

INTERNATIONAL NEGOTIATIONS: CHALLENGES AND STRATEGIES FOR AFRICAN COUNTRIES

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ABSTRACT

Negotiation is a very vital tool for resolving disputes amicably and ensuring harmony in international relations. Further, it is the process of engaging in ‘dialogues or discussions’ with the sole object of reaching an acceptable agreement by the parties involved in a dispute. Essentially, negotiation aims to achieve fairness and security among states. It is voluntary, non-adjudicative, informal and flexible. This article seeks to identify and analyse the challenges and limitations African countries face in negotiating with international bodies and other countries as well as propose strategies, approaches and attitudes they must adopt to ensure a more favourable negotiation outcome. The paper is divided into eight sections, which are based on secondary data analysis and literature review that covers the area of study in addition to other theoretical and legislative enactments on international negotiation in Africa. The review of the literature examined information from several important sources which covers the major area of the paper.

Keywords: International Negotiations, Bargaining, Development, Multilateral Diplomacy, Africa

INTRODUCTION

African countries’ involvement in both international as well as multilateral diplomacy has increased significantly and become more complex due to a myriad of challenges such as high incidence of poverty, disease, conflict and

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marginalisation in international affairs, particularly during the Cold War.⁴ These challenges have been reinforced by Francis Fukuyama who posits that “Africa has so many problems that its lack of political and economic development seems overdetermined”.⁵ Thus, from various fronts, states within the African continent remain minor powers still “hemmed in” by unequal and immovable structures, high incidence of poverty and underdevelopment, which are often characterised by fragile economies and weak political and military capabilities.⁶

These challenges faced by African countries have become huge setbacks on the continent’s capacity to negotiate with international institutions such as the International Monetary Fund (IMF), the World Bank and other developed countries like China and United States of America in order to implement deals to its advantage.⁷ This informs why Africans always have to go to these Bretton Woods institutions for assistance to stabilise their economies as well as finance a number of projects more than any other continent as well as engage in Trade Negotiations, Power Purchase Agreements, Economic Partnership Agreement, Climate Change Convention negotiations among others. Africa has now come to realise that, to achieve the best deals in negotiations, there is an imperative need to use its numbers to negotiate favourable terms by adopting common interests in international negotiations.⁸ This strategy adopted currently has enabled the continent’s representatives in international bodies such as the United Nations and other international platforms to play a much more effective and efficient roles when it comes to international diplomacy compared to the time past.⁹

In spite of these successes, African countries continue to encounter certain challenges and drawbacks during negotiations with international bodies and other developed countries which tend to hinder them from executing better deals to their benefit. This paper identifies and analyses some of the challenges together with

⁴Z Siphamandla, *Africa in international negotiations: A critique of African common positions* (2011) <<https://www.open.ac.uk/socialsciences/bisa-africa/files/africanagency-seminar1-zondi.pdf>> accessed March 2024.

⁵ F Fukuyama, *Second thoughts. (The national interest 1999)* 19.

⁶ Brown, *A question of agency: Africa in international politics*, 33 (Third World Quarterly 2012) 10, 1889–1908.

⁷ Zondi (n 1) 2.

⁸ Ibid.

⁹ Ibid.

the limitations African countries face in their quest to negotiate favourable terms with international bodies and other countries. Further, proposals, strategies, approaches and the needed skills that must be adopted to ensure a more favourable negotiation outcome are also discussed.

NATURE AND STYLES OF NEGOTIATION

Whenever there are desires that demand to be satisfied and needs that are to be met, then potentially an occasion for negotiation has arisen. In addition, when people exchange ideas with the intention of changing existing relationships to reach a settled agreement, then the parties are negotiating.¹⁰ Negotiation occurs at various levels in society including business, government, or within the family, anytime people have to make decisions.¹¹ Negotiation can be categorised into deal-making or dispute-resolution. Deal-making negotiation involves negotiating the terms of a contract or some other relationship of a commercial nature whereas dispute-resolution involves dealing with a dispute that has already arisen, or preventing a potential dispute from occurring in an ongoing relationship.¹² *Zartman* defines negotiation as a “process of two or more parties combining their conflicting points of view into a single decision of mutual interest”.¹³ *Ferraro* also defines negotiation as “a process between people who share some common interests, people who stand to benefit from bringing the process to a successful conclusion”.¹⁴ While *Zartman* emphasises negotiation as a means of resolving conflicts, *Ferraro* believes negotiation to be an approach to better cooperation. In “Getting to Yes,”¹⁵ negotiation is defined as a “back-and-forth communication designed to reach an agreement when you and the other side have some interests that are shared and others that are opposed.”

¹⁰ E Wertheim, *Negotiations and Resolving Conflicts: An Overview*, College of Business Administration Northeastern University, <<http://www.cba.neu.edu/~ewertheim/>>

¹¹ R Fisher, Urry W, Patton B, *Getting to Yes: Negotiating agreement without giving in* (2nd edn, New York: Penguin Books Ltd 1991) 6.

