of the Coalition Government**

The first factor that can be expected to influence the actions and ability of a post-election power sharing concerns the institutional design and structure of the government. Often, the structure and design of the power sharing regime is a product of the negotiations that ended the conflict, and reflect the context-dependent interests and strategies of the various parties. Most often, key areas of negotiation concern the structure of the executive, and the allocation of ministerial portfolios. Important differences, such as whether the coalition is structured around a unitary (President) or dual (President and Prime Minister) executive can be surmised to affect the relative balance of power between the parties in a coalition. Perhaps most importantly, this factor must also consider the procedures used for allocating positions and for broader decision-making processes, as this will in large measure determine the strategies employed by participants in the coalition government.

**Factor 2: History of Relations Between Coalition Partners**
This factor borrows heavily from the focus of Cheeseman and Tendi (2010), who focus on “tracing the historical roots of the key veto players who shaped how power-sharing agreements were implemented” (p. 206). It can be expected that patterns of relations between parties – whether characterized by exclusionary politics, mutual accommodation, or something in-between – will have particular salience for determining how parties in a power sharing government interact with their coalition partners. It can be expected that parties with a history of elite accommodation, interaction, and deal making will be more apt to engage in political compromise under a coalition agreement. Conversely, parties with a history of exclusionary politics and the utilization of coercion to achieve political ends will be expected to be less likely to pursue political compromise and agree on reforms during the transitional period.

**Factor 3: Vertical Relationships and Accountability Mechanisms**

Coalition governments, while coming about as a result of a fundamentally undemocratic process, still must maintain a degree of responsiveness to their citizenry, particularly in cases where expectations for change and conflict fatigue are high. The particular mechanisms and nodes of vertical accountability can thus be expected to shape the behavior of parties in a given coalition. These can include influences from civil society, independent media, or other endogenous interest groups that have an interest in ensuring progress on democratic reforms, as well as direct civic activism.

Vertical accountability mechanisms also refer to external influences, particularly the international ‘guarantors’ of a given agreement and other international influences. In the case of negotiated coalitions, the task of monitoring the implementation of a given power sharing
agreement often falls to the organization involved in facilitating that agreement. In Zimbabwe, for example, the Southern African Development Community (SADC) continues to play a lead in monitoring reform progress, owing to their role in brokering the Global Political Agreement that brought an end to the election violence in 2008. International influences are not limited to regional institutions and guarantors of agreements, however, and can also include states with particularly strong bilateral ties and other regional organizations.

**IV. PATHWAYS TO POWER SHARING IN KENYA AND ZIMBABWE**

While violence remains an all-too-common occurrence around electoral processes, particularly in Africa, cases of power sharing following violent conflict are relatively few (though no less important for the theory and practice of power sharing). In Africa, over the past 10 years four cases of violent elections have resulted in power sharing agreements: Kenya, Zimbabwe, Togo and the semi-autonomous government of Zanzibar (Bekoe, 2010). While future research may consider the experiences of Zanzibar and Togo in more detail, given the relative paucity of available literature on these cases and the inability to conduct direct fieldwork, this analysis will focus the analysis on Kenya and Zimbabwe, two of the highest-profile cases of power sharing following flawed and violent elections. Not only do both Kenya and Zimbabwe provide a rich array of literature and analyses to build case study material, they also offer broadly dissimilar post-independence histories, a factor which should reveal important insights into how patterns of political contestation, developed over a long historical period, shape the performance of governing coalitions.
While offering good fodder for case study analysis, the choice of Zimbabwe and Kenya could be subject to the same criticism of being premature that is noted above: the history of the coalition government in both cases is not yet written, as neither has reached the end of their prescribed duration. Nonetheless, with the sunset of each inclusive government approaching quickly – Kenya is expected to end the term of power sharing with elections in March 2013, while Zimbabwe’s Global Political Agreement technically expires in mid-2013 – at the time of this writing we are in a better position to discern trends and generalizations about the performance of the power sharing than in the beginning or middle of their tenure.

It goes almost without saying that Kenya and Zimbabwe arrived at their respective power sharing coalitions under considerably different circumstances, and indeed these circumstances provide important pointers for explaining the performance of the coalition government in each respective case. While this section will not venture a comprehensive explanation of the political histories of Kenya and Zimbabwe, it will instead focus on the immediate antecedents, events and factors behind each country’s respective flawed elections and path to a power sharing coalition.

Since independence in 1963, Kenya has been able to maintain a relatively stable civilian regime, albeit one plagued by periods of intense repression and single-party rule. Despite the absence of civil war, nearly event electoral event in Kenya’s post-independence history has been marred by violence, often state-sponsored, and almost always containing an ethnic dimension. Elections in 1992 and 1997 contained violence at levels almost similar to that of 2007, including state-supported repression and the inflammation of ethnic tensions by then-President Daniel Arap Moi in an effort to bolster support for his Kenya African National Union (KANU) party (Levitsky & Way, 2010). In 2002, the erosion of support for Moi, his failure to hold together the
strains of KANU’s ethnic alliances, and the unforeseen unity of the opposition led by a loose alliance formed between Mwai Kibaki and Raila Odinga under the banner of the National Rainbow Coalition (NaRC), finally led to a change of guard at the center of Kenyan politics with Kibaki defeating Moi (Cheeseman & Tendi, 2010). The unsteady alliance between Kibaki and Odinga soon unraveled, with Odinga leaving the alliance and beginning the process of consolidating a broad array of ethnic interests to challenge Kibaki’s – and indeed the ethnic Kikuyu – hold on power.

The break between Kibaki and Odinga created the conditions for the broad ethnic and political polarization that ultimately led to the tragic events of 2007. As noted by Cheeseman and Tendi (2009), “When the Orangement Democratic Movement was formed to oppose the government’s favored constitutional draft, Kibaki was left increasingly isolated as Odinga recruited a number of powerful ethnic patrons to join his ‘pentagon’, knitting together an effective coalition of the dispossessed” (p. 209). In effect, Odinga was able to create a broad ethnic coalition “united in their belief that they had been denied ‘their turn to eat’ as a result of Kikuyu domination of land, political power, and economic opportunity” (Cheeseman & Tendi, 2010, p. 209). This belief that it was the Luo’s turn at the seat of political power highlights the highly ethnicized nature of Kenyan politics during this period and helps explain the emergence of violence in response to flawed polls.

The December 27, 2007 election pitted Kibaki, Odinga and ODM splinter candidate Kalonzo Musyoka as the frontrunners for the presidency. Although the period preceding the election saw an escalation of violence in many parts of Kenya, according to Barkan (2008) the election was arguably the “freest and fairest since independence.” That view held until the final
vote count. While detailed accounts of electoral fraud are rare, it is widely believed that, with the growing expectation of an Odinga victory highlighted by exit polling and preliminary tallies, Kibaki’s allies engaged in widespread ballot stuffing and fraud during the tabulation process. On December 30, following a three-day delay, the Electoral Commission of Kenya announced Kibaki the winner with a popular vote of 47% over Odinga’s 44% and Musyoka’s 9%, while seats in parliament were effectively deadlocked (Kagwanja & Southall, 2009). Within minutes following the announcement of the results, Kibaki was sworn in at a hastily organized ceremony at State House before a handful of guests, despite calls for a recount by the opposition and international observers (Kagwanja & Southall, 2009; Barkan, 2008). The hastily organized ceremony and announcement was the spark that set the fire ablaze. Within hours of Kibaki’s announcement, protests in Nyanza and other ODM strongholds erupted in violence and demonstrations that quickly degenerated into scenes of rape, looting, and indiscriminate killings, according to Kagwanja and Southall (2009). Adding fuel to the fire was the admission by Samuel Kivuiti, the chairman of Kenya’s electoral commission that he had been “subject to undue pressure, and could not say with certainty that Kibaki had actually won the poll” (Kagwanja & Southall, 2009, p. 263).

The violence in Kisumu and other towns of western Kenya started shortly after Kibaki’s hasty announcement. A day later, riots broke out across the country, mainly in Nairobi, Kisumu, Eldoret, and Mombasa (ICG, 2008). The protests quickly took on an ethnic tone with Odinga’s supporters turning their anger on Kikuyu communities. As noted by the International Crisis Group: “The ferocity and speed of the violence caught many by surprise. Hundreds were killed in less than 24 hours. Houses and shops were set ablaze. Thousands began fleeing. By the second
day, Kenya appeared to be on the brink of civil war” (ICG, 2008, p. 9). A series of reprisal attacks began around the country, plunging the country into turmoil that left more than 1,000 dead and 600,000 displaced (ICG, 2008).

After three weeks of chaos, mediation led by the Panel of Eminent African Personalities - former President Benjamin Mkapa of Tanzania, former South African First Lady Graça Machel, and former UN Secretary-General Kofi Annan – began under the joint auspices of the African Union (AU) and UN. Following six weeks of intense negotiations Kibaki and Odinga signed the Agreement on the Principles of Partnership of the Coalition Government on February 28, 2008, bringing an end to the violence and ushering the first period of power sharing in Kenya’s post-independence history, the institutional contours of which will be discussed in further detail below.

While leaders scrambled to reach a negotiated solution to the crisis in Kenya, another crisis was brewing further south in Zimbabwe. Once among sub-Saharan Africa’s most prosperous and promising states, the disastrous policies of the Mugabe regime nearly drove Zimbabwe to wholesale economic and social collapse in the mid-2000s. Since then, politics in Zimbabwe have been marked by extreme repression by Mugabe, ZANU-PF, and its allied security services. In February 2000, for instance, Zimbabwe held a referendum on a draft constitution that would have strengthened the presidency, granted government officials immunity from prosecution, and allowed the government to seize land without compensating owners (Gavin, 2007). When the referendum was voted down, Mugabe launched a series of repressive measures, including farm invasions, intimidation and removal of judges and a crackdown on journalists and civil society activists.
Despite facing a government with a proclivity for brutal intimidation, the MDC, a reformist movement formed out of Zimbabwe’s powerful trade unions and civil society, won 57 of the 120 contestable seats in the June 2000 parliamentary elections (Gavin, 2007). President Mugabe, however, won reelection in March 2002 over his MDC challenger, Morgan Tsvangirai, in polling which, according to Gavin, was characterized by “deeply unfair pre-election conditions, political violence, and a lack of transparency” (Gavin, 2007). The next elections in 2008 were the most contested and violent in Zimbabwe’s turbulent post-independence history. Following the initial vote for presidency, the Zimbabwe Electoral Commission (ZEC) refused to release results for nearly six weeks, raising suspicions that they were being manipulated in order to deliver Mugabe a victory over Tsvangirai (Makumbe, 2008). When the results were finally published, they showed that Tsvangirai had received more votes than Mugabe, but did not pass the threshold for outright victory.

A second round of voting was scheduled to take place three months later, during which time ZANU-PF unleashed a wave of violence that resulted in the deaths of nearly 100 MDC supporters, countless arrests of MDC members and civil society activists, and the violent displacement of more than 50,000 people throughout the countryside (Makumbe, 2008). According to Bratton and Masunungure:

> ZANU-PF’s strategy for the runoff election was “electoral cleansing.” The objective was to kill MDC officials and polling agents, displace qualified electoral officials such as schoolteachers, and punish known MDC supporters. The targets of intimidation were not so much the solid MDC strongholds in the cities and the southwest, but politically contested areas in the country’s middle belt and northeast where, in the first round of the election, voters had swung away from ZANU-PF and toward the MDC (Bratton & Masunungure, 2008, p. 51).

After a planned MDC rally in Harare on June 22 was prevented by ZANU-PF supporters, Tsvangirai announced at a press conference on the same day that he was withdrawing from the
election due to the violence. According to Tsvangirai, a free and fair election was impossible for eight basic reasons: state-sponsored violence; interference with the MDC's campaign, including its inability to hold rallies; the arrests of many members of the MDC, including important figures; Electoral Commission "partisanship"; media censorship, harassment of journalists, and the exclusion of foreign journalists; Mugabe's attitude and his suggestions that he would not accept defeat; and the existence of "an elaborate and decisive plan by ZANU-PF to rig the elections", which included extensive intimidation, obstruction of MDC election agents, and ballot-stuffing (Tsvangirai, 2008).

The crisis that followed threatened to plunge Zimbabwe back into chaos, and prompted renewed attempts to find a negotiated solution. In September 2008, following a protracted mediation led by South African President Thabo Mbeki, a final deal was reached between the two factions of the MDC (Tsvangirai’s faction and an off-shoot led by Arthur Mutambara) and ZANU-PF. The Global Political Agreement (GPA), signed on September 15, 2008, allowed Mugabe to retain his seat as President, with Tsvangirai becoming Prime Minister and Mutambara Deputy Prime Minister.

V. Power Sharing in Kenya and Zimbabwe in Comparative Perspective

Despite their divergent trajectories, Kenya and Zimbabwe ultimately arrived at a similar governance arrangement in 2008: a ‘government of national unity’ with electoral adversaries in a tenuous coalition, charged with reforming the institutions of government that failed to contain political violence in the months prior. This section will assess the performance of the respective coalitions in Kenya and Zimbabwe in light of the theorized indicators of success defined above:
constitutional reform and the reconstitution of governing institutions, reconciliation and transitional justice, and rebuilding trust in democratic processes.

To be sure, the power sharing experiences in Kenya and Zimbabwe exhibit broadly divergent outcomes when considered in the context of constitutional reform. While the MDC and ZANU-PF continue to haggle over the completion of a draft constitution, Kenya successfully promulgated a progressive constitution that continues to hold the potential for fundamentally transforming Kenya’s political system. Without question, the adoption of Kenya’s constitution was a feat that drew wide plaudits from the international community and, for a time, gave tremendous hope to those wishing for a break from Kenya’s corrupt and often brutal governance practices. As such, it is worth exploring the constitutional development and implementation process in each case more closely.

The start of the constitutional reform process began with a core component of the Annan-mediated peace agreement – the slate of reforms titled “Agenda 4” - that highlighted constitutional reform as a crucial task to prevent future electoral violence (Kramon & Posner, 2011). Constitutional negotiations began soon after the formation of the coalition government, driven by the momentum of the peace agreement and external pressure to implement the slate of Agenda 4 reforms. After an initial round of expert reviews, the primary debate among the parties in the constitutional drafting process concerned issues of the powers of the executive and the structure and scope of proposals to devolve greater authority to county governments. While ODM and Odinga preferred a dual executive, Kibaki and his PNU allies favored provisions for a strong executive, no doubt consistent with the expectation of continued political domination. Due to a range of factors, including Odinga’s professed calculation that he would prefer more
extensive executive powers if elected president, the parties were able to compromise on a governing formula that gave Kenya a strong executive but with more extensive devolution of budgeting functions and political power than initially favored by the PNU (Kramon & Posner, 2011). The devolution component was a critical and controversial aspect of negotiations, and is seen by many as a key factor in mitigating the winner-take-all mentality of Kenyan politics by diffusing political power away from the center of Kenyan politics.

Ironically, those most opposed to the constitutional process were also those individuals that were most widely seen as being responsible for the 2007-8 election violence, including William Ruto and Uhuru Kenyatta, both of whom remain under indictment by the ICC (as discussed below). Backed by former President Moi, and playing into Kenya’s long-standing tradition of ethnic-based politicking, Ruto enlisted the loyalty of Kalenjins in the Rift Valley to vote overwhelmingly against the draft. The reasons for the salience of Ruto’s appeals during this process were many. Not only had Ruto broken with Odinga after the formation of the coalition government, Ruto feared the provisions for devolution would potentially split the Kalenjin stronghold in the Rift Valley (Barkan & Mutua, 2010). Uhuru Kenyatta, a key leader of the Kikuyu community, was largely silent in the run-up to the referendum, maintaining a low public profile while attempting to derail the constitution behind the scenes, likely given his desire to one day assume the presidency and retain broad powers but not break with Kibaki, who remained supportive of the constitutional draft (Barkan & Mutua, 2010). In essence, the 2010 referendum pitted pro- and anti-reform forces against one another in a battle not only for a wide-ranging new constitution, but what many saw as a referendum on the ability of the Kenyan political elite to break from past practices and usher in a new area of rule-bound, peaceful politics.
In contrast to the election that occurred less than three years earlier, however, voting in the referendum was peaceful, with the constitution passing with over 68 percent of the popular vote. The Rift Valley, due largely to Ruto’s concerted attempt to encourage a “no” vote, was the only province that did not ratify the draft, rejecting it by a margin of 67 to 33 percent. Assessments of the content of the constitution are roundly positive. The constitution contains an extensive bill of rights, including new and expanded rights for women. Though the ODM eventually gave up its demands for more extensive checks and balances within the executive, the president’s power is curtailed, and parliament’s strengthened, through new rules governing the presidential appointment of cabinet ministers, effectively limiting the age-old Kenyan practice of using cabinet appointments as a tool of ethnic patronage (Kramon & Posner, 2011, p. 97).

Executive authority is further constrained by the provisions for devolution, which mandates that each county will have its own elected assembly and directly elect a governor who will be responsible to the executive branch. According to Barkan (2011), “establishment of the counties will provide each ethnic group, particularly those that are not part of the governing coalition of the national government, with a measure of control over its own affairs. Creation of the counties will also result in the breaking up of the largest ethnic blocs, particularly the Kikuyu in Central Province and the Kalenjin in the western central area of Rift Valley Province, because the counties will on average serve populations smaller than these groups” (Barkan, 2011).

The implementation of the legislation required to realize the constitution’s vision, however, has been mixed. While some elements of the constitution have been implemented effectively, others have suffered due to a lack of political will and active attempts to undermine reform processes, often by the same blocs – Kikuyu and Kalenjin politicians and MPs loyal to
Kenyatta and Ruto – that sought a no vote during the referendum. Indeed, the pattern that has become clear is that those most set against the constitution are now the ones trying to block its implementation (Barkan, 2011).

Perhaps the most significant bright spot in Kenya’s constitutional implementation effort has been the process of reconstituting the judiciary. The very public debate over the nomination of Willy Mutunga, an individual with impeccable reform credentials, as Chief Justice of the Kenyan Supreme Court was widely considered a win for democracy and judicial independence in Kenya. After his nomination, which was very nearly derailed by a smear campaign believed to be orchestrated by Kibaki and associated allies, Mutunga embarked on an ambitious project of judicial reform. In his first progress report, Mutunga notes, “We found an institution so frail in its structures; so thin in resources; so low on its confidence; so deficient in integrity; so weak in public support that to have expected it to deliver justice was to be wildly optimistic; we found a judiciary that was designed to fail” (Ndungu, 2012). Mutunga subsequently fast-tracked a range of reforms to the judiciary, including instituting new vetting procedures for judges, appointing new judges to the High Court, and enhancing the functionality and efficiency of Kenya’s primary courts (Njogu, 2009). As such, the judicial reform process continues to stand out as a bright spot in an otherwise mediocre slate of reforms achieved following the adoption of the constitution.

While the Kenyan parliament has passed most of the necessary legislation to conform to constitutionally mandated timelines, the implementation of this legislation remains complicated in practice. Police reform is one example. In spite of a high-powered Task Force on Police Reform, the creation of a Police Reform Implementation Committee, and the fact that elements of police reform are enshrined in the new constitution, the reform process has significantly
lagged behind schedule. The process of selecting the members of the National Police Service Commission that will appoint the new Inspector General has been mired in political wrangling, the Independent Police Oversight Authority has yet to be given a mandate to begin its work, and 7,000 new recruits hired with much fanfare many months ago have yet to be trained (Oruko, 2012). As of late August 2012, nearly six months after the passage of the National Police Service Act, the parties of the coalition government continued to dispute nominees for the critical position of Inspector General (Oruko, 2012). Other critical reforms, such as the establishment of a national land commission and a committee to oversee the devolution of power to the 47 new counties, remain only in their nascent stages and lack sufficient funding from central authorities (Mbugua, 2012). The ability of the Kenyan government to continue these processes while also preparing for elections will certainly present challenges for the government in the remaining months of the power sharing coalition.

While the implementation of reforms continues to proceed in fits and starts in Kenya, in Zimbabwe, the process of reform has yet to gather momentum. Constitutional reform had always been a sticking point between MDC and ZANU-PF. Prior to the flawed elections of 2008, calls from Tsvangirai and the MDC to proceed with constitutional reforms before elections were effectively annulled by Mugabe, who unilaterally decided to proceed with elections under a previously negotiated consensus constitution (Ploch, 2010). Despite the fact that Article 6 of the GPA calls for the development of a constitution that “deepens our democratic values and principles and the protection of the equality of all citizens,” the process of constitutional outreach did not begin until the summer of 2010, almost two years after the signature of the GPA (Masunungure, 2009). To be sure, the process of citizen outreach was acrimonious at best.
Frequent violent outbreaks between ZANU-PF and MDC loyalists interrupted the public consultations, and presented an obstacle to the active and effective participation of citizens in outreach meetings (Dzinesa, 2012). Outright intimidation during the outreach phase was also common. According to some sources, ZANU-PF launched Operation “Vhara Muromo” (“Shut Your Mouth”) during the outreach process to suppress dissenting voices, including through illegal arrests, harassment and break-ups of sanctioned MDC meetings (Dzinesa, 2012). After approximately two years of tense citizen outreach and numerous negotiations organized by the Constitution Select Committee (COPAC), which was charged by the GNU with delivering a “people-driven” constitution, a preliminary draft of the constitution was leaked to the state-run Herald newspaper in February 2012 (New Zimbabwean, 2012). The release of the draft sparked a new round of negotiations among the parties, resulting in a finalized version of the COPAC draft that was formally released to the public in July 2012.

The draft constitution produced by the COPAC negotiators contained many positive elements, bringing hope to many that Zimbabwe may follow Kenya’s lead in achieving a substantially more progressive social contract between the government and its people. While the draft maintains a strong presidency, it introduces a bill of rights and substantially more checks on executive authority. More importantly, the draft includes clear language on the non-partisan role of the security services. Section 11.3 in particular concludes, “Neither the security services nor any of their members may, in the exercise of their functions: (a) act in a partisan manner; (b) further the interests of any political party or cause; (c) prejudice the lawful interests of any political party or cause; or (d) violate the fundamental rights and freedoms of any person. (3) Members of the security services must not be active members or office-bearers of any political
party or organisation. (4) Serving members of the security services must not be employed or engaged in civilian institutions except in periods of public emergency” (COPAC, 2012).

However, despite the fact that the ZANU-PF negotiator to COPAC agreed to the draft, after it was publicly released ZANU-PF went on the offensive, insisting on a broad array of changes to the draft that would fundamentally alter its scope and content. In particular, ZANU-PF took umbrage to the restrictions on the security services, procedures for devolution, provisions in the bill of rights, and constraints on executive authority, introducing a draft containing its suggested revisions (Voice of America, 2012). The MDC responded in kind, declaring the negotiations deadlocked and refusing constitutional amendments in the absence of a referendum on the COPAC-agreed draft. According to Tsvangirai, “The principals in the GPA cannot substitute the sovereign will of the people of Zimbabwe to determine how they should be governed. Let the people of Zimbabwe, through a referendum, be the final arbiters, not three individuals” (Chibaya, 2012).

Subsequent meetings between South African President Jacob Zuma and the main GPA principals have been unable to break the constitutional impasse. As it stands at the time of writing, SADC had agreed to hold an extraordinary summit in Tanzania in October 2012 in an attempt to move the parties closer to a resolution, though few see the possibility of unlocking the current deadlock without substantial movement in the positions of either party. To be sure, the constitutional saga is indicative of a broader trend of attempts by the coalition government to affect reform: progress is made, and then derailed at the last minute when ZANU-PF’s interests are fundamentally threatened.
While political reforms have floundered, the biggest success of the coalition government in Zimbabwe has been the stabilization of the economy, which due to gross mismanagement by ZANU-PF in the years before the election, was in a state of near-collapse. As described by Bratton and Masunungure (2011), at a time when incomes were beginning to rise in the rest of Africa and inflation was dropping in neighboring countries, Zimbabwe had the world’s lowest growth and highest rates of inflation. The last official report on inflation in mid-2008 put the rate at 231 million percent, though private economists estimated it to significantly higher (Bratton & Masunungure, 2011). At the same time, Mugabe’s loyalists in ZANU-PF enjoyed never-before-seen riches, owing largely to patronage, the allocation of ill-gotten farmland, and extraordinarily loose fiscal policies. Immediately, following the signature of the GPA, Zimbabwe’s economy began to rebound. In January 2009, the government abandoned the defunct Zimbabwe dollar and adopted the U.S. dollar, along with the South African Rand, as the national currency. Perhaps the most shrewd move of the coalition government was the appointment of the tenacious and capable Tendai Biti, who assumed the position of Finance Minister. Biti, widely regarded as a likely successor to Tsvangirai, moved quickly to mobilize credit for agriculture, to curb the over-extended activities of the Reserve Bank, and to initiate reforms to the civil service systems for personnel and financial management (Bratton & Masunungure, 2011, p. 33). The changes to the economy began to bear fruit: in 2009, gross domestic product grew by 5 percent, and another 8 percent in 2010 (Bratton & Masunungure, 2011, p. 34). To be sure, when starting from the state that Zimbabwe’s economy was in prior to dollarization, it would have been difficult to imagine a trajectory other than positive.
Nonetheless, preventing a complete economic collapse and stabilizing the economy is widely considered as the most tangible outcome of the power sharing coalition to date.

In terms of transitional justice, the particular scope and type of justice pursued following electoral violence has important implications for the course of the political transition. To be sure, nations that undergo a process of transitional justice and national healing may be more apt to support policies that enforce trust and coalition building; that is, the politics of trust begin to replace the politics of opposition. As mentioned above, South Africa is a good example of a case in which efforts to build inter-party trust were instrumental in ensuring that the parties to the governing coalition were able to cooperate to advance their governance objectives. In both Kenya and Zimbabwe, however, efforts to promote reconciliation have been largely stillborn, having barely progressed past the planning stage and having done little to advance the process of national healing. Further, in the case of Kenya, efforts to fill the gap in local mechanisms through international jurisprudence – that is, the referral of cases to the ICC – have been counterproductive, further polarizing the parties in the coalition and playing directly into ethnicized political rhetoric.

Following the signing of the Annan-brokered accord, the parties in Kenya agreed to the establishment of a Commission of Inquiry into Post-Election Violence, commonly known as the Waki Commission after its chair, Court of Appeals Judge Philip Waki, to investigate the actions of key players and the security services during the post-election violence. The two parties also agreed to the Waki Commission’s suggestions that they establish a Kenyan tribunal to try the suspected perpetrators of the violence and, if that did not happen, that consideration be given to referring the matter to the ICC. Efforts to establish a national tribunal were scuttled by anti-
reform elements, most notably Ruto and Kenyatta, on the misguided calculation that the ICC process would drag on well beyond Kenya’s next elections, after which Kenya might be in a position to reconsider its obligations under the Rome Statute (ICG, 2012).

