



The Global State of Democracy 2017
Exploring Democracy's Resilience

Chapter

8

Inclusive peacebuilding in
conflict-affected states: Designing
for democracy's resilience



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Inclusive peacebuilding in conflict-affected states: designing for democracy's resilience

Countries emerging from armed conflict face a long and arduous road, characterized by multiple obstacles as well as many opportunities. Steps taken in the immediate post-conflict period have a tremendous impact on the country's future. This chapter recommends implementing targeted and active inclusion in peacebuilding processes in order to activate and maintain consistent representative–constituent communication channels, give voice to individuals and groups who identify ways to challenge traditional notions of the democratic state, and facilitate broader access to the highest levels of decision-making as a guiding principle in state- and democracy-building processes. It recommends promoting such policies and practices in three key transitional processes: constitution-building, electoral design and rebel-to-political-party transformation. The chapter features case studies of Liberia, Nepal and Libya.

Written by

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Our experience has identified inclusivity and institution-building as critical in preventing relapse into violent conflict and producing more resilient States and societies. Exclusion is one of the most important factors that trigger a relapse into conflict.

—Ban Ki Moon, United Nations Secretary-General, 2007–16 (UN 2012)

8.1. Introduction: imperatives of inclusivity

At the end of the second Liberian civil war in 2003, the country was in shambles. Over the course of 14 years of violent conflict, almost

300,000 Liberians had died and more than 500,000 had been displaced. The country's GDP had fallen by over 90 per cent in less than two decades, one of the most striking such drops in the world (Radelet 2007: 1–2). Almost 70 per cent of the country still lives below the poverty line of USD 1.90 per day (UNDP 2016).

The war particularly impacted women and children, and the various traumas they suffered continue to haunt the country. All warring sides used mass rape as a weapon of war during the conflict. Male child soldiers were sometimes forced to rape their own mothers, grandmothers and sisters as part of their initiation, and the victims were as young as eight months old (Toral 2012). Child soldiers comprised an estimated 25–75 per cent of all fighting forces in Liberia (Pan 2003). Boys and

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girls were used in the conflict; the latter were primarily used as cooks, porters, sex slaves, and domestics for men and boys (Pan 2003). The war also destroyed 70 per cent of the country's school buildings, and more than half of all Liberian children were estimated to be out of school after the war: 'A whole generation of Liberians has spent more time at war than in school' (Radelet 2007: 4).

In 2003, as war raged, a group of women came together to wage a nonviolent campaign for peace in response to former President Charles Taylor's declaration that he would never negotiate with rebels and that he would sooner see the last soldier die than allow international peacekeepers in. Two female social workers and a leader of Muslim women's groups organized the Women of Liberia Mass Action for Peace, which began to publicly and privately demand peace. They held a 'sex strike', denying intimacy to their partners until peace was achieved. In public, the women utilized peaceful marches, songs and sit-ins, and convinced President Taylor and rebel groups to engage in peace talks.

The women then travelled to the site of the negotiations in Accra, Ghana, where they continued to exert pressure for a peace deal. In July, as violence escalated in Liberia, the women in Accra staged a sit-in at the site of the negotiations. They linked arms, refusing to allow the delegates to leave without a final settlement. When guards came to arrest the women, one of the leaders threatened to remove her clothing, an act that would shame the men. The women were not arrested, and they met with the chief mediator, who agreed to listen to their demands for peace. Three weeks later, President Taylor, who had been indicted for war crimes by the Special Court for Sierra Leone, resigned and a peace deal was announced (Rennebohm 2011).

This grassroots movement, which inspired other women around the country and the continent, continued its work into the post-conflict, transitional phase. The women acted as watchdogs over the implementation of the

peace agreement and took an active role in encouraging fighters to abide by disarmament rules. They also organized to provide transportation and childcare, and supervise market stalls, so that thousands of women working in the markets could register to vote in the first post-conflict election. Groups such as those in the Women in Peacebuilding Network continued to push for women's integration into the economy, working to ensure sustainable peacebuilding (Bekoe and Parajon 2007). In 2011, one of the group's founders, Leymah Gbowee, won the Nobel Peace Prize for mobilizing women 'across ethnic and religious dividing lines to bring an end to the long war' (Cowell 2011).

The Liberian case highlighted the critical importance of inclusion, which is also increasingly recognized in peacebuilding efforts. In *Peacebuilding in the Aftermath of Conflict* (UN 2012), the UN Secretary-General underscored the importance of early emphasis on inclusion in peacebuilding efforts, and calls on the international community to identify entry points for inclusion. The transitional period in which reconstruction activities take place offers opportunities to integrate this principle into the fundamental institutions and processes that will serve as a basis for the newly born or reborn state. Since an inclusive approach to peacebuilding processes implies the localization of peacebuilding efforts, it increases the local population's ownership of the transition, thereby making the peace more sustainable.

Acknowledging that the transition from war to peace and democratic rule is a process and cannot necessarily be bound by any single event, this chapter does not strictly define a transitional period. Indeed, transitions are not necessarily completely peaceful. The signing of a peace deal does not mean that the conflict is over in the minds of the people or that the underlying problems have been sufficiently addressed. However, a transition signals that the primary warring parties have shown a commitment to ceasing hostilities and rebuilding the state.

Active and targeted inclusion ensures that political representatives value (and consistently seek) constituents' views and voices, and that they incorporate these views into higher-level discussions and decisions

This chapter discusses how political elites who are managing the development of the new state can best integrate principles of inclusion into the design of new political institutions in the aftermath of violent conflict. Active and targeted inclusion, explained in detail below, promotes stability and resilience in new democratic institutions by prioritizing communication between political elites and citizens as well as by giving voice to the most marginalized groups in society. This chapter focuses on active and targeted inclusion mechanisms in constitution-building as well as in the political settlement and the design of electoral systems. These processes form some of the core elements of democratic resilience: they lay the foundation for the rules of the new state, determine who can participate in that state and design the levers of that participation (Reilly 2015). As such, they have the power to determine the state's resilience—the ability of its social systems to cope with, survive and recover from complex challenges and crises that have the potential to trigger systemic failure. Indeed, decisions made during the transition 'can make an enormous difference to generations of ordinary people' (Maley 2006: 683).

The resilience of democratic institutions depends primarily on their inclusiveness. When political institutions aim for *active and targeted inclusion*, the resulting structures of authority and the citizenry at large are better prepared to deal with the problems at the heart of the conflict that may threaten future stability. Active and targeted inclusion operationalizes the UN Secretary-General's definition of inclusion, which is 'the extent and manner in which the views and needs of parties to conflict and other stakeholders are represented, heard and integrated into a peace process' (UN 2012: 11). It goes beyond the quest for simple numerical representation of a broad array of interest groups to focus on the communication necessary to facilitate inclusion and on the difficult questions of identity formation necessary for long-term, sustainable inclusion. *Active* inclusion aims to

create innovative channels of communication between decision-makers and constituents at key institution-building moments. It demands more of the people, asking them to provide input and feedback. It also requires more of decision-makers, who must work to engage people outside their core support groups. *Targeted* inclusion acknowledges the importance of unconventional and contentious definitions of identity. It proactively encourages people to speak from their own perspectives, and to allow those views to be part of the political debate, from which they may have been traditionally excluded. Therefore active and targeted inclusion ensures that political representatives value (and consistently seek) constituents' views and voices, and that they incorporate these views into higher-level discussions and decisions. It also demands that societies confront head on some of the potentially divisive issues that could most threaten the peacebuilding process, primarily by giving voice and access to groups that challenge traditional, mainstream conceptions of the democratic state. Active and targeted inclusion gives the new state a chance to creatively define its own version of democracy, stability and peace. This kind of inclusion helps build or 'design' democratic resilience by providing the state with a broad range of diverse experiences, viewpoints and skills that can be used strategically to cope with, survive and recover from complex challenges and crises that have the potential to lead to systemic failure.

Section 8.2 of this chapter examines how the dominant liberal peacebuilding model has focused largely on a limited definition of inclusion, which is centred on traditional notions of numerical representation, and the consequences of this approach. Sections 8.3 and 8.4 review the use of post-conflict inclusion mechanisms in three fundamental state-building processes: constitution-building, rebel-to-party transformation, and electoral system design, using the case studies of Libya and Nepal (Box 8.1). These sections argue that active and targeted inclusion—which

focuses on ensuring diversity and continued communication with constituents, incentivizes former rebels to participate in the political process and facilitates access to executive power—promotes the long-term resilience of the state. Section 8.5 concludes with a set of recommendations for stakeholders. For additional information on the issues discussed in this chapter see *Democracy and Peacebuilding: A Resource Guide* (Cox 2017).