¹² *Ibid.*

¹³ W Zartman, *Negotiation as a joint decision-making process*, in the negotiation process: Theories and applications, (Beverly Hills: Sage 1978) 67-86.

¹⁴ GP Ferraro, *The Cultural Dimension of International Business* (Upper Saddle River: Pearson Education 2002) 127.

¹⁵ Fisher, Urry and Patton (n 8).

Even though there is no universally accepted definition for negotiation, most scholars are of the view that where two or more parties have both ‘common and conflicting interests’, and interact with each other with the ultimate purpose of reaching a mutually acceptable agreement amongst themselves, then negotiation has taken place. Negotiation simply entails a situation where participants involved in the process, find common grounds of convergence in a competitive national or regional interests that they demand to reach an acceptable outcome through an agreement.¹⁶ Usually, in bilateral negotiations, the process of finding a ‘common ground’ is easier, because the interests are normally two to reconcile.¹⁷ However, in multilateral negotiations, where there are more than two parties and sets of interests on the table, reaching an amicable settlement is quite often a lot more complex exercise.¹⁸

Negotiation, as a dynamic and multifaceted process, is deeply influenced by cultural, historical, and contextual factors. While the foundational definitions provided by scholars like Zartman and Ferraro emphasise conflict resolution and cooperative interests, the styles of negotiation often reflect the sociopolitical ethos of the parties involved. For African nations, negotiation styles are frequently shaped by collectivist values, historical legacies of colonialism, and contemporary challenges such as economic dependency. For instance, the *Ubuntu philosophy*,¹⁹ emphasising communal harmony and interdependence, often permeates African negotiation practices, prioritising relationship-building over transactional gains. This contrasts sharply with individualistic Western styles that prioritise assertiveness and immediate outcomes.

Globalisation has further complicated negotiation dynamics. Digital platforms and virtual negotiations, accelerated by the COVID-19 pandemic, have introduced new dimensions to cross-border dialogues. African negotiators now contend with hybrid models where face-to-face diplomacy merges with teleconferencing, altering traditional rapport-building techniques. However, limited access to

¹⁶ J Lönnroth, United Nations Convention: An analysis of ten years of negotiations, 25 (International Migration Review 1991) 96.

¹⁷ Zondi (n 1) 3.

¹⁸ Ibid.

¹⁹ Ncube, Lisa B. “Ubuntu: A transformative leadership philosophy.” *Journal of Leadership Studies* 4.3 (2010): 77-82

advanced technological infrastructure in some African regions can exacerbate existing power imbalances, as developed nations leverage superior resources to dominate virtual spaces.

Moreover, Emotional Intelligence (EI) plays a critical yet understudied role in negotiation styles. Skilled negotiators harness EI to read counterparts' unspoken cues, manage stress, and foster empathy skills particularly vital in multicultural settings.²⁰ For example, during the African Continental Free Trade Area (AfCFTA) negotiations, delegates from diverse linguistic and cultural backgrounds relied on EI to navigate sensitivities around tariff reductions and trade barriers²¹. Such nuanced styles highlight the need for adaptive strategies that blend traditional relational approaches with modern procedural rigour.

PRINCIPLES OF NEGOTIATION

There are four basic principles of negotiation.²² The first, and foremost is that, one must always separate the 'parties involved' from the main problem. In resolving issues that may surface, the focus must be on the interests and not positions. Further, in reaching an amicable settlement in negotiations by the parties, there must be the invention of options for mutual gain. The last, but not the least principle is that the resolution to settle by the parties must be based on some objective criteria. Negotiation is also less costly, and one of the most flexible methods in resolving disputes. It allows the parties autonomy to control the process. The four key characteristics of a good negotiated settlement are fairness, efficiency, application of sound reasoning and transparency.

The four principles of negotiation, separating people from problems, focusing on interests, inventing mutual gains, and relying on objective criteria are universal in theory but face unique challenges in practice for African countries. Consider the principle of separating parties from the problem. In contexts where historical grievances, such as colonial exploitation or unequal trade agreements, linger,

²⁰ Kim, K., Cundiff, N. and Choi, S. "The Influence of Emotional Intelligence on Negotiation Outcomes and the Mediating Effect of rapport: A structural Equation Modeling Approach." *Negotiation Journal* 30(1), 2014.

²¹ <https://www.tralac.org/blog/article/15746-the-role-of-negotiating-principles-in-the-design-of-the-afcfta.html>

²² Fisher, Urry and Patton (n 8) 6.

African negotiators often grapple with deeply entrenched mistrust. For instance, during renegotiations of mineral extraction contracts with former colonial powers, emotional narratives of resource exploitation can overshadow objective problem-solving. To mitigate this, mediators like the African Union²³ have advocated for “truth and reconciliation” frameworks in economic dialogues, aiming to acknowledge past injustices while fostering forward-looking collaborations.

The principle of focusing on interests rather than positions is equally complex. African nations frequently negotiate from positions of structural weakness, such as debt dependency or climate vulnerability, which pressures them to adopt short-term concessions over long-term strategic interests. For example, in climate negotiations, African states’ urgent need for adaptation funding often forces them to accept conditional loans rather than demand reparations for historical carbon emissions. Here, the principle clashes with systemic inequities, necessitating coalition-building with other Global South nations to amplify shared interests, such as the G77+China bloc in United Nations forums.²⁴

Inventing options for mutual gain requires creativity constrained by resource limitations. When negotiating infrastructure loans with China, African governments have experimented with “resource-for-infrastructure” barter deals, such as Angola’s oil-backed loans²⁵ and Ghana’s bauxite deal.²⁶ While these deals offer immediate project financing, they risk long-term resource depletion. To enhance mutual gain, experts recommend integrating local content agreements (e.g., mandating Chinese firms to hire African engineers), thereby aligning external investment with capacity-building objectives.

Lastly, objective criteria must be contextualised to address Africa’s unique developmental priorities. For instance, during the Economic Partnership Agreements (EPAs) with the EU, African nations argued that “fair” trade terms should account for asymmetrical industrial capabilities. By invoking the World Trade Organisation’s Special and Differential Treatment (SDT) provisions, they

²³ <https://au.int/en/decisions/accra-proclamation-reparations>

²⁴ <http://www.g77.org/doc/>

²⁵ <https://china.aiddata.org/projects/53063/>

²⁶ <https://www.scmp.com/news/china/diplomacy/article/3037993/ghana-goes-ahead-us2-billion-chinese-bauxite-barter-deal-has>

anchored their demands in internationally recognised criteria, though enforcement remains inconsistent.²⁷

APPROACHES TO NEGOTIATION

There are several approaches to negotiation. *Fisher, Ury, and Patton* have distinguished between the two main approaches to negotiation: distributive or positional bargaining and integrative or interest-based negotiation.²⁸ The positional negotiation is categorised into soft and hard negotiation while the interest-based negotiation deals with principled negotiation.²⁹

Distributive/positional negotiation (Competitive, Win-Lose)

In positional negotiation, the resources to be shared are fixed, such that when one party wins, the other party loses it forever.³⁰ According to Fisher, Urry, and Patton, "Parties usually adopt positional bargaining where each side takes a position argues for it, and makes concessions to reach a compromise".³¹ Fisher, Urry, and Patton argue that positional bargaining does not usually lead to good agreements, because the agreements reached tend to neglect the parties' involved interests and destroy the relationship. This situation makes it inappropriate to adopt positional bargaining when many parties are involved.³²

Hard positional bargaining

This involves a contest of will, application of pressure, threat, and demands concessions as a condition of the relationship.³³ Such negotiation type involves individuals that are hard on the problem and the persons and since the goal is to win, individuals engage in competition with the other party in order to have their own interests satisfied without concern for the other party's interest.³⁴ If only one party feels satisfied and the other party gets disappointed, then the purpose for entering into such negotiation has been defeated. This is because all negotiation methods should be assessed by three key criteria, which include producing an agreement that is logical, if the agreement is possible, and the presence of an

²⁷ Adetula, Victor, and Chike Osegbue. "Trade and the Economic Partnership Agreements in EU-Africa relations." *The Routledge Handbook of EU-Africa Relations*. Routledge, 2020. 211-223.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Wertheim (n 7).

³¹ Fisher, Urry & Patton (n 8) 7.

³² Ibid (8).

³³ Ibid (7).

³⁴ Ibid.

efficient and improved or at least not damaged relationship between the parties involved.³⁵ The moment these criteria have been compromised, then the hard positional bargaining becomes problematic and cannot be relied upon when, especially, relationships are of the essence.

Soft positional bargaining

This involves accommodating the interest of the other party which is the opposite of competing. In this instance, the individual forgoes his or her own interests to satisfy the concerns of the other person, obeying the other person's orders when he or she would prefer not to or yield to the other person's point of view. Since their goal is an agreement, they engage in concessions to cultivate the relationship.³⁶ While concession in negotiation is mandatory, research has shown that people who usually concede to the other party's interests easily and more quickly do not always explore all comprehensive and mutually beneficial solutions.³⁷

Integrative or interest-based negotiation (win-win or problems solving approach)

This style adopts an objective criterion, to establish conditions of mutual gain by all parties involved and emphasise the importance of information exchange and problem-solving amongst the group.³⁸ It helps facilitate problem-solving, co-operation, and joint decision-making for mutual gains. This approach in negotiations entails collaborative decision-making by participants to achieve a mutually beneficial outcome. With this negotiation style, interests are covered, options are developed and there is a search for commonalities between parties.³⁹

Principled negotiation

In order to avoid the problems associated with the positional approach, *Fisher, Urry* and *Patton* developed another kind of negotiation designed solely to produce 'wise outcomes' efficiently called principled negotiation.⁴⁰ This approach in negotiation entails two or more parties sitting together harmoniously to best address their mutual interests that benefit them all with creative and objectively fair solutions.⁴¹ It involves exploring interests and developing multiple options to

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ A Tanya & Cungu A, *Negotiation theory and practice: A review of the Literature* (2008) 15.