The ICC’s chief prosecutor, Luis Moreno-Ocampo, obtained permission from the pre-trial chamber to open an investigation into the situation in Kenya in March 2010. After a period of evidence gathering and witness interviews, summonses were issued for a group that came to be known as the “Ocampo Six”: William Ruto, Henry Kosgey, Joshua arap Sang, Uhuru Kenyatta, Francis Muthaura, and Hussein Ali. According to some, the prosecutor deliberately chose a balance amongst individuals allied with the ODM and PNU in order to maintain a degree of political neutrality (Brown, 2011). While the indictments may have been neutral among the parties contesting the 2007 election, the ICC was quickly accused of an ethnic bias in light of the fact that no Luo (the ethnicity of Prime Minister Odinga) were subject to investigation. Indeed, some Kalenjin politicians made mention of the fact that of the ODM-associated suspects all are ethnic Kalenjin from the Rift Valley, whereas no Luo was accused (Brown, 2011). The confirmation of charges against four individuals – Ruto, Kenyatta, Muthaura, and Sang – in January 2012 only served to heighten perception of an ethnic bias behind the ICC’s actions given that only Kikuyu and Kalenjin remained under indictment (Simons, 2012). As it currently stands, the ICC’s decision to charge two presidential aspirants – Uhuru Kenyatta and William Ruto – and to hold the trial in April 2013, following the date of Kenya’s next election, has put international jurisprudence in the middle of a political maelstrom that not only threatens to derail efforts to bring justice to those responsible for violence in 2007 and 2008, but also to be a spark for new violence around the next election.
Whereas efforts to promote transitional justice in Kenya may prove counter-productive, these efforts have been non-existent in Zimbabwe. The signing of the GPA was seen as a significant moment to advance the cause of justice and reconciliation in Zimbabwe, an issue that had particular salience even prior to the devastating violence in 2008 (Dzinesa, 2012). The GPA even contains provisions for transitional justice, though they are vague: Article 7 notes that the three parties would commit themselves to “putting an end to the polarization, divisions, conflict and intolerance that has characterized Zimbabwean society and politics in recent times” and would “give consideration to the setting up of a mechanism to properly advise on what measures might be necessary and practicable to achieve national healing, cohesion, and unity” (Dzinesa, 2012, p. 8). However, even the GPA’s vague provisions have not been met with action. An Organ on National Healing, Reconciliation and Integration (ONHRI) was created in 2008, though other than brief periods of citizen outreach, it has yet to open any public fora, pursue prosecutions, or attempt to address the legacy of the 2008 violence. Indeed, as many observers have pointed out, this fact is unsurprising given the continued sway held by members of the security services in the coalition government; including officials that would likely be implicated in any public inquiry or transitional justice mechanism. As Mashingaidze (2010) notes, “For truth and justice to take place, there should be strong moral rejection of the former regime, and a clear consensus that its system was bad and its agents guilty of moral wrongs” (quoted in Dzinesa, 2012).

The final factor, reform of the electoral system, again points to substantially more progress in the Kenyan case than in Zimbabwe. The Report on the Independent Review Commission on the General Elections headed by Judge Johann Kriegler of South Africa, a report
that was agreed during the Annan mediation and undertaken at the same time as the Waki investigation, avoided judgment as to which political party had ‘won’ the 2007 elections (Southall, 2009). The commission found the Electoral Commission of Kenya to be technically and administratively incompetent, expensive, and incapable of undertaking the fundamental task of efficiently registering voters (Southall, 2009). As such, the Kriegler report included wide-ranging recommendations for reconstituting electoral management structures and rebuilding trust in democratic processes, distinguishing between ‘anomalies, failures and malpractices traceable to gaps and provisions in the Constitution and laws of Kenya [and] those that can be attributed to bad culture encompassing impunity, disrespect for the rule of law and institutional incompetence (Republic of Kenya, quoted in Southall 2009). These included reconstitution of the electoral management body, procedures for post-election audits by independent bodies, and an empowered mechanism of electoral dispute resolution.

The Kenyan government has acted on many of the Kriegler report recommendations. One of the key outcomes of the constitutional reform process includes the creation of an independent electoral management body – the Independent Electoral and Boundaries Commission – which was set up to oversee Kenya’s subsequent elections. Importantly, the appointment procedures for election commissioners were overhauled, requiring a competitive application process for the position that includes approval of parliament, rather than the more partisan appointment procedures that existed in the past. Indeed, the IEBC’s handling of the constitutional referendum was broadly seen as non-controversial and competent, though many have pointed out that administering a simple “yes or no” referendum is substantially easier than a complex election involving presidential, parliamentary and county-level elections. While the
IEBC has made some missteps – including an ongoing controversy over the date of the election and growing concerns about tendering irregularities for the procurement of voter registration technology (The Star, 2012) – its actions represent a substantial improvement over the corrupt and ineffective ECK. Whether Kenyans have sufficient faith in electoral preparations remains to be seen, though moderate improvements in the procedures and technical preparations for the next elections may engender greater trust – and higher expectations – that the IEBC will be able to deliver a credible poll.

The government of national unity in Zimbabwe has made little progress in reforming electoral management institutions. The inclusive government appointed a new Zimbabwe Electoral Commission in March 2010, though in practice the composition of the ZEC changed very little, and continues to include a range of party officials and former army officers with deep ties to ZANU-PF (Dzinesa, 2012). In addition, the voters roll continues to exhibit a substantial number of ghost voters, and is in significant need of a complete overhaul, according to NGO observation groups (ZESN, 2008). As it currently stands, additional efforts to reconstitute electoral management institutions in Zimbabwe remain subject to the continued impasse over the constitution detailed above. Unless and until the parties are able to agree on a draft constitution that includes procedures for reconstituting electoral management procedures – as occurred in Kenya – broader electoral reforms are unlikely.

Considering the performance of the governments of national unity in Kenya and Zimbabwe in this manner reveals sharp differences in the performance of the power sharing regime in each case. While still subject to a high degree of political wrangling and ethnic-based politicking, Kenya has nonetheless made tremendous progress in instituting reforms, particularly
those emanating from the slate of Agenda 4 reforms and constitutional provisions. On the other hand, Zimbabwe remains mired in political deadlock and acrimonious politics between the coalition partners that has yet to result in tangible progress on reforms. In terms of rebuilding electoral management institutions, Kenya has successfully implemented many of the Kriegler commission recommendations to reconstitute trust in democratic processes, including the creation of an independent and empowered electoral management body, and the advancement of critical judicial reforms that will have lasting effects well beyond the upcoming elections. The parties in Zimbabwe, on the other hand, have made little progress in advancing most of the reforms necessary to reconstitute the country’s broken and partisan electoral management systems, and have not yet tackled the thorny issues around the role of the judiciary or the bloated voter’s roll.

The picture is less clear in the case of transitional justice. Neither Kenya nor Zimbabwe have instituted mechanisms to rebuild inter-communal cohesion and trust. In both cases, mechanisms to affect local justice, including agreements made in the respective peace negotiations and stipulated in various agreements and recommendations of commissions of inquiry, remain largely unimplemented, due clearly to a lack of political will on the part of the coalition partners. Moreover, in the Kenyan case, when local mechanisms failed and international jurisprudence stepped in, the result has not been a win against impunity but rather the further polarization of the parties in the coalition. This is the fundamental irony of the ICC indictments in Kenya; by not addressing impunity earlier in the duration of the transition, the ICC has created a situation where the stakes of the next election are significantly higher for two of the indictees – Ruto and Kenyatta. For these individuals, the next elections represent not only
a chance to assume the presidency, which they have long aspired, but also a chance to avoid international jurisprudence and complicate the ICC proceedings. While there is still a possibility that the Kenyan courts will remove these individuals from contending the presidency, it is clear that the ICC will be a divisive issue in the next elections regardless of the merits of the case.