8.2. Trends in peacebuilding and democratization

To understand the extent to which inclusion has been considered and integrated into peacebuilding theory and practice, it is critical to first look at the dominant model of peacebuilding. The post-Cold War era ushered in a flood of (largely UN-led) peacekeeping missions. Between 1989 and 1994, the UN Security Council authorized 20 new peacekeeping missions, septupling the number of peacekeepers around the world from 11,000 to 75,000 (UN Peacekeeping 2016). These missions were tasked with a wide variety of responsibilities, ranging from implementing peace agreements to re-organizing military and security forces and overseeing elections.

Over time, it became clear that many of these post-Cold War peacekeeping missions were working towards goals that were implicitly based on a set of assumptions about the ideal nature of a state. Many policymakers and academics believed the end of the Cold War signalled the dawn of a new era of liberal democracy (Fukuyama 1992). While some evidence did indicate that international support was necessary for stable and successful transitions, peacekeeping was also used to orient new states towards liberal democracy, which would help achieve global peace according to democratic peace theory, which asserts that liberal democracies do not go to war with each other (Doyle 1986).

Liberal peacebuilding refers to activities that were designed and implemented based on the assumption that liberal democracy and market-

BOX 8.1

Resilience by design: building inclusive democracy in post-conflict countries

Transitional, post-conflict periods present opportunities and challenges to build democratic institutions that can help prevent future conflict. If transition processes are inclusive, nationally owned, open and democratic, the resulting democratic system will be resilient. It is important to foster a broad sense of ownership of the decisions made during transitional periods: if people feel they have a stake in the decisions, they are more likely to respect the rules and stay politically engaged in the long term.

Targeted and active inclusion in primary political institutions and processes—such as constitution-building, political parties and elections—helps create the conditions for a resilient democracy that is well equipped to survive destabilizing shocks and crises. Inclusive constitution-building processes ensure that the constitutional settlement enjoys public and elite legitimacy and promotes interactions between elites and constituents. Allowing former rebels to reimagine and redefine themselves as politicians helps broaden the base of public support for state legitimacy. Inclusive electoral systems that encourage elites to seek electoral support outside of their ‘safe’ zones provide incentives for consensus-building rather than winner-take-all politics. Moreover, electoral systems that provide more elected representatives with access to the highest levels of decision-making power are more conducive to resilience than those that view inclusion as little more than simple numerical representation. Truly inclusive electoral systems must provide access to decision-making and power holders and foster the growth of new, local stakeholders who are interested in the democratic process.

oriented economies were the best guarantees of sustainable peace. Liberal peacebuilding missions focused on democratization, good governance, respect for the rule of law, the promotion of human rights, the growth of civil society and the development of open market economies (Hoffman 2009). In the immediate post-conflict stage, the liberal peacebuilding model often focused on expanding multiparty politics and scheduling elections, which were accompanied by a revised constitutional settlement.

The liberal peacebuilding debate

Initially, there were high levels of optimism about peacebuilding, based partly on early successes in Guatemala, Mozambique, Namibia and South Africa (Hoffman 2009: 10). Yet international support gradually waned as it became clear that liberal peacebuilding did not always result in peace. Many missions were followed by a return to conflict and the subversion of the democratic institutions left behind (Paris 2010: 341). Bosnia and

Herzegovina, Timor-Leste and Rwanda were cited as examples of the model's weaknesses and tendency to fail.

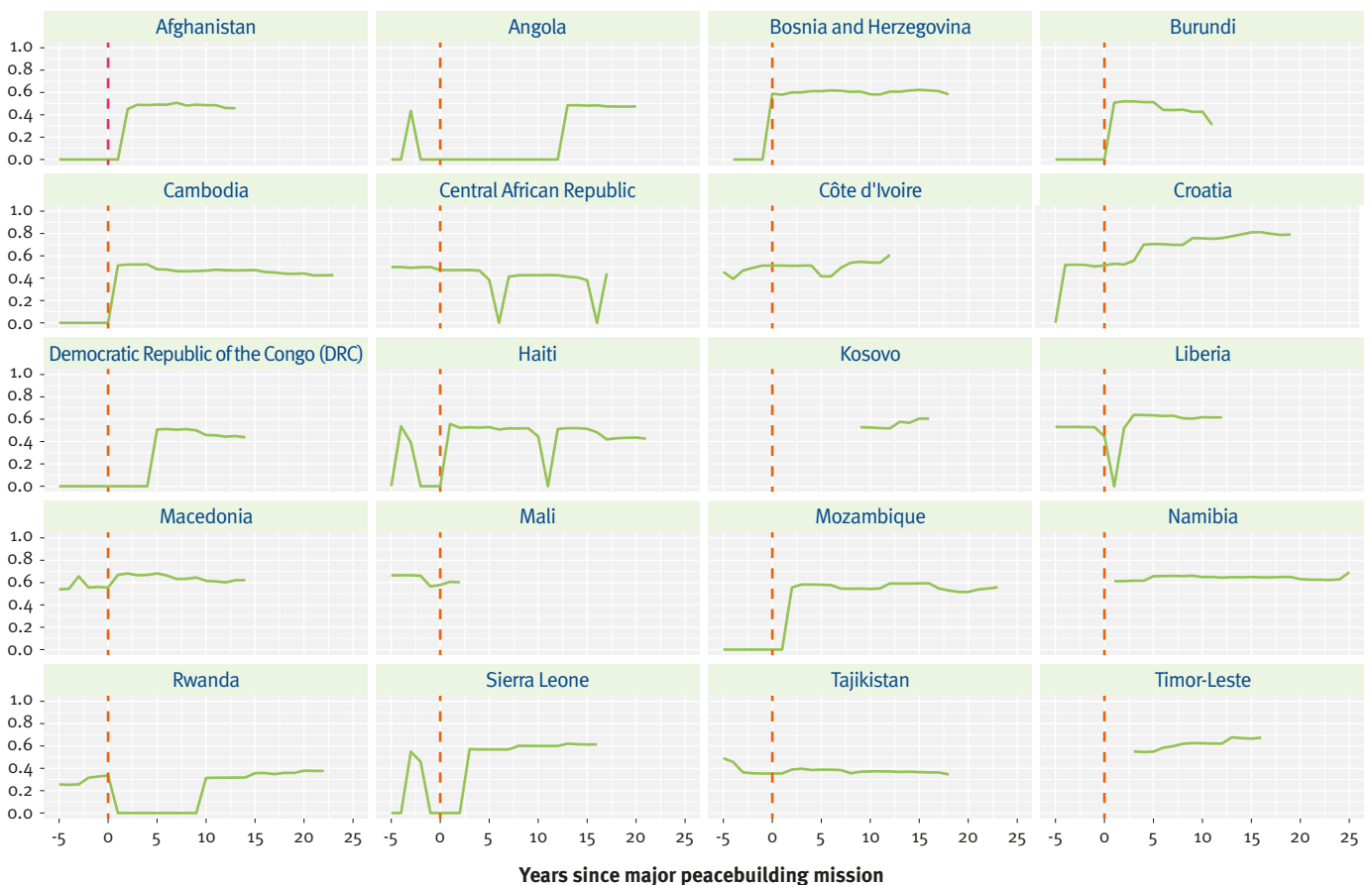
Figure 8.1 shows how the countries with major peacekeeping missions (those deployed for six months or more with at least 500 military troops) fared over time with regard to representative government, which is used here as an indicator of electoral democracy. The results are mixed. Cambodia, Central African Republic, Haiti and Liberia experienced periods of dramatic drops in representative government, while Bosnia and Herzegovina, Timor-Leste, Macedonia, Namibia and Tajikistan have maintained relative stability over time. Still others have experienced periods

of clear growth. Only Croatia has maintained a clear upward trajectory in representative government over time. Of course, a host of factors other than peacebuilding missions have affected trends in representative government in these countries.

The ideological assumptions underlying the liberal peacebuilding model, and its practical application, have been vigorously debated. Sceptics have long pointed to the inherently messy and conflictual nature of democratization, arguing that it is difficult to take on in a post-conflict environment, when stability is a priority (Wolff 2011: 1780). Critics have also noted implementation problems, such as peacebuilders' lack of expertise in

FIGURE 8.1

GSOD indices: the evolution of Representative Government in 20 post-conflict countries



Notes: The y-axis shows the score for representative government and the x-axis shows the years before and after a major peacebuilding mission. The orange dashed line marks the beginning of the peacekeeping operation (year 0 in the axis). Scores in the y-axis range from 0 to 1. Higher scores indicate a higher performance in representative government.

Source: GSOD indices 2017 (Representative Government Index).

supporting state–society relations (Barnett and Zurcher 2009) and programmes' tendencies to work at cross-purposes and thus harm host states (Carothers 2006; Jarstad and Sisk 2008; Paris and Sisk 2007; Uvin 2001).

Further, the liberal peacebuilding model's idea of inclusion is often limited in scope, restricted to consultations with national elites at the expense of subnational actors (Richmond 2011). Inclusion thus becomes limited to leaders who occupy the highest levels of the transitional state.

National and local actors determine the outcomes of all liberal peacebuilding activities because they must decide whether . . . to engage in them or sustain them . . . National and local ownership are therefore integral to peacebuilding outcomes. That said, the focus of most bilateral and multilateral donors on direct engagement with the state privileges national ownership...The organizational routines that require agreement by the state therefore detract from ownership by other members of society, often leading to the empowerment of an illiberal state (Campbell 2011: 100).

The focus on national elites is often compounded by peacebuilders' privileging of international 'experts', which creates a significant gap between local needs and national policy direction.

Countries where interventions take place are forced by the international community to adopt a democratic system of government regardless of existing conditions and/or citizens' preference. They are quickly put through the formal steps expected to make democracy a reality, usually beginning with elections. This process of democratization supposedly complements any previous peace agreement, helping to stabilize the country and consolidate the peace. A growing body of evidence suggests

that coercive democratization is not a successful strategy in most post-conflict situations (Ottaway 2010: 1–2).

Peacebuilders also often have expansive powers, which can quell true political participation as well as locally driven reforms (Chandler 1999; Paris 2010: 343). Over time it has become clear that the post-Cold War peacekeeping model and implementers' tendencies to impose a one-size-fits-all framework, especially one focused on national-level stakeholders, cannot produce the necessary conditions for durable peace.

Inclusion and resilient states

As policymakers continue to confront the challenges associated with rebuilding conflict-ravaged states, they must think about how to modify the prevailing liberal peacebuilding model to make targeted and active inclusion more of a central priority. In 2012, the UN secretary-general noted the importance of inclusivity and institutional design.

Our experience has identified inclusivity and institution building as critical in preventing relapse into violent conflict and producing more resilient States and societies. Exclusion is one of the most important factors that trigger a relapse into conflict. Almost all cases that have avoided such a relapse have had inclusive political settlements, achieved either through a peace agreement and subsequent processes or because of inclusive behaviour by the party that prevailed in the conflict. An early emphasis on inclusion is therefore essential. A closely related objective is to strengthen formal and informal institutions, including to restore core governance functions and equitable service delivery. Inclusivity and institution-building are also critical to domestic accountability systems, help to restore the social contract, and lay a more reliable foundation for the State's engagement with the international community (UN 2012: 2).

Over time it has become clear that the post-Cold War peacekeeping model and implementers' tendencies to impose a one-size-fits-all framework, especially one focused on national-level stakeholders, cannot produce the necessary conditions for durable peace

Inclusive peacebuilding



The 2015 review by the High-Level Independent Panel on Peace Operations acknowledged the importance of inclusivity and broadening decision-making ownership, and criticized its past failure to reach out to (and work with) actors beyond the national government. Going forward, the review recommended:

‘[I]nclusive national ownership’... whereby the national responsibility to drive and direct efforts is broadly shared by the national government across all key social strata and divides, across a spectrum of political opinions and domestic actors, including minorities. This implies participation by community groups, women’s platforms and representatives, youth, labour organizations, political parties, the private sector and domestic civil society, including under-represented groups (UN 2015b: 21).

Scholarly research supports these calls for inclusion. Including former rebels in the political settlement of the transitional process has proven to be critical to both long-term peace and democratic resilience. The consensus is that giving former combatants a voice in their political, economic and social destiny lowers the chances of a recurrence of violence (Toft 2010: 10), and thus allows more time for democratic institutions to stabilize and win the public’s trust. Some evidence suggests that including former combatants in new political institutions increases the likelihood that a democratic process will lead to the creation and strengthening of democratic institutions (Hoddie and Hartzell 2003). Including ex-combatants through broad participation and shared or diffused responsibility has been effective in Colombia, El Salvador and Guatemala (Travesi and Rivera 2016; Herbert 2013; Stanley and Holiday 2002).

It is also important to bridge other divides and integrate representatives who can offer subnational, minority, class, gender and age perspectives (ZIF 2015; UN 2015a). UN Security Council Resolution 1325 reaffirms

the important role of women in the prevention and resolution of conflicts, peace negotiations, peacebuilding, peacekeeping, humanitarian response and in post-conflict reconstruction. It emphasizes women’s unique strengths and ability to effect change, and stresses the importance of their equal participation and full involvement in all efforts to maintain and promote peace and security (UNSC 2000). Inclusion does more than bring diverse groups into decision-making processes. It can also help promote broadmindedness in society and increase social tolerance. Inclusive, consensual systems promote mutual respect and tolerance, and help facilitate deliberation (Kirchner, Freitag and Rapp 2011: 210). Such tolerance is essential for developing societal resilience, and makes it easier for people to adjust to change. This may be especially true for democracies, where the freedoms of speech and expression can expose controversial issues. Mutual tolerance and respect help societies listen to and provide space for contentious views without falling apart or resorting to violence.

Including actors beyond the principal conflict parties has often been beneficial for peacebuilding and transition processes. Such inclusion can take place through a variety of modalities beyond official negotiations, including inclusive commissions, problem-solving workshops or consultations (Paffenholz 2014).

Limits of inclusion

Regardless of the context, finding the right balance of inclusivity in post-conflict settings can be challenging. Some groups may be legitimately excluded from peace negotiations, for example if the population believes the group has sacrificed its right to participate because of past abuses. Inclusivity can also decrease efficiency: when broad inclusivity involves many ministries or organizations, decision-making and progress might be slow or costly (World Bank 2011: 124; ZIF 2015).

Since it is impossible to include every single constituency in decision-making processes, the

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World Bank emphasizes context-dependent, 'inclusive enough' coalitions. These coalitions should prioritize groups that offer political legitimacy, financial and technical resources, and that will continue to press for deep institutional reforms, such as business, labour, and women's groups and other elements of civil society (World Bank 2011: 124). Indeed, the joint Peace and Development Advisors programme, established by the UN Development Programme and the UN Department of Political Affairs in 2004, has demonstrated success in supporting local-level dialogue and infrastructures for peace (UNDP-DPA 2015). Aiming to build local and national capacities for conflict resolution and prevention, the programme has worked with a national network of female mediators in Burundi, and youth dialogue platforms in Ukraine (UNDP-DPA 2015: 7–10).

The following two sections discuss how the three transitional processes of constitution-building, rebel-to-political party transformation and electoral system design can integrate active and targeted inclusion principles, and address the challenges related to its practical implementation.

8.3. Post-conflict constitutions: inclusion in practice

Post-conflict constitutions are endowed with a great responsibility. Not only do they fulfil their usual function as a framework for government, but they also embody the peace deal—including the settlement of disputes related to identity, ideology, autonomy, and access to public power and resources. With so much at stake, post-conflict constitution-building processes take place in fiercely contested political arenas, with each group staking claims for its interests. Excluding interested parties from the process renders them unable to voice their concerns and aspirations, and risks their rejection of the final document, regardless of its substantive content. Moreover, as all groups will be forced to live together in the new (or reborn) political community, the acquiescence of all groups to the new constitutional settlement is critical to

its legitimacy, and therefore its stability and resilience.

Inclusive constitution-building processes are more likely to produce a resilient constitution that will result in an enduring constitutional settlement (Elkins, Blount and Ginsberg 2009) and decrease the likelihood of a return to conflict (Widner 2005). This section outlines the challenges of inclusive constitution-building in terms of representation in the constitution-making body and offers practical suggestions for those interested in active and targeted inclusion.

Defining 'we the people'

Thomas Paine described a constitution as 'not the act of its government, but of the People constituting its government' (Paine [1791] 1999). However, the people cannot decide until someone decides who 'the people' actually are (Jennings 1956). In many ways, this is also the most critical decision, as it can affect the *substantive output* of the constitution-making process (i.e. the text) as well as the procedural legitimacy of the process, and thus the sense of broad ownership of the resulting constitution (Hart 2003).

While all citizens may, in some cases, be given the chance to ratify a constitution through referendum, the task of framing the constitution is delegated to a constitution-making body such as a constituent assembly. Thus defining 'the people' involves deciding who is included in (and excluded from) the constitution-making body, how they are included and whom they represent.

In liberal democracies, regular elections produce winners and losers; it is accepted that the winners, who represent only part of the population, can make decisions for a certain period on behalf of the entire country. This situation is acceptable because the losers are protected from the tyranny of the majority through safeguards such as fundamental rights, and because they will have the opportunity to vote in a future election.

Constitutions, however, are made in the name of all the people, and are intended to last for generations. Therefore, the stakes involved in constitution-building processes are higher than those related to ordinary electoral processes, and thus the demands for inclusion are stronger.

Inclusion through representation

Inclusion through representation presents opportunities for inclusivity along two dimensions: horizontal inclusion (or targeted inclusion), which seeks to give voice to as many of the principal societal groups as possible, including non-mainstream, contentious groups, and vertical inclusion (or active inclusion), which aims to involve the broader citizenry beyond the elites selected to conduct negotiations. Both dimensions should be considered when designing post-conflict constitution-building processes.

Horizontal inclusion

In societies divided by violent conflict, defining 'the people' is often a highly contentious process that can take several forms. In many ways, the decision about how society is represented in the constitution-making body will reflect an existential dilemma over the nature of the political community being founded: is it a community of a single group of citizens, or several groups?

One approach is to view the constituents' power as the combined will of all individuals, which can be approximated through proportional representation (PR) electoral systems. The 2011 Tunisia National Constituent Assembly was elected on this basis. However, Tunisia is a relatively ethnically homogenous state. The challenge of horizontal inclusion becomes particularly vexing in more heterogeneous states, especially those that can be classified as plurinational states (i.e. comprised of more than one discrete nation) (Tierney 2007). For example, some view the 1867 founding act of modern Canada as a covenant between its English- and French-speaking communities (Tierney 2007). A more recent example is Libya, where the Constitutional Drafting Assembly

was elected based on equal representation of the three main regions, despite vastly different population sizes (see Box 8.2).

In these contexts, to satisfy the demands of subnational societies, targeted inclusion in constitution-building processes must be based on a concept of 'we the *peoples*', participating as equal partners, even if the communities have unequal numbers and even if some of the subnational identities are contentious. The implications for political equality are troubling from an orthodox liberal democratic standpoint, but where the resulting logic of horizontal inclusion accurately reflects the shared socio-historical conceptions of citizenship and political community as experienced by the broader public, it is likely to increase the legitimacy of the constitution-building process.

Lastly, if the legitimacy of the constitution-making body is to be based on its reflection of the collective self-perceptions of the broader society, special measures may be required to ensure the inclusion of groups that would otherwise be under-represented, such as women. In Tunisia, the electoral law for the National Constituent Assembly required vertical parity in the party lists, but not horizontal parity across constituencies. Therefore, many parties did not include women at the tops of their lists; thus while female candidates represented 50 per cent of the total, only 27 per cent of the elected assembly members were women (Inclusive Security 2017).

Vertical inclusion

Regarding vertical inclusion, the central question is how to ensure that the elite pact at the centre of the constitution-making process has the broadest possible societal base. Some have suggested that the optimal process of designing a Constituent Assembly should be hourglass shaped: broad inclusion at the outset, in a national debate during elections to the assembly, and broad inclusion at the end, in the form of a popular referendum. In between vertical inclusion would be limited, as delegates

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BOX 8.2

Libya's constitutional crisis

Constitution-building in the post-2011 Libyan transition has been characterized by serious mismanagement. At the start of the process, there was great hope for an inclusive and broadly representative constitution. Yet over time it has become clear that minority communities that experienced deep cultural and political marginalization under Colonel Muammar Gaddafi's rule continue to be relatively sidelined. This situation has undermined the legitimacy of both the Constitutional Drafting Assembly (CDA) and the draft constitution.

Background and context

While Libyan society is dominated by an Arabic-speaking majority of Arab-Berber ancestry that makes up approximately 90 per cent of the population, the country is also home to several minority groups. While it is difficult to obtain up-to-date Libyan demographic data, Berbers, also known as Amazigh, are thought to be the largest minority group, constituting 4–10 per cent of the population (Minority Rights n.d.; UK Home Office 2016: 8). Other minorities include black Africans (6 per cent) and Tuareg and Tebu (1 per cent combined) (UK Home Office 2016).

Under President Muammar Gaddafi, who ruled from 1969 to 2011, pan-Arabism was the dominant ideology. Gaddafi's belief in the need for unity across the Arab world and the indivisible nature of Arabism and Islam resulted in serious and severe restrictions on the lives and rights of the country's non-Arab groups. For instance, it was illegal for Berbers to give their children non-Arab names, and those who participated in cultural celebrations abroad were arrested upon their return (IRIN 2012). The Amazigh language and script were forbidden, and those who promoted Berber culture and/or heritage were at risk of death (Lane 2011). Some Tuaregs, especially those who settled in Libya 40 or 50 years ago (as opposed to hundreds of years ago), were denied 'family booklets', which served as the main proof of citizenship and were required to apply for jobs and bank loans, and to purchase property. Most critically, they were unable to claim Libyan or any other citizenship (IRIN 2012). Unsurprisingly, minority populations today tend to be economically disadvantaged. Their neighbourhoods were marginalized under Gaddafi, and lacked infrastructure and struggled to receive state assistance (IRIN 2012). Members of the Berber community were at the forefront of the uprising against the Gaddafi regime.

Constitution-building

After President Gaddafi's fall, Berbers and Libya's other minority communities expected official recognition of their identities as well as full rights and liberties. Some Berbers cited a new constitution that guaranteed their rights as one of their primary demands (Lane 2011). There was thus much hope surrounding the CDA, which started work in April 2014 and published a final draft in April 2016.

Unfortunately, the CDA did not manage to effectively or holistically represent Libyan society, in part because only two of its 60 seats were reserved for each of the Berber, Tebu and Tuareg communities, referred to as the 'three cultural components' (Carter Center 2014). Since Berbers alone are estimated to constitute about 10 per cent of the population, this community felt that it should have received at least six seats. Despite their demands, the minority groups also failed to win veto power on issues most critical to them, including national identity markers such as the name and identity of the state, as well as flag, anthem and language rights. In response, the Berber community boycotted the election to the CDA as well as the entire

drafting exercise, leaving two seats vacant throughout the process (St John 2016; Eljarh 2014). Moreover, a 12-member Working Committee of the CDA prepared the latest draft of the constitution, but the committee's failure to include representatives of the Tuareg and Tebu communities prompted their boycott of the CDA. Additionally, before the most recent draft constitution was released in February 2016, 11 members of the Working Committee from the western region of Libya accused the group of dividing the country and then boycotted the proceedings (Ibrahim 2016). By the time the draft constitution was released, minority and historically marginalized communities were barely represented.

International best practice related to constitution drafting emphasizes the need to ensure sufficient time, opportunity and transparent procedures for consultations. It is also important to ensure that marginalized groups are guaranteed adequate opportunity to participate; the CDA does not appear to have done so (ICJ 2015: 18–19). While the CDA held several town hall meetings, civil society groups pointed out that there was insufficient notice to guarantee high levels of participation; the meetings were often attended only by elites and offered little chance for discussion because they often took the form of lectures. Moreover, certain parts of the country were not visited because of security concerns (ICJ 2015: 19). The International Commission of Jurists observed that 'the CDA made little active effort to seek out the views of marginalised populations. The CDA also did not engage institutions that arguably were specifically mandated to assist such as the National Council for General Liberties and Human Rights' (ICJ 2015: 19). Civil society organizations that represented the interests of minority groups and women also submitted reports and proposals to the CDA for consideration; few of their recommendations were included (ICJ 2015: 19–20).

The CDA's February 2016 final draft was surrounded by controversy. It was issued in violation of its own rules of procedure, as it did not enjoy a two-thirds majority of support within the assembly. In addition to disagreements about proposed decentralization structures and the choice of parliamentary versus presidential systems of government, the draft constitution has been severely criticized by minority groups. The Coalition of Libyan Human Rights Organizations warned of human rights deficiencies: 'If adopted in its current form the draft would likely undermine fundamental human rights in Libya for generations to come due to the weak protections afforded to certain vulnerable groups such as women and ethnic, religious and political minorities' (Lawyers for Justice in Libya 2016). The coalition warned that the draft lacks comprehensive protections of equality and non-discrimination. It also called for more explicit guarantees of the right to religious freedom and protection of ethnic, political, cultural and religious minorities, and persons with disabilities from discrimination. The draft was further criticized for the way in which it 'authorizes and enshrines gender discrimination' (Lawyers for Justice in Libya 2016). Finally, the draft constitution proclaims that Libya is a part of the Arab world, which is likely to cause concern among the country's non-Arab minorities (Ibrahim 2016).

Overall, the CDA has failed to produce a broadly legitimate constitution. Although there are several contentious issues in the latest draft, the absence of minority representation within the process and the draft's failure to address minority groups' fundamental concerns are particularly alarming. The way in which the CDA addresses various groups' criticisms and concerns will determine the future of the country's constitutional order. In July 2017, amid protesters storming the CDA building, the draft constitution was approved, setting the stage for parliament to approve a national referendum (Musa 2017).

should be removed from the polarizing tendencies of public debate that might prove non-conducive to compromise and consensus. The referendum would provide a 'downstream constraint', which would prevent the elites from making a deal too far from the preferences of their constituents, or the public at large (Elster 2012).

This analysis is based mainly on the French National Constituent Assembly of 1789 and the US Constitutional Convention of 1787. While this thinking applies to many current constitution-building processes, modern norms of democratic representation and the divided society implications of post-conflict transitions require a more nuanced approach to process design, and to vertical inclusion.

The predominant mechanism for vertical inclusion in constitution-building processes is active in the sense that it seeks regular, consistent input from the people, largely through public consultations. However, many doubt the value of such public participation, contending that 'there is not even a scintilla of evidence that it improves the durability or the democratic content of constitutions' (Diamond et al. 2014). Critics of popular participation as a means of vertical inclusion predominantly argue that it is not productive for two reasons. First, there is a view that secret, elite negotiations as an essential element of constitution-making can be jeopardized by too much openness and transparency. Second, there is a notion that public consultations are likely to be at best superficial, and at worst potentially damaging by generating unrealistic expectations of how the public's views might be incorporated into the text.

While there might be some validity to these criticisms, two recent examples of more thoughtful structuring of public participation show signs of leading to more effective vertical inclusion. First, in Kenya—and to a less structured degree in Tunisia—the public received iterative drafts of the constitution for comment at various stages of the negotiating

process. In this way, the vertical inclusion could be visualized as several hourglasses standing on top of each other, as the process repeatedly opened out for public engagement, and narrowed again for deliberation and negotiation among the delegates. While it is debatable whether the various rounds of comments had a substantial effect on the final text, such iterative broadening of vertical inclusion can provide not only the benefit of continuous public engagement in the process, and therefore increased public ownership; it can also help negotiations by providing delegates with more information regarding the positions of their constituents, and of the public as a whole.

Second, the participatory process in Chile, which took place throughout 2015 and 2016, was remarkable in its use of deliberative settings for public consultations. Public consultations had previously consisted of a town hall meeting in which members of the public were given the opportunity to voice their desires and concerns to a member of the constitution-making body or its staff. Most recently, in 2016, a series of meetings at the district, provincial and national levels were held following a broad civic education process. The meetings were facilitated to focus on issues and concepts, and used small groups to encourage deliberation and discussion. While expectations may have been unrealistically raised in terms of how recommendations from these meetings would be used, the use of informed, deliberative discussions is a valuable lesson learned for future participatory processes.

Vertical inclusion beyond elections and referendums has become a widespread norm. The question for designers of constitution-building processes is therefore not *whether* to include public consultations, but how to ensure they can be an effective means of meeting citizens' evolving expectations. Including different groups in the constitution-building process gives a wide range of actors a stake in the final constitutional settlement, making it more likely that more people will abide by the

The question for designers of constitution-building processes is therefore not *whether* to include public consultations, but how to ensure they can be an effective means of meeting citizens' evolving expectations

constraints of the new constitutional order and seek to protect it from potential violations. A stable constitutional order, in turn, contributes to long-term democratic resilience by channelling conflict through rules agreed to by all sides, providing certainty and predictability in terms of how power is to be allocated, and constraining majoritarian impulses.

8.4. Peacebuilding through elections and political parties

Former rebel groups play an important role in post-conflict transitional periods, and their decisions about whether (and how) to participate in electoral politics can have far-reaching consequences for the resilience of both the new state and the democratic system as a whole. In many cases, these rebels form the political parties that represent the interests of the formerly aggrieved parts of the population. Evidence shows that, all else equal, including former rebels in the peacebuilding process makes a recurrence of conflict less likely, in both the short and long term (Marshall and Ishiyama 2016: 1020; Call 2012: 4). Yet the transformation process is challenging: it requires significant adjustments and capacity building, and if rebels do not feel it is worthwhile to participate in the new political process, they may cast doubt among their supporters about the legitimacy of the new system, or even return to the battlefield. Nor will the inclusion of former rebels always enjoy the broad support of society, which can jeopardize the system's long-term legitimacy.

Ex-rebel party leaders enter the political process tentatively, full of doubts about whether the rules of democratic politics will be enforced, and whether they and/or their parties will benefit. Former rebels have four types of incentives to form parties and participate in electoral politics. First, they may suffer from 'battle fatigue' and be eager to abandon a life of war for a more stable political process. In Colombia, for example, the seven months since the signing of the peace deal have seen a baby boom for former FARC rebels, who are happy to be able to start

families (Otis 2017). Second, participating in elections can help legitimize a group's armed struggle by portraying it as a fight for representation and accountability, rather than just power. Third, elections offer significant domestic and international visibility, which can help reassure opposition parties that the government will deliver on its promises. Fourth, elections often bestow resources on parties, from both the state and international donors (Matanock 2012; Zürcher et al. 2013). One study found that between 1990 and 2009, rebel leaders chose to form parties 54 per cent of the time; these parties contested elections and regularly won seats in national legislatures (Manning and Smith 2016).

Yet the inclusion of former rebels in the structures of power comes with risks to democratic legitimacy. When there are parts or aspects of the conflict that remain unresolved, inclusion may inadvertently demonstrate to splinter groups that they will also eventually be included if they take up arms again. This issue may be compounded by the proliferation of small arms and the vested interests of those who gained financially from the conflict. Once former rebels attain formal power, they may end up remaining there long after they are relevant, essentially 'freezing' the power structure. There is also the danger that warring groups may end up being over-represented relative to other segments of the population. Indeed, the design of inclusive institutions must strike a careful balance between giving voice to those who were formerly aggrieved and to those who now risk marginalization, simply because attention is so focused on those most intimately involved in the conflict.

Rebel groups also face considerable challenges and risks by becoming political parties. Meaningful transformation requires significant attitudinal and behavioural changes, which take time (De Zeeuw 2007: 11–19; Ishiyama and Batta 2011; Lyons 2005; Manning 1998). 'State building requires not just new institutions that channel politics in more productive directions, but deep and long-lasting social

transformations that permit groups embittered by violence to accord legitimacy to a new state in ways that previously proved elusive' (Lake 2016: 17).

The process of developing ideological platforms and policy direction and choosing candidates can also expose unresolved questions or fault lines within the party and provoke significant internal conflict. Which candidates represent the party's ideals and stand a chance of winning? Who gets to choose the candidates? Should the party choose 'sons of the soil' who are well known in their constituencies, or those who are most likely to stick to the party line once in office? What is the best strategy for the electoral system in use?

Contesting elections can also change and destabilize internal party hierarchies and organizations. Parties have different internal constituencies—the 'professional politicians' at the central level, mid-level party officers, those elected to represent the party in public office, committed party supporters who strongly identify with the party and what it stands for, and voters. Parties need the support of each of these groups to succeed, and it can be challenging to balance their priorities and concerns while strategizing at the broader level to contest elections. Once in office, elected representatives often develop a stake in their individual success that outweighs their loyalty to the party. This can sharpen internal divisions and empower new groups within the party to challenge the leadership.

Despite the risks of including former rebels in the transition, successful transformation results in benefits for the party and the state, which are discussed in the next section.

Rebel-based parties and resilience

Including rebels in post-conflict transitions can help build a more resilient state in several ways. First, rebels-turned-politicians often realize that participating in electoral politics can be more worthwhile than returning to the battlefield. Politicians who win legislative,

municipal or council seats gain access to a regular salary, visibility and a possible platform for further political advancement. They may also gain leverage with regard to the central party hierarchy, as electoral participation and victory can bring resources to the party and individual members. These individuals may therefore develop a stake in continued participation in democratic processes and institutions; targeted inclusion policies will seek to convince them of the benefits of the new system. In the long run, these new politicians' participation creates more resilient (and legitimate) institutions. Former rebels' participation lends legitimacy to democratic institutions, and over time, their continued participation can result in modifications and adjustments that reflect the needs and demands of their parties and constituents.

For example, in Mozambique, former members of the National Resistance Party (Resistência Nacional Moçambicana, RENAMO) were elected to Parliament. RENAMO's MPs have disregarded the party leader's calls to boycott Parliament over alleged electoral fraud in part because they rely on their salaries (Hanlon 2017). The party leadership has not enforced such calls because the state provides the party with a subsidy based on its representation in Parliament.

If enough former rebels participate in democratic politics, it can increase internal party democracy and make the new party stronger over the long term. For example, in El Salvador, the Farabundo Martí National Liberation Front (Frente Farabundo Martí para la Liberación Nacional, FMLN) mayors elected after the war faced pressure from local constituents to make immediate improvements in public service delivery; their ability to deliver these services helped them win votes in the next election. Mayors also found common cause with one another, and in some cases worked across party lines to address the needs of their municipalities. Within the FMLN, these mayors banded together to challenge the party's 'orthodox' wing in ways that led to

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greater internal democracy and improved the party's competitiveness vis-à-vis other parties (Manning 2008).

In Bosnia and Herzegovina, similar dynamics were observed in some areas, particularly within the Croatian Democratic Union of Bosnia and Herzegovina (Hrvatska demokratska zajednica Bosne i Hercegovine, HDZ BiH) in western Herzegovina. While some party officials sought to boycott elections in the early 2000s to protest sanctions imposed on their leader by the UN High Representative for Bosnia and Herzegovina, subnational party officials pushed for participation, arguing that the party would otherwise be excluded from politics. These officials were concerned about the party's fate as well as their own; they depended on public office for their livelihood and their reputation, which could provide them with other positions or advantages in the future (Manning 2008). These findings resonate with broader comparative work on democratization in single-party regimes in Mexico or Taiwan (Eisenstadt 2007; Rigger 2001). These dynamics merit further study in the post-conflict context.

Thus ex-combatants often find that it is worthwhile to participate in democratic politics, and their participation can help promote the legitimacy and resilience of democracy in post-conflict states. So how can transitional agreements be designed to convince former rebels that participation in democratic politics is worth the risk? This depends in part on the choice of electoral system design, which can determine who gains access to the legislature and, perhaps more critically, how much access previously marginalized groups have to executive office and other senior positions in the new state. As explained in the following section, decision-makers must strike a balance between broad short-term inclusion, which may be critical for confidence building, and more meaningful, targeted long-term inclusion.

Electoral institutions

Political institutions are especially critical in post-conflict environments (Wolff 2011: 1778), when former adversaries are assessing the potential shape and character of a new state, evaluating the roles they could play in that state and deciding how much faith they have in the ability of the new rules of the game to address their grievances. Thus it is critical to choose the most appropriate electoral system (Sisk and Reynolds 1998), since this choice usually has a profound effect on a country's future political life. Electoral systems, once chosen, usually persist, as political interests solidify around, and respond to, the incentives they generate. Rules about who can compete, the range of choices voters have, how votes translate into seats, and the likelihood of gaining representation will influence actors' willingness to participate in elections and their faith in the system's legitimacy.

The choice of electoral systems

Since elections are often perceived as one of the most fundamental aspects of democracy, citizens should have faith that the electoral system will guarantee that their interests will be represented. The three main types of electoral systems are plurality/majority, PR and mixed (Reynolds, Reilly and Ellis 2005). Some research indicates that PR's ability to include a broader cross-section of society in the legislature may have more limited utility for long-term peace and stability than previously conjectured. Majoritarian systems, which incentivize consensus-based politics, may work better in conflict-affected countries because they encourage elites to build support outside of their traditional voter bases by moderating their policies. PR systems, by contrast, may institutionalize the kind of fragmentation that led to conflict in the first place.

The choice of electoral system can affect a country's long-term stability and bolster its ability to deal with shocks and crises in four ways. First, electoral systems influence politicians' behaviour and strategy. Some majoritarian systems reward moderation, for instance, and can have

significantly different outcomes from those that provide a stage for more extremist views (Reilly 2002: 156). Second, electoral systems have the power to either ease or exacerbate conflict (Horowitz 1985; Benoit 2004: 369). Supporters of consociationalism, a governance model based on power sharing between elites from different social groups, argue that PR is the best option for deeply divided societies, because it produces proportional outcomes, facilitates minority representation and treats all groups equally (Lijphart 2004: 100).

In post-conflict settings, PR systems, which aim to ensure that the number of seats won corresponds to the proportion of votes received, are the most popular. Their guarantee of inclusion for a wide variety of groups has made such systems one of the most attractive options for states seeking to increase broad participation, including women's representation (Larsrud et al. 2005). PR systems are often part of a wider set of institutions that forms the basis of consociationalism. Consociational systems give various subnational groups significant autonomy and representation in the national legislature. They can also include parliamentarism, a grand coalition government, segmental autonomy, a proportional electoral system and a minority veto (Selway and Templeman 2012: 1545).

Third, the choice of an electoral system determines the degree to which representatives feel accountable to their constituents. For example, under closed-list systems, parliamentarians may feel more accountable to party leaders than they do to voters. Majoritarian systems, however, may foster a closer link between representatives and voters (Rocha Menocal 2011: 2). Fourth, electoral systems can influence the public's faith in government. In majoritarian systems, it is easy to feel that votes are 'wasted' because a candidate can win with just over 50 per cent of the vote, leaving nearly half of the population feeling unrepresented. The issue of wasted votes is frequently raised in American elections: the first-past-the-post (FPTP) system

gives third-party candidates little chance of winning. In closely contested elections, voters who cast their ballots for third-party candidates are often seen to have wasted their votes or to have helped one of the major parties (Krugman 2016). In PR systems, however, some argue that the perception that fewer votes are 'wasted' provides greater incentives for turnout (Norris 1997: 305).

Based on the logic of inclusion discussed above, for many years scholars assumed that electoral systems that prioritized power sharing and facilitated a 'place at the table' for a wide spectrum of groups were best suited to divided societies. This belief is based on the assumption that groups that are included in the national legislature feel they have a voice and are therefore not motivated to rebel (Goati 2000; Selway and Templeman 2012: 1545; Bogaards 2013: 74). This assumption is most relevant in post-conflict countries: the consensus is that making institutions more accessible to minority groups is critical to long-term peace (Alonso and Ruiz 2005: 1) and to establishing and maintaining broad public faith in the value of democracy. Therefore, many scholars long assumed that majoritarian systems were less conducive than PR systems to fostering long-term stability, peace and democracy, especially in post-conflict states (Selway and Templeman 2012: 1544). When the electoral system is specified in a peace agreement, it is always PR, either on its own or as part of a mixed system (Bogaards 2013: 79).

Proportional versus majoritarian systems

PR systems, however, are not a panacea for divided societies. In fact, critics point out that PR systems replicate societal divisions within the national legislature, since they offer no incentives to broaden policy platforms or appeal to non-traditional supporters. PR elections often result in 'coalitions of convenience' that are not based on a common ideology or longer-term goals (Horowitz 2012: 26). While majoritarian systems tend to favour groups that are numerically dominant, some also provide incentives for candidates to

The choice of electoral system can affect a country's long-term stability and bolster its ability to deal with shocks and crises

Preferential systems—known as ‘centripetal’ systems due to their aim to pull parties toward moderate, compromising policies—have the unique ability to encourage the formation and strengthening of a core of ‘moderate middle’ sentiment within the electorate

moderate their policies and stances in order to win support from outside their traditional bases. Some majoritarian systems incentivize political moderation and are more likely to produce consensus between rivals (Horowitz 2012: 26). Vote pooling, which requires politicians to gain votes from their own supporters as well as those of their rivals, may be one of the best options for encouraging moderation and consensus (Horowitz 2012: 28). For example, the single transferable vote (STV) allows voters to rank candidates in multi-member districts. The winner is the candidate with the most votes above the quota, but the surplus votes are then transferred to voters’ second, third and other choices.

These preferential systems—known as ‘centripetal’ systems due to their aim to pull parties toward moderate, compromising policies—also have the unique ability to encourage the formation and strengthening of a core of ‘moderate middle’ sentiment within the electorate (Reilly 2002: 158). Such systems give politicians electoral incentives to attract votes from other groups. They also encourage different actors to come together to make deals on reciprocal electoral support, and to develop ‘centrist, aggregative, and multi-ethnic political parties’ or coalitions of parties that can make cross-ethnic appeals and present a diverse range of policy options (Reilly 2002: 159). ‘Centrifugal’ systems, by contrast, push parties towards ideological extremes. Plurality-like rules can have a centripetal effect when the electoral rules positively bias parties in seat allocations, while non-proportional rules push parties into more extreme positions because voters defect from parties that expect fewer seats than their vote share (Calvo and Hellwig 2011: 39).

Unfortunately, centripetal systems are uncommon. Sri Lanka uses the STV in attempts to ensure cross-ethnic support for its president, but preference votes have never been used because the candidates always receive more than 50 per cent of the vote. In Ireland, the STV has promoted moderation and inclusion. In the 1998 legislative elections, 76 per cent of

representatives needed preference votes to win seats (Mitchell 2008: 14).

Some studies question the logic of inclusion and its relationship to democratic stability and peace. For instance, PR does not always facilitate the inclusion of marginalized groups and minorities, which in turn promotes peace and long-term democracy. Some research shows that ethnic groups win more seats and do better overall under majoritarian systems than in PR systems (Alonso and Ruiz 2005: 14; Reynolds 2011: 115). Moreover, and perhaps more surprisingly, some evidence suggests that higher levels of parliamentary representation do not automatically moderate ethnic conflict. One study found that parliamentary representation has no significant effect on the level of ethnic rebellion, primarily because there are no guarantees that a particular group will have access to decision-makers or be able to block decisions contrary to its interests (Alonso and Ruiz 2005: 2, 14).

The evidence on the ability of PR systems to create lasting peace is also mixed. While PR is correlated with peace in some studies (Bogaards 2013: 80), in others it is linked to political violence (Selway and Templeman 2012: 1558). Previous analysis has shown that PR has no significant effect on decreasing violence in the most diverse societies; it has only been shown to reduce violence in homogenous societies (Selway and Templeman 2012: 1560). Selway and Templeman also analyse other consociational institutions, and find that in ‘highly divided’ countries that have just PR and parliamentarism, consociationalism is associated with more political deaths and riots (2012: 1563, 1565).

In the long term, then, legislative seats may not guarantee lasting peace or democratic resilience. Societal groups that feel marginalized (or at risk of marginalization) want to be able to influence and access higher-level decision-making processes, particularly at the executive level. Broad inclusion (i.e. occupying opposition seats in the legislature) only goes so far towards

contributing to long-term resilience. In order to influence long-term change, inclusion must be more meaningful.

Therefore, *targeted inclusion* may be necessary—for example, including marginalized groups at specific levels of power. Examples of slightly modified PR systems that facilitate access to executive power include South Africa, where all parties with at least 5 per cent of legislative seats have a right to be represented in the Cabinet, and Lebanon, which permanently earmarks the presidency for one religious group and the prime ministership for another (Lijphart 2004: 99). In such systems, elected representatives in the opposition have limited power to block

legislation or advance their agendas. A system's resilience depends more on whether the Cabinet and other decision-making bodies are inclusive (Alonso and Ruiz 2005: 2).

With increased global movement and migration, democracies may want to move away from encouraging narrow group identities that conflict with other narrowly defined groups. Instead, they may increasingly choose to build and foster political institutions that reward consensus and seek the benefits of diversity. If this is the case, PR may not meet the needs of future democracies. Box 8.3 explores the inclusion of minority groups during the constitution-building process in Nepal.

BOX 8.3

Peacebuilding and inclusivity in Nepal

Overview of the conflict (1996–2006)

Nepal is home to 125 caste and ethnic groups that have distinct languages, cultures and religions. For many years, however, this diversity was neither respected nor reflected in the state apparatus and constitutional order. Until 2006, the country was known as 'the only Hindu Kingdom in the World', ruled by a Hindu dynasty that favoured high-caste Hindu males to the detriment of indigenous peoples, women and lower castes. Chronic caste and ethnicity-based discrimination, social exclusion, economic inequality and political grievances helped fuel a long-running armed conflict (1996–2006) between the government and the Maoist Communist Party of Nepal (Gurung 2005; Bishwa 2007).

The Maoist party sought to abolish the semi-feudal structure of the state, overthrow the Nepalese monarchy and establish a new democratic system. It mobilized traditionally marginalized groups, including Janajati (indigenous peoples outside the Hindu caste system) and Dalit people from the lowest-caste group, referred to as the 'untouchables' (Lawoti 2010; Gurung 2005), and fought for ethnic autonomy, regional devolution and local governance, equality of languages, the establishment of a secular state, the end of ethnic oppression, gender equality, protection of the disabled and the adoption of a republican constitution (Gurung 2005).

The Maoists and the Government of Nepal signed the Comprehensive Peace Accord (CPA) in 2006. The agreement entailed a power-sharing arrangement between the mainstream parties and the Maoists that included the former rebels in the interim government. In parallel to the peace process, historically marginalized groups such as women, Madhesi (a majority Hindu group from the southern plains), Janajatis and Dalits demanded political inclusion and equal representation in government bodies (Carter Center 2014). Nearly half of the population (49.6 per cent) had been excluded from FPTP elections from 1991 to 2008 (Vollan 2014: 261).

A key commitment of the CPA was the establishment of an inclusive, democratic, progressive and decentralized state 'in order to address the problems related to women, Dalit, indigenous peoples, Janajatis, Madhesi, oppressed, neglected and minority communities and backward regions in the remote mountain and plains regions by ending discrimination based on class, caste, language, gender, culture, religion, and region' (Comprehensive Peace Agreement 2006).

Inclusivity in the Constituent Assembly

The first elections for Nepal's 601-member Constituent Assembly were held in 2008: 240 members were elected from single-member constituencies via FPTP, 335 were elected using a closed-list PR system from a single nationwide constituency, and 26 were appointed by the Council of Ministers on the basis of consensus.

This election was a milestone, and was seen as a chance to guarantee that the constitution-making body, and subsequently the constitution-making process, would be representative of Nepal's diverse society. Several affirmative action measures were taken to ensure the participation of traditionally marginalized groups. For example, when submitting their candidate lists, political parties were required to comply with quotas for women and traditionally marginalized groups. At least 50 per cent of the candidates on the PR lists were required to be women, and women had to make up at least 33 per cent of the total number of candidates for the PR lists and FPTP races combined. In Nepal, this level of female representation was unprecedented. In the past, women had, for instance, never compromised more than 6 per cent of the country's parliamentarians (GIIDS 2017).

Furthermore, in the PR lists, political parties were required to nominate candidates from the following groups in accordance with their share of the population measured in the 2001 census: 37.8 per cent Janajatis, 32.1 per cent Madhesi, 30.2 per cent 'Others,' 13 per cent Dalits, and 4 per cent from nine 'backward regions' with the lowest development index scores (an individual can belong to more than one such group,

which results in a total of more than 100 per cent). With the exception of the gender quota requirements, PR lists that included 100 or fewer candidates did not have to comply with the ethnic quotas. This exception initially only applied to party lists covering more than 20 per cent of the seats to be elected under the PR election. However, following complaints by Madhesi parties, this percentage was raised to 30 per cent (Carter Center 2008).