³⁹ Ibid.

⁴⁰ Fisher, Urry & Patton (n 8) 10.

⁴¹ A Noda, *Getting to Yes* by Roger Fisher and William Urry: Critical summary (2015)<
<http://abinoda.com/book/getting-to-yes>> accessed 4 March 2025.

choose from in order to arrive at standards independent of will and to resolve conflicting interest fairly, taking into account community interest.⁴² The five basic principles that undergird negotiations are needed to guide interest-based negotiators. These are first, and foremost, isolating the people from the problem at stake; focusing on the interests brought by each party; generating various options that are mutually beneficial and satisfying to all the parties; having an on objective criteria in place and developing 'Best Alternative to Negotiated Agreement' (BATNA).⁴³

CHALLENGES AND LIMITATIONS OF AFRICAN COUNTRIES IN NEGOTIATING

Everyone enters into a negotiation agreement to have a favourable deal. However, most of the negotiations African countries enter into with international bodies and developed countries are usually not favourable due to problems such as lack of proper preparation and research, differences in negotiation styles among countries, lack of well-informed teams or experts, power imbalance and unknown key players whose influence affect the outcome of the negotiation. These challenges and limitations are analysed in detail below.

Lack of preparation and research

Many of the difficulties encountered by African countries during negotiations stem from their failure to do proper preparation and research prior to the negotiation process. As a result, they lose the confidence to negotiate effectively. Lack of preparation includes failure to gather accurate and needed information about the issues to be satisfied and the available alternatives. A party going to the negotiation table must acquire the needed information about the other party's interests which they intend to pursue, stated positions, and the approach or style to be pursued which does not only lead to a better outcome but also minimises the frustrations as well as the anxiety of negotiation.⁴⁴ For instance, prior to the awarding of contracts, African governments failed to consult civil societies on fundamental issues that confront their societies in the health sector, experts needed to address those issues,

⁴² Fisher, Ury & Patton (n 8) 10.

⁴³ Ibid.

⁴⁴ https://us.sagepub.com/sites/default/files/upm-assets/60654_book_item_60654.pdf

technology transfer, Corporate Social Responsibility (CSR), and Sustainable Environmental Management practices.⁴⁵

Also, cultural differences in terms of values, behaviours, negotiation skills and laws make it essential that African countries engage in research to equip themselves very well before going to the negotiation table. However, most African countries rush to get deals done and therefore do not scrutinise things carefully nor weigh the options available. According to Page,⁴⁶ it is evident that negotiations between the European Union and its associated African, Caribbean and Pacific (ACP) countries entailed less serious participation and showed no signs of success for developing countries as trade relations were non-reciprocal. This arises from the fact that ACP countries were unable to mobilise opposition to the new regime and unable to secure consultation in the face of new arrangements with other countries which reduced their margin of preference. All these stem from their feeling of disadvantage, inexperienced delegation, lack of research by countries before embarking on negotiations, and lack of adequate knowledge on how negotiations are done.⁴⁷

Differences in bargaining power

Most often, the power imbalance between African countries and developed countries during negotiation affects the confidence of African countries due to their disadvantaged position of poverty and underdevelopment.⁴⁸ Due to the heavy reliance on international bodies and developed countries, these donors, having taken a hard position in negotiation, sought to capitalise on the weaknesses and problems of these African countries and present unfavourable conditions, whereas African countries often present soft negotiation style of conceding to whatever conditions that are presented. Whitfield and Fraser have opined that the negotiating strength and capacities of some African governments like Mozambique, Mali, Ghana, Tanzania, and Zambia are very weak due to the fact that all these countries

⁴⁵ <https://www.managementstudyguide.com/negotiation-challenges.htm>

⁴⁶ S Page, *Developing countries: Victims or participant. Their changing role in international negotiations* (Overseas Development Institute 2003) 2.

⁴⁷ S Page, *Developing countries in international negotiations: How they influence trade and climate change negotiations* 35 (IDS Bulletin 2009) 71-81.

⁴⁸ L Whitfield and Alastair F, *Negotiating aid: The structural conditions shaping the negotiating strategies of African governments* (International Negotiation 2010) 15, 363.

are confronted with huge debts and balance-of-payments challenges. Consequently, these setbacks weaken their negotiation abilities and make it possible for donors to exert undue influence over their macro-economic policies during the period of structural adjustment.⁴⁹

There is a general perception among the international community that African countries usually accept the terms offered during negotiations, under the notion that if they do not take what has been offered another country might accept it.⁵⁰ For instance, in Ethiopia, the development of an electric train line which spans Addis Ababa to Djibouti, and was fully funded by the Chinese cost around US\$3.4 billion for 756 kilometers.⁵¹ A similar one in Kenya costs more than that of Ethiopia and some of the reasons assigned for the difference were that the environment was different and the need for the Kenyan one to carry higher volumes of cargo. However, many experts believe other factors come into play, such as a lack of proper research before going for the negotiation and not undertaking due diligence during the negotiation process.⁵² There is often deep information asymmetry between the parties in the negotiation and as a result, African governments tend to have access to less information on projects than the investors with whom they are contracting, making them vulnerable in the negotiation process.⁵³

Unknown players and their influence on the negotiation

International negotiations just like domestic negotiations mostly involve unknown players or parties who are not physically present at the negotiation table and are less obvious, even though they have an interest in the subject matter of the negotiation and as a result, they formally or informally influence the deal in one

⁴⁹ Ibid.

⁵⁰ Interview with Folashade Soule, How to negotiate infrastructure deals with China: Four things African governments need to get right, Senior Research Associate (University of Oxford: Oxford 3rd January 2019).

⁵¹ Ibid.

⁵² Ibid.

⁵³ <https://extractiveshub.org/topic/view/id/44/chapterId/478>

way or the other.⁵⁴ Many International donor agencies have influence worldwide which makes them more powerful than the parties with interests who will be making the deal.⁵⁵ Therefore, when African countries go to the negotiation table without investigating these extra players, their decisions and the influences of these informal and formal negotiation players that can make or break a deal put them at risk of getting unfavourable deals.⁵⁶ For instance, making deals with the United States of America usually involves extra players beyond those represented such as the Federal Trade Commission and the Justice Department among others.⁵⁷

Differences in Negotiation Style

Different procedures as well as negotiation styles in other developed countries can pose challenges for African countries. Failure to understand these procedures and styles of countries one negotiates with can act as a barrier to the attainment of a successful negotiation. Further, the inability to know ahead what the other party's ways of negotiating are can lead to difficulties in reaching a wise conclusion that is beneficial to all the parties.⁵⁸ Sometimes there may be differences in values, culture, attitudes, and interests which may call for a particular negotiation style and if this is not managed well can lead to results which one may not have anticipated. This can lead to misunderstanding and disagreement and if not managed well may damage business relationships.⁵⁹ According to Gulbro and Herbig, a negotiation style which is effective in one culture can be totally ineffective and inappropriate in another jurisdiction where the culture is different and can be more harmful than good.⁶⁰ For instance, Ghanaian cultural values entail verbal indirectness as a proper way of speaking unlike what pertains to Western

⁵⁴ JK Sebenius, The hidden challenge of cross-border negotiations (2008) Harvard Business Review < <https://hbr.org/2002/03/the-hidden-challenge-of-cross-border-negotiations> > accessed March 2025.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ LT Wells, International business: Negotiating with Third World Governments (Harvard Business Review January 1977).

⁵⁹ HS Woo, Negotiating in China: Some issues for Western women 14 (Women in Management Review 1999) 115-120.

⁶⁰ R Gulbro and P Herbig, Cross-cultural negotiating processes 96 (Industrial Management & Data Systems 1996) 17-23.

cultures which encourage assertiveness and candid expression of views. African states' behaviour is collectivist in nature, and does not see states as independent entities existing all by themselves, but are rather "a group animated by the spirit of solidarity".⁶¹ Since Africans value relationships, they are more likely to adopt soft negotiation styles. In contrast, countries with an individualistic culture like Australia, who value individual autonomy pursue individual interests, and encourage competition, are most predisposed to adopt hard negotiation styles.⁶² The Chinese also have an attitude of take-it-or-leave-it approach, and in several instances, the collectivist approach of the Africans may not make them confrontational enough in return to identify the best negotiation style to adopt in order to achieve a more favourable negotiation.⁶³

Lack of comprehensive team/ experts and stakeholders

There are a myriad of key challenges that confront African governments in their negotiations. One of these is instances, where African government delegations fail to harmonise inter-ministerial coordination and end up in a ratio of one African to three Chinese in negotiations, sometimes without the key experts on the field.⁶⁴ African countries mostly go to international negotiation sessions with fewer representatives due to a lack of human (qualified experts) and financial resources. Unlike African countries, the industrial or developed economies have the capacity to put up coalitions and resources that are able to canvass the interests of their countries comprehensively. Experts such as lawyers, economists, scientists, diplomats, and researchers most often accompany their negotiating teams and give them briefings during the negotiations.⁶⁵ Lack of different kinds of skills and talents within the negotiating team or within the negotiating coalitions and where

⁶¹O Obinna, Protection of human rights in Africa and the African Charter on Human and People Rights: A comparative analysis with the American and European Systems Human Rights (1984) 48.

⁶²FLK Hsu, Americans and Chinese: Passage to Differences (Honolulu: University Press of Hawaii 1985).

⁶³ Interview with Soule (n 39).

⁶⁴ Herve Lado, Folashade Soule, "Tips For African Negotiators Doing Deals With China: Rebalancing Asymmetries" (2020) < <https://resourcegovernance.org> > accessed 25 February 2020.

⁶⁵M Mace, Maruma E, Bruch C, and Salpin C, Guide for negotiators of multilateral environmental agreements" <https://www.cbd.int/doc/guidelines/MEAs-negotiators-guide-en.pdf>.

to turn if technical information is required can become a hindrance to implementing a favourable deal.⁶⁶

Sometimes, African countries fail to involve the public and all interested stakeholders in order to have meaningful input and public debates before the team can represent their countries in the negotiation. For instance, the laws of Ghana require all international business transactions to be ratified by parliament.⁶⁷ With respect to the Power Purchase Agreements resulting from negotiation between the Government of Ghana and a foreign investor, it was held to be an international business transaction which needed to receive the necessary parliamentary approval and, without that, it was unenforceable⁶⁸

THE APPROACHES, STRATEGIES AND ATTITUDES THAT MUST BE ADOPTED BY AFRICAN COUNTRIES TO ENSURE A MORE FAVOURABLE NEGOTIATION OUTCOME

International negotiators employ certain negotiating strategies, approaches, and attitudes that are meant to increase their bargaining power, which automatically impacts their negotiation outcomes positively.⁶⁹ The strategy here means “a set of behaviors or tactics that are observable in principle and associated with a plan to achieve some objective through negotiation”.⁷⁰ In order to ensure more beneficial negotiation outcomes, African countries can engage in proper preparation and research, principled negotiation or a combination of negotiation styles, develop a negotiation position (BATNA), build informed negotiation teams, and increase their knowledge base.

Preparation and Research

There is no doubt that all successful negotiators prepare well far in advance before the actual day that the negotiations take place. African countries’ preparations require that they investigate the culture of other countries with regard to how their

⁶⁶ Ibid.

⁶⁷ Republic of Ghana, Constitution (Art 181(5) 1992).

⁶⁸ *The Attorney General vrs Balkan Energy Ghana Ltd and Others* (J6/1/2012) [2012] GHASC 35 (16 May 2012)

⁶⁹ Odell, Creating data on international negotiation strategy 7 (International Negotiation 2002) 39-52.

⁷⁰ Ibid.

values, behaviour, language, attitudes, and interest affect their negotiation styles. It is also necessary to conduct research on the extra players who have an interest in the subject matter of the negotiation and the roles they play to influence the outcome of the negotiation because, sometimes, they may be the actual actors behind the scenes and pushing an agenda.⁷¹ Preparation may involve assessing existing legal regimes. This includes a comprehensive review of the national laws and regulations of an opposing party, together with international agreements and norms that may be binding or non-binding which may take care of present environmental issues.⁷² It also requires training parties on the best approach to negotiating skillfully. For delegations from the African continent to be successful, it is imperative to have a comprehensive understanding of the country's interests as well as position on the issues under negotiation, and an appreciable sense of the interests of other delegations.⁷³

Adequate preparation and research before the negotiation allow a party to gather crucial information on a project's historical assets, its impact on the economy of a country, and its likely risk profile, which all make it possible for a team to be able to negotiate well. Ideally, the interests, needs, and position of a country entail a wide range of activities, which spans broader ministerial, departmental, and inter-agency consultations, targeted scientific studies, and input from all stakeholders who may be involved in the project (business and industry bodies). This may sometimes include Non-Governmental Organisations and Civil Society groups.⁷⁴ The final position of the state involved in an issue should then have the necessary political endorsement, in order to enable the team to have confidence in the position taken during the negotiation process.⁷⁵

Involvement of all stakeholders

There should be the involvement of private sector actors and the affected committee in parliament in the process prior to negotiations by presenting all key

⁷¹ JK Sebenius (n 43).

⁷² Mace, Maruma, Bruch & Salpin (n 54) 11.

⁷³ J Gupta, On behalf of my delegation: A survival guide for developing country climate negotiators (CSDA/IISD 2000) 49.

⁷⁴ Mace, Maruma, Bruch, Salpin (n 54).

⁷⁵ Ibid.

contracts for their consideration and approval. Locally elected officials should also be involved in the preparation of negotiations in order to strengthen the government's position.⁷⁶ National assemblies' opinions must be solicited in the contractual stage of negotiations through oversight and accountability measures to help increase transparency and create a barrier for corruption, ratification, and the adoption of measures to hold governments responsible.⁷⁷

Build an Informed Negotiation Team or Expertise

African governments would benefit from restructuring their negotiation teams to improve both size and expertise. A negotiation team representing legal, political, operational, finance, geological, environmental, technical, and economic disciplines may offer the best chance of success and ensure that investment is aligned with national and sector development goals.⁷⁸ Resources must be invested to train the negotiation team. The negotiators must have tenacity, endurance, physical fitness, and confidence as their characteristics during negotiations.⁷⁹ Where the required capacity is unavailable in government, getting an external advisor or local experts is advisable, accompanied by a due diligence process to assess the expert's eligibility.⁸⁰ External expertise can be useful in areas where the African side lacks capacity in terms of legal expertise such as the one offered by the African Legal Support Facility of the African Development Bank or the Germany-based CONNEX programme.⁸¹ Also, the Natural Resource Governance Institute (NRGI) has been providing support to a number of governments on financial and tax modeling used during negotiations to build the governments' positions solidly.⁸² As complex deals tend to be dominated by politics, especially where natural resources are used to back loans, their terms should be exposed to the public and national oversight entities' scrutiny to ensure accountability.⁸³

⁷⁶ <https://extractiveshub.org/topic/view/id/44/chapterId/478>

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ J Emily, *Negotiating against the odds: A guide for trade negotiators from developing countries* (UK: Palgrave Macmillan 2013) 13.

⁸⁰ <https://extractiveshub.org/topic/view/id/44/chapterId/478>

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

On this, Mace, Maruma, Bruch, and Salpin opine that:

Once the negotiating team is formed, the ‘head of delegation’ should act as a team leader and all decisions should pass through him or her. The negotiating team can appoint a deputy head to negotiate when the head of delegation is absent. A clear division of labour should be made well in advance of the negotiations. For example, one team member might work on talking to other delegations with similar interests, while another team member might focus on monitoring and coordinating the national position across different issues. Different team members may focus on different issues. It may also be very important for someone to be responsible for obtaining important documents from the Secretariat, drafting text, taking notes during sessions, developing new positions, and maintaining communications.⁸⁴

ENGAGE IN PRINCIPLED NEGOTIATION OR A COMBINATION OF APPROACHES WHERE NECESSARY

African countries often adopt the soft negotiation style due to their vulnerability, prioritising relationship preservation with donor countries. They usually give away concessions on the substance of the matter more quickly and are less likely to explore all integrative and mutually beneficial solutions leading to bad agreements.⁸⁵ According to the authors of *Getting to Yes*, it is appropriate to engage in an interest-based negotiation rather than positional bargaining because it is an all-purpose strategy and whether the other side is more experienced or less, a hard bargainer or a friendly one, it can be used.⁸⁶ Adopting the principled negotiation style will help parties to be soft when dealing with the people in negotiation and hard when dealing with the substance of the problem by distinguishing the issues or problems from the parties involved in the dispute.⁸⁷ Parties must then focus on the underlying interests and needs rather than their stated positions by listing issues at stake and inventing options for resolving each

⁸⁴ Mace, Maruma, Bruch, Salpin (n 54).

⁸⁵ Fisher, Urry & Patton (n 8) 10.

⁸⁶ Weithelm (n 7).

⁸⁷ Ibid (n 12).

issue through brainstorming sessions for mutual gain and each option is evaluated based on objective criteria of fair standard which is independent of the will of the parties.⁸⁸

When African countries' negotiators become problem-solving negotiators, they are able to explore and cultivate shared interest, which would help them maintain good relationships, and also achieve a more favourable negotiation outcome.⁸⁹ Also, depending on the nature of the subject matter of the negotiation, a combination of styles may be appropriate since it would ensure a common solution to the issues at stake with actions that place little emphasis on joint gains (value-claiming).⁹⁰ This would enable them to explore and cultivate shared interest which would help them maintain good relationships and also achieve a more favorable negotiation outcome or agree to treat partial agreements as provisional until all issues are settled.⁹¹

DEVELOPING A NEGOTIATION POSITION (BATNA) BEST ALTERNATIVE TO A NEGOTIATED AGREEMENT

According to Jeswald W. Salacuse, "The less powerful party in international negotiation is not necessarily at the mercy of a more powerful party because the smaller party can increase its power through the skillful use of negotiating strategies and skills".⁹² Considering the fact that international bodies and the developed countries are more powerful in their bargaining positions, larger and resourced, it is essential for Africans to know their worst and best-case scenarios of the outcome of negotiations, and the best and worse alternatives. BATNA is a term derived from '*Getting to Yes: Negotiating Without Giving In*'⁹³ and this concept is described as the standard against which any proposed agreement should be measured.⁹⁴ Using the BATNA would protect most African countries from

⁸⁸ Ibid 23-24.

⁸⁹ Ibid.

⁹⁰ Odell (n 58) 39-52.

⁹¹ Ibid.

⁹² JW. Salacuse, *Lessons for practice: In power and negotiation* (University of Michigan Press 2000) 257.

⁹³ Fisher, Urry & Patton (n 8) 52-54.

⁹⁴ Ibid.

accepting terms that are too unfavourable and from rejecting terms that would be in their interest to accept.⁹⁵

Emily Jones posits that “Other sources of potential leverage that African countries need to identify include controlling resources such as raw materials, minerals, land and water that are in high demand, diplomatic recognition, forming coalitions with others, having access to information, ability to make moral arguments and the personal qualities of negotiators such as being vigilant and confident at the negotiation table”.⁹⁶ Thus, the more easily a party can leave the negotiation table, the greater the capacity to affect its outcome.⁹⁷

INCREASE KNOWLEDGE

Influencing negotiations is about increasing bargaining power.⁹⁸ African countries need to increase their knowledge base by getting information regarding international bodies and other countries with which negotiations are to be conducted, their experience, expertise, reputation, mode of operation and performance in other countries, as well as expectations and motivations from the project.⁹⁹ Also, they need to acquire information on the various interest groups, their reputation and credibility, their way of thinking, their degree of influence in the decision-making process in the subject matter of the negotiation, and information on recent concessions.¹⁰⁰ These would aid in finding out the potential enemies and predict the strategy the opposition is bringing on board during negotiations.¹⁰¹ African countries can take every opportunity to share lessons or experiences in negotiations with the international bodies and the other countries with one another.¹⁰² If you are a member of a small delegation, you may wish to

⁹⁵ Ibid.

⁹⁶ Emily Jones (n 68) 32.

⁹⁷ Ibid (n 82).

⁹⁸ A Moerland, Do developing countries have a say? Bilateral and regional intellectual property negotiations with the EU IIC 48 (Published online: 6 October 2017) 774.

⁹⁹ Emily Jones (n 68) 23.

¹⁰⁰ Fisher, Urry & Patton (n 8) 7.

¹⁰¹ Ibid.

¹⁰² Mace, Maruma, Bruch, Salpin (n 54) 32.

team up with other delegations from like-minded countries to share information and increase your negotiating strength.¹⁰³

African universities can also set up centers for international negotiation where research on international bodies and potential donors can be made to close the gap in information and knowledge.¹⁰⁴ Also, they can employ some external interventions. For instance, in Togo, Senegal, and the current government in Benin, the cabinet hires international law firms with experts who have worked in the Chinese government and its development banks to help provide information regarding Chinese negotiations.¹⁰⁵ This is to help bridge the gap in negotiation styles between African countries and other countries.

On a broader note and in an increasingly interconnected yet unequal world, African states face daunting challenges when negotiating international agreements with economic and political giants such as the EU, China, and the United States. Individually, many African countries, often small in economic size and geopolitical influence, struggle to secure fair terms in trade deals, climate accords, or investment partnerships. However, by pooling their strengths through regional blocs such as the African Union, the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC), or the East African Community (EAC), African nations can transform their negotiating power, ensuring outcomes that prioritise continental prosperity over external exploitation. By negotiating as a bloc, African countries can amplify their influence and secure equitable outcomes.

CONCLUSION

Africa's predominant political practices, high levels of poverty, underdevelopment, and the poor economy have placed a great burden on African governments to depend on international bodies and other countries for assistance. They have also entered into trade negotiations, climate change negotiations, power purchase agreements, and other agreements with these donors in order to support development projects and reduce poverty. However, when African countries

¹⁰³ Ibid.

¹⁰⁴ Interview with Soule (n 42).

¹⁰⁵ Ibid.

engage in negotiation with these international bodies and other countries, they are confronted with a lot of challenges such as the strong bargaining position of the donor parties which hinders them from achieving a favourable negotiation outcome, lack of preparation and research, cultural differences in negotiation styles, lack of informed negotiation teams or experts and unknown key players whose influence affect the outcome of the negotiation.

In order to achieve a favourable negotiation outcome, proper preparation and research are the first thing to do which requires identifying the nations' interests and developing a national position as well as the interest and position of the other country. This also involves identifying key players whose influences impact the outcome of the negotiation. In order to allow for meaningful input and debate by societies, negotiating partners must ensure that detailed and timely information on the content of the agreement is made available through public sources so that, they can have meaningful and equal opportunities to influence the negotiated outcome. They must mobilise experts who have the necessary skills in the subject matter of the negotiation and provide all the necessary resources they will need to implement a successful negotiation as well as training on negotiating skills and use of BATNA. All these will go a long way to help African countries achieve a favourable negotiation outcome.

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