The most notable area of divergence between Kenya and Zimbabwe, concerns the process of reconstituting the social contract between citizens and the state and agreeing to a new constitution. The Kenyan constitution remains a historic achievement for the Kenyan people and the parties in the power sharing coalition, and will have implications well beyond the period of power sharing, though its implementation still leaves much to be desired. The coalition parties in Zimbabwe, on the other hand, continue to struggle with efforts to reframe the social contract. While the long-delayed COPAC process showed signs of progress in putting forward a relatively progressive draft, it was quickly derailed by high-level ZANU-PF intervention at the last minute. Indeed, this practice is symptomatic of most issues plaguing the coalition government in Zimbabwe, where stone-walling on the part of senior ZANU-PF members and Mugabe himself remains standard practice. While it remains to be seen whether SADC mediation will be able to break the current constitutional impasse, the prospects for a progressive constitution for the people of Zimbabwe continue to become dimmer with each passing day.

What factors explain the divergent outcomes in Kenya and Zimbabwe? Put differently, what factors explain Kenya’s ability to make progress on reforms during the transitional power sharing period, while Zimbabwe has remained largely in a state of political stasis? As noted above, delving deeper into the hypothesized factors of power sharing success provides a useful
analytical frame of reference for considering the factors that condition power sharing performance in situations of democratic deadlock.

The first factor, as noted above, concerns institutional design. In both Zimbabwe and Kenya, the institutional design of the transitional government is broadly similar. Each agreement to end the violence and form a transitional government invests power in a dual executive made up of the primary parties in the election, with the incumbent retaining their position at the Presidency and the establishment of the position of Prime Minister to accommodate the new coalition partner. In the Zimbabwean case, the MDC faction led by Arthur Mutambara was also given a seat at the table as a Deputy Prime Minister. Important differences in the two settlements, however, can be found in the procedures for allocating positions within the coalition government. In the case of Kenya, procedures for the allocation of cabinet posts and seats were clearly defined in the text of the power sharing agreement: each member of the coalition was to nominate someone from the National Assembly as Deputy Prime Minister; the coalition government would take into account the principle of portfolio balance and reflect their relative parliamentary strength; and the removal of any minister would be subject to consultation and concurrence in writing by the leaders (Lindenmayer & Kaye, 2009). Kibaki and Odinga quickly nominated Uhuru Kenyatta and Musalia Mudavadi, respectively, to their posts as Deputy Prime Minister.

The mediation in Zimbabwe, however, papered over the procedures for the allocation of cabinet positions. From the outset of the agreement, Mugabe deftly used this lack of clarity to pursue unilateral appointments. Bratton and Musunungure (2011) summarize this process well:

Despite promising to “consult and agree,” President Mugabe unilaterally reappointed Gideon Gono as RBZ Governor and Johannes Tomana – responsible for arresting and prosecuting MDC
leaders – as Attorney General. After months of wrangling, Tsvangirai announced that permanent
secretaries would be allocated proportionally between parties, as would provincial governors (of
which MDC-T would get 5, ZANU-PF four, and MDC-M one). But it transpired that presidential
authority had secretly been used to reappoint all existing secretaries and that no date had been set
to swear in new provincial governors. Then, in October 2010, Mugabe unilaterally reappointed the
old ZANU-PF governors without, as required by the GPA, consulting the Prime Minister,
prompting yet another walkout from Cabinet by Tsvangirai and charges that the country had
entered a constitutional crisis (p. 35).

At the same time, the parties wrangled over the MDC’s appointments, with ZANU-PF
effectively blocking Tsvangirai’s attempt to appoint Roy Bennett – an MDC stalwart – from the
Ministry of Agriculture. As Bratton and Masunungure (2011) note, “a generous interpretation of
these events was that Mugabe was unable to sell an even-handed division of positions to his own
party; a more cynical view is that he acted in bad faith throughout” (p. 35).

What this comparison makes clear is that, in terms of institutional design, specificity and
balance are critical. The lack of clarity in the procedures for cabinet nomination in the case of
Zimbabwe created a situation ripe for deadlock, whereas in Kenya the comparatively clear
procedures for appointments and the balance between the parties helped streamline the creation
of the government of national unity and prevented one of the most critical first steps of forming a
coalition government from becoming a source of contention.

Another critical factor is the history of political accommodation and elite compromise.
As described above, Kenya and Zimbabwe entered their respective coalitions with broadly
divergent trajectories. Whereas Zimbabwe’s post-independence history was characterized by
exclusionary, often brutal political domination by ZANU-PF and allied security services, Kenya,
on the other hand, has a long history of relatively cohesive elite politics. As Cheeseman and
Tendi (2010) note, “Under multipartyism, Kenyan politics has been characterized by periods of
concentration, as leaders sought to broker viable electoral pacts, and of fragmentation. The
consequence of this process of elite musical chairs is that few political leaders have not, at one point or another, worked as colleagues” (p. 213). Despite the bitterness and acrimony of the electoral period, Kibaki and Odinga knew each other well, having previously campaigned side-by-side to remove Moi from power in 2002 (Cheeseman, 2011, p. 351). The ability of the parties to form pacts can be seen, as described above, in a range of reforms that occurred during the transitional period, including agreements to ultimately adopt and implement portions of the new constitution. As Kenya looks forward to the next electoral period, the fault lines in Kenyan politics remain extraordinarily fluid. While this fluidity also presents a situation ripe for unrest, it can also support the implementation of reforms when there is a critical mass of support for a given policy, as seen during the constitutional referendum. Whether these coalitions are created with a genuine interest in reform, or on the base of a unique configuration of interests and attempts to neutralize political rivals – as has been suggested in the Kenyan case (Cheeseman, 2011) – remains open to debate. Nonetheless, the implication of Kenya’s unique history of elite cohesion and fragmentation, though hardened by the electoral violence of 2007 and 2008, nonetheless created the conditions for a more functional power sharing regime.

Zimbabwe, on the other hand, began the term of power sharing from a much different historical trajectory, given the relative acrimony between ZANU-PF and the democratic reform movement. Zimbabwe’s strong partisan identities date back to the independence movement. In many ways, the liberation war, and the political dominance of ZANU-PF, continues to overshadow efforts at broader political competition, and allows ZANU-PF to deflect attempts to engage in compromise with the democratic opposition. The patterns of violence in 2008 were broadly indicative of the way the parties continue act during the coalition government. Indeed,
power sharing has done relatively little to halt the militarization of the state, and the
intransigence of hardline ZANU-PF leaders. As a result, ZANU-PF’s tried and true tactics have
not changed during the period of power sharing: the ruling party continues to use targeted
violence, intimidation, and appeals to patriotism and anti-colonialism to reinforce the division
between the coalition partners and stymie efforts to create coalitions interested in durable
reforms.

This trend has been compounded by the fact that in Zimbabwe, unlike in Kenya, the
security services play a decidedly partisan role in politics. While, as detailed in the Waki
Commission report, the police were active participants in Kenya’s post-election violence, the
army and intelligence services have remained largely politically neutral and responsive to
civilian oversight. In Zimbabwe, on the other hand, the security sector – army, air force, police,
intelligence and prisons – reports directly to the President and is given funding from the
President’s office, the costs of which do not appear fully in the finance minister’s annual budget
(Bratton & Masunungure, 2011). Indeed, even prior to the inauguration of the power sharing
coalition, top leaders of the defense forces vowed publicly not to recognize Prime Minister
Tsvangirai (Bratton & Masunungure, 2011). Ultimately, the civil-military relationship is the
fundamental issue underwriting the failure of the power sharing regime in Zimbabwe. As
Bratton and Masunungure (2011) note, “The fundamental problem with the transitional
government is that power is not shared, but divided. ZANU-PF and MDC-T exercise power
separately within largely exclusive, and often competing, zones of authority. Moreover the
distribution of power is unequal, with the balance tilted in favor of old guard elements from the
previous regime. Thanks to its intransigent stance during power-sharing talks, ZANU-PF
managed to retain exclusive control over the coercive instruments of state, including the security, intelligence, and judicial services” (p. 34). The failure of the coalition government to address this broad historical imbalance remains the most likely issue to derail – or continue to stall – the constitution and other mechanisms of political reform. Moreover, it points to the fundamental issue that explains the failure of the parties to achieve broader reform. As Bratton and Masunungure (2011) summarize nicely, “while the MDC sees the coalition government as launching a process of incremental democratization in Zimbabwe, ZANU-PF views the power-sharing government as an incremental process of reclaiming power and returning to an undiluted ZANU-PF government” (p. 33).

A third important factor concerns the vertical accountability mechanisms conditioning the actions of the coalition governments in both Kenya and Zimbabwe. In terms of international pressure, the degree of international involvement in both cases can be considered significant, though important differences are worth exploring in greater detail. As the agreed guarantor of the implementation of the Global Political Agreement, SADC has done little to move the parties along the path of reform despite concerted efforts and increasingly shrill calls from regional capitals. During a SADC summit in early September 2009, regional heads of state expressed concern over outstanding political issues in Zimbabwe, but ignored calls for a special summit on the topic. (Ploch, 2010). SADC has hardened its position on the need for reforms before elections, particularly in a communiqué from March 2011 that lamented the lack of progress on the GPA, and more recently following a meeting of SADC heads of state in Luanda, Angola (ICG, 2011). Despite the presence of a detailed series of reforms mandated by SADC member states – the SADC “roadmap” to elections – key provisions, including greater media freedoms...
and the aforementioned constitutional drafting and referendum, remain outstanding (NewsDay, 2011).

Ultimately the ability of SADC to move the parties closer to resolution appears heavily circumscribed. While SADC continues to issue strongly worded statements from regional capitals, the parties to the GPA continue to be deadlocked on key issues. The constitutional impasse – which is expected to be discussed at the next SADC Troika meeting in October 2012 – will be a crucial test of SADC’s resolve to force a way out of the current impasse or continue to be content with non-implementation of the roadmap and the continuation of a broadly dysfunctional coalition government.

In Kenya, international pressure has been comparatively more successful at keeping the parties in the coalition government focused on meeting important reform benchmarks. Given his significant role in mediating the agreement that brought an end to the violence, Kofi Annan played a critical role in ensuring continued follow-up to Agenda 4 timelines, publically calling out Kenyan officials during the initial stages of the power sharing coalition. Importantly, Annan continued to carry the weight of the African Union and United Nations in this role, and is widely credited with ensuring that pressure remained on the parties during the initial stages of the governing coalition. At the time of the constitutional referendum, the international community also played a significant role in putting the parties on notice to ensure a free and fair election, including the United States. A visit by Vice President Biden to Kenya only two months before the constitutional referendum helped signal U.S. interest and support for a credible referendum, and signaled that the international community would continue to be engaged in seeing through political reforms.
On the other side of vertical accountability, domestic demands for reform in Kenya also played a considerable role in driving the parties to complete the constitutional reform process. As Kanyinga and Long (2012) find, Kenya’s citizens overwhelmingly favored a new constitution as a top priority for the coalition government. These strong pressures from below proved an important impetus for the parties in the coalition government to focus their attention on achieving reform. In many ways, the broad demands for reform dovetailed nicely with the particular configuration of political interests present in the coalition. As Kanyinga and Long (2012) note, “To the PNU and Kibaki in particular, the new constitution answered the need for a legacy that would compensate for the 2007–8 postelection violence; to Odinga and ODM, it was a political dividend and an important campaign resource for the next presidential election in terms of showing credibility with respect to the reform agenda on which they had campaigned in 2007 (p. 46). Odinga was primarily interested in fashioning himself as a committed reformer, thereby creating a political identity that played well with both his domestic constituency and international donors. The president and the prime minister’s combined interests in meeting this broad popular demand therefore eroded the basis of opposition from their own political parties (Kanyinga & Long, 2012, p. 46).

In Zimbabwe, years of political predation have kept ordinary Zimbabweans from being able to effectively make their voices heard. Rather, a small but vocal cadre of civil society organizations has played role in keeping the agenda focused on political reform, but have had few avenues to influence government policy. The key priorities for civil society actors at the outset of the transitional period included influencing the constitutional drafting process, encouraging democratic legislative reforms, reconstituting the security sector, and the further
consolidation of conditions that would ensure that ZANU-PF would not have the mechanisms at its disposal to disrupt and seize power in subsequent elections (ICG, 2009). Despite their initial strength, organization and apparent window of opportunity, Zimbabwean civil society has been largely unable to affect the course of Zimbabwe’s transition.

In terms of legislative reform, civil society initially set their targets on various repressive pieces of legislation, such as the Public Order Security Act (POSA) and the Access to Information and Protection of Privacy Act, both of which were utilized periodically by ZANU-PF and the security services to limit association and disrupt civil society activities. Civil society calls to reform the draconian POSA became increasingly shrill after the inauguration of the 2008 unity government and the continued harassment of civil society activists. Despite nearly two years of calls from civil society to reform the POSA, the lower house of parliament only tabled a bill for its repeal in early December 2010 (NewsDay, 2010), and it is unlikely to be passed by the Senate or signed by the Presidency.

As a result of the growing frustration with the government of national unity to deliver promised reforms, Zimbabwean civil society is increasingly shifting its focus to other countries with potential leverage to affect political change in Zimbabwe. The Crisis in Zimbabwe Coalition, an umbrella group of numerous Zimbabwean organizations, has been the most proactive in this regard, focusing their efforts on pressing regional countries, including South Africa as the guarantor of the GPA, to encourage greater political reform within Zimbabwe. While these efforts have been moderately successful, particularly within the Southern African Development Community (SADC) (The Zimbabwean, 2010), other factors, such as economic
ties and Mugabe’s continued perception as one of the “fathers” of the African liberation struggle may limit the effectiveness of regional advocacy efforts.

Overall, despite the apparent strength and organization of the various domestic and international organizations, it does not appear that civil society has been able to significantly affect political reform in Zimbabwe’s transitional government; a fact that is particularly concerning given the relative lack of political voice and means of populat expression in Zimbabwe. While some authors have criticized Zimbabwean civil society movements as too elite or “urban” to make a difference for the majority of Zimbabwe’s population, these have largely been shrugged off as ZANU-PF propaganda meant to discredit its most vocal critics (Bratton & Masunungure, 2008).

When taken as a whole, it is clear that the unique configurations of political interests and histories made reform during the transitional period more likely in the Kenyan case than in Zimbabwe, where a history of acrimonious, brutal politics continues to underwrite relations between the MDC and ZANU-PF. While this observation gives some hope that Kenya’s next election will be violence-free, the factors that compelled the adoption of a progressive constitution are already beginning to unravel, making the political playing field much more volatile heading into the electoral period. Similarly, in the absence of reforms, elections in Zimbabwe under the current circumstances could be generally expected to be significantly flawed.

VI. CONCLUSIONS

In light of the increasing prevalence of power sharing formulae as the preferred method to bring an end to violent conflict and promote more stable governance, this analysis ventured to
highlight a unique subset of cases within the broad spectrum of power sharing possibilities: transitional power sharing agreements that result from flawed and violent elections. Understanding this subset has important implications for both the general theory of power sharing, which until this point has failed to adequately address the unique political and historical circumstances present in these cases, and the practice of democratization and peace-building in societies recovering from violent electoral conflict. In choosing Kenya and Zimbabwe, this analysis shows how the theorized factors behind power sharing success – the institutional design of the power sharing agreement, the history of political competition and elite relations, and vertical mechanisms of accountability – condition the ability of actors in a coalition government to achieve political reforms. More specifically, what this analysis shows is that, when these factors create political incentives – and indeed build on past histories of political compromise – for partners in a coalition government to advance reforms, the chances of ‘success’ are significantly greater.

In Kenya, a history of elite cohesion and cooperation, combined with carefully developed institutional procedures and pressure from both above and below, created a situation that was more conducive to durable reform, as indicated by Kenya’s successful constitutional referendum and progress in overhauling the judicial and electoral systems. In Zimbabwe, on the other hand, a history of acrimonious and combative politics, combined with vague institutional procedures and ineffective domestic and regional influences created a situation ripe for policy deadlock, as indicated on numerous issues ranging from cabinet appointments to negotiations on a new constitution. Despite these divergent trajectories, both cases indicate that transitional justice is
difficult in this scenario, particularly when partners in the coalition government are likely to be implicated in any transitional justice proceedings.

To be sure, while the passage of the constitution in Kenya represents a historic achievement for the power sharing coalition, it does not mean that Kenya is out of the proverbial woods. Key elements of the constitution, including critical reforms to the police service, land reform, and the devolution of powers to 47 new counties have sputtered due to a combination of low political will and active attempts to stymie reforms by major political forces seeking to maintain a corrupt and beneficial status quo. As such, while Kenya has achieved some success when compared to Zimbabwe, in both cases it is fair to say that the fundamental factors that compelled electoral violence in 2007 and 2008 continue to remain intact, albeit in different forms.

What relevance does this analysis have beyond the unique cases of Kenya and Zimbabwe? Observers of the electoral stalemate in Cote d’Ivoire are likely to claim that the international community, and African regional institutions in particular, have turned a new leaf; that power sharing, once a dominant feature of international strategies to end Africa’s conflicts, is no longer the preferred solution to intransigent incumbents attempting to subvert the will of their people. Nonetheless, one can argue that the situation in Cote d’Ivoire was unique, given the strong role afforded to election observers and redundancies in ballot counting systems, all of which pointed to a clear victory for Ouattara (ICG, 2011). It is not inconceivable to think of a range of other contexts where the winners and losers of elections are not as clear-cut, with

---

2 The Economic Community of West African States (ECOWAS) is often cited as being particularly forward-leaning on issues of democracy in democratic quality, particularly in light of the election of Ouattara as ECOWAS president in February 2012.
electoral processes subject to forms of manipulation that cast sufficient doubt on the results to compel the parties and international mediators towards a negotiated solution.

It is for these situations that this analysis provides useful pointers on which factors to consider when designing power sharing institutions. First, in countries with a history of acrimonious and imbalanced politics, as remain present in the Zimbabwean case, the specificity of rule-making and appointment procedures is crucial. Procedures must be agreed that make clear the rules of appointments and prescribe a path to reform implementation that does not leave room for intransigent incumbents to maneuver or stall the implementation of reforms, or simply appointments of their coalition partner. This may create problems for negotiators seeking to end agreements, but is nonetheless critical in order to ensure clear procedures and expectations for actors in the coalition.

Second, when there is a history of acrimonious political relations and a distinct imbalance of power – specifically when the security services are decidedly partisan – the power sharing coalition must have clear procedures and a mandate to affect security sector reform, and this factor must be universally supported by the international “guarantors” of the agreement and other external actors willing to exert leverage. This is indeed a sensitive task that few countries, even countries wracked by civil war, are able to do well. However, it can be generally assured that a power sharing agreement is doomed to fail when one side is able to effectively keep a gun under the table. Inducements for security sector reform – such as “golden parachutes” for generals implicated in violence or conditional offers of amnesty – should also not be ruled out in such cases, regardless of the scope and duration of the transitional coalition.
Third, international pressure during the transitional phase must be consistent, with clear penalties for non-compliance. In the Zimbabwe case, SADC was hesitant to use its negotiating leverage to drive the parties to make progress on numerous substantive issues, including the continued involvement of the security sector. Instead, the regional body appears to prefer strongly worded statements as opposed to more punitive measures against Mugabe and ZANU-PF. In Kenya, on the other hand, international pressure played a positive in shaping the configuration of political interests that ultimately agreed on the need to finalize the constitution.

Fourth, the Kenyan case makes clear that, even when efforts to pursue national or local level transitional justice fail, international jurisprudence should be pursued early in the term of a transitional regime, rather than at the end of its duration. As it currently stands, the ICC’s indictment of four prominent Kenyans, however well-intentioned, has become an inextricable political issue in Kenya’s election, raising the stakes for two presidential aspirants and increasing the likelihood that a reversion to old-guard ethnic politicking will be utilized during the next election. Had international jurisprudence been quicker to address issues of impunity in the immediate aftermath of the 2007-8 violence, Kenya may not be in this predicament. When faced with similar dilemmas in the future, the international community would do well to ensure that transitional justice occurs before the end of a given transitional period.

While these conclusions offer ways to structure incentives and focus international attention on more effective strategies for building peace and promoting incremental democratization in countries emerging from electoral conflict, ultimately the power sharing formula is a second-rate solution to the larger problem of electoral violence, and should not supplant efforts by the international community and regional actors to ensure that elections do
not turn violent in the first place. Indeed, as noted at the beginning of this analysis, power sharing regimes that result from violence present legitimate winners of elections with unsettling Faustian bargain, forcing leaders to choose to enter a governing coalition with a violent adversary or risk plunging their country into civil war. Ensuring that this bargain does not need to be made must be the top priority for every actor interested in deepening peaceful democratic contestation in Africa’s nascent democracies. Transparent and sound electoral processes, stronger regional and international monitoring, and heftier penalties - particularly from regional institutions – for parties that complicate elections through violence are just a few examples of interventions that may forestall electoral violence and strengthen Africa’s nascent democratic institutions.


59