Notwithstanding certain shortcomings related to the design and implementation of this quota system (EU Election Observation Mission to Nepal 2008; Carter Center 2008; Einsiedel, Malone and Pradhan 2012), women and marginalized groups made unprecedented gains in political representation that would have been difficult to achieve without quotas. These groups were guaranteed a minimum number of seats in the Constituent Assembly through the quotas applied to the closed-list PR race, and were fairly well represented in the candidate lists of the Maoist party for the FPTP race and won in a number of constituencies. The 2008 election resulted in the most inclusive legislative body in the history of Nepal, and one of the most representative bodies in South Asia: women obtained 33.22 per cent of the total number of seats, Madhesis 34.09 per cent, Janajatis 33.39 per cent, Dalits 8.17 per cent, and representatives from backward (i.e. lowest in the development index) regions 3.83 per cent (Vollan 2014: 259). Nonetheless, Hill castes were still represented far beyond their share of the population, despite the existence of inclusiveness measures (UNDP 2014).

The 2008 election also led to an outstanding victory for the former rebels. The Maoists won 220 of the 575 elective seats (38.2 per cent), making it the largest party in the Constituent Assembly and the only one with enough seats to block the passage of articles. This historic victory completely altered the balance of power (International IDEA 2015).

However, it has been difficult to realize true inclusivity in Nepal. Due to the exception that was introduced for party lists with candidates making up less than 30 per cent of the contested seats, only 11 parties that nominated more than 100 candidates had to meet all quota requirements. These parties won a total of 277 of the 335 PR seats (Vollan 2008). Political parties were also allowed to allocate the seats won in the closed-list PR race to any of the candidates on their lists, not just those at the top. This gave them a 10 per cent margin of flexibility with regard to implementing the gender and ethnic quotas. Furthermore, a broad interpretation of the 'other groups' category led many parties to include candidates from any group that was not included in the specific quotas, regardless of whether they belonged to a marginalized or minority group. Candidates from high castes and privileged communities were included in this category, which undermined the quota (EU Election Observation Mission to Nepal 2008; Vollan 2008; Carter Center 2008).

Furthermore, although women and marginalized groups made significant gains in representation in 2008, this did not immediately translate into access to the highest levels of decision-making power. Despite the Maoists' promise to include marginalized groups in the government, no Dalits were included in the Cabinet for seven months after the former rebels won the election. Only after increasing complaints from the Dalit community were two Dalit ministers appointed (Gelpke, Khanal and Pyakurel 2012).

The 2015 Constitution

In September 2015, nearly a decade after the signing of the CPA, 507 out of 601 members of the Constituent Assembly voted in favour of the new constitution, which established a secular, federal and democratic republic. In line with the spirit of the CPA, the constitution adopted the mixed electoral system used in the 2008 and 2013 Constituent Assembly elections in efforts to increase equality and inclusion.

Some majority groups have successfully lobbied to reverse the ratio of FPTP to PR seats, which has resulted in fewer PR seats (IFES 2016). There is concern that the new system may result in fewer women and representatives of marginalized groups in the legislature. The enforcement of these provisions has yet to be defined in electoral law, and it remained a point of contention between Nepal's central government and representatives from marginalized groups as of late 2016.

Several discriminatory provisions continue to threaten the inclusive spirit of the constitution, such as limits on the citizenship rights of Nepali women, the possible creation of electoral districts that favour majority ethnic groups and limits on religious free speech. Such provisions undermine the principles of inclusion that the constitution sought to address, and have led to political unrest and protests in the year since the promulgation of the constitution, in particular by women's groups and Madhesis (The Guardian 2015; ICG 2016). Without proper inclusion of these aggrieved groups, the long-term effectiveness and resilience of the state are at risk. Similarly, there are ongoing disputes between major political parties and advocates of marginalized groups over the creation of provincial borders that would disadvantage regional minorities in elections (Chen 2016). These provisions threaten the fragile trust that many Nepalis have in the state, and risk causing conflict and delegitimizing the new constitution.

The road ahead

Nepal's legislative elections due in January 2018, will be the first to take place under the new constitution. Impressive advancements in inclusiveness have been made in the composition of Nepal's Parliament since the CPA, and the 2008 and 2013 elections significantly increased the representation of marginalized groups. However, the successes remain fragile.

The adoption of the 2015 Constitution was followed by violent protests by marginalized groups over a number of unresolved issues including the delimitation of provincial boundaries, the implementation of citizenship provisions perceived as discriminatory by women and Madhesi communities, and the implementation of federalism. There are further concerns about whether the mixed electoral system will be able to facilitate more diversity in high-level offices and local governance structures. Decision-making power still consistently rests with men from upper castes, and therefore does not reflect the concerns of the wider population. Societal acceptance of women and marginalized groups in positions of power continues to lag behind the ideals described in the CPA and the Constitution. Democracy cannot be achieved without including representatives from the entire spectrum of Nepali geography, ethnicity and society. Therefore the country's lawmakers must ensure that the quotas and principles of equality and inclusiveness enshrined in the 2015 Constitution are implemented in accordance with the needs of all groups in society, or risk regression of the democratic process.

8.5. Conclusions and recommendations: inclusive peacebuilding

After more than 30 years of international peacebuilding, experts now recognize that a fundamental flaw in the dominant model of peacebuilding is its lack of emphasis on inclusion. Inclusion, however, must go beyond quotas; it must be meaningful and targeted. Provisions to facilitate true inclusion do more than ensure numerical representation; they provide access to decision-making and foster the growth of new, local stakeholders who are interested in the democratic process.

The processes of constitution drafting, rebel-to-party transitions and electoral system design demonstrate how targeted and meaningful inclusion works in practice. Regular interaction with constituents, access to decision-makers, and careful nurturing of actors who are new to the democratic process can lead to broad public legitimacy and belief in new democratic institutions. In the long term, this broad-based 'buy-in' can help prevent a return to violence and give political actors incentives to maintain their participation in democratic politics; a continuous commitment to democracy—despite sporadic shocks and emergencies—is the best example of a resilient democratic state. The following recommendations are targeted at stakeholders at various stages of the post-conflict democratic transition process.

Peace/transition negotiators

- *Develop and use a more comprehensive definition of inclusion that takes into account more than simply the number of individuals and groups at the table.* Effective inclusion also requires a publicly legitimate selection process and legitimate representatives, and for these representatives to have access to decision-makers.
- *Integrate active and targeted inclusion strategies into the design of all institutions,* so that they are the product of regular communication with the public and are open to groups that challenge mainstream conceptions of the democratic state.

- *Find innovative ways to follow the lead of local stakeholders, including at the subnational level.* International donors have critical support roles to play during transitions, but they should not always be in the lead. Local and regional concerns must be addressed, and it is important to foster a broad sense of ownership of the decisions made during transitional periods. If people feel they have a stake in the decisions, they are more likely to respect the rules and stay involved in the long term.
- *Include issue-based civil society organizations in decision-making processes during the transitional period.* These organizations, which will push for fundamental reforms, are more likely to prioritize the voices and needs of ordinary citizens.

Authorities in charge of elections and international election assistance providers

- *Provide continuous support for political party development that targets various party subgroups likely to be empowered by participating in electoral politics.* These include the party's representatives in the national legislature, cabinet, local office, candidates for these offices, and regional party leaders from areas of the country that may have interests distinct from those of party leaders in the capital.
- *Help prepare party representatives to effectively perform their duties.* Conventional party-building programming often includes working with legislative representatives to develop stronger links with their constituencies and providing training in how to analyse and prepare legislation. This will equip new party officials with the tools to be effective representatives.
- *Promote the inclusion of new parties' leaders in programming in ways that give them a stake in the system.* Distrust is likely to be high within parties, and programmes designed to support legislators or local elected officials may be viewed as threatening to members of the party's central hierarchy who are not in these bodies, for example.

Inclusion must go beyond quotas; it must be meaningful and targeted.

Practitioners should invite members of the party hierarchy to participate in such programming, and ensure transparency and inclusion in their activities.

Electoral system designers

- *Think beyond power-sharing arrangements at the executive level.* More limited power-sharing arrangements (such as a share in state administration and security sectors) may also promote democratic resilience. Find new ways to provide credible, broad-based security guarantees for post-rebel parties without locking out competing 'unarmed' opposition parties.
- *Focus on electoral systems that balance inclusivity with access to decision-making in government, and that seek to achieve inclusivity via broad-based popular support.* Majoritarian systems do not always lead to a tyranny of the majority, and PR systems do not always result in inclusive government. Look beyond labels to explore which electoral system is best suited to particular contexts.
- *Include provisions that allow for veto power and that do not relegate certain parties to the opposition benches.*

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