Accord

ISSUE 25

an international review of peace initiatives

Legitimacy and peace processes
From coercion to consent

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Alexander Ramsbotham and Achim Wennmann

Cover photo: Demonstrators carrying the national
flag of Nepal participate in a mass gathering
demanding peace, social harmony and the
punctual implementation of a new constitution,
in Kathmandu, 23 May 2012.

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Acronyms

ABRI – Republic of Indonesia Armed Forces
APRP – Afghanistan Peace and Reintegration Programme
ARMM – Autonomous Region in Muslim Mindanao
ARS – Alliance for the Re-Liberation of Somalia
AUPD – Africa Union High-Level Panel for Darfur
CA – Constituent Assembly [Nepal]
CDC – Community Development Council [Afghanistan]
CoE – Committee of Experts [Somalia]
CPA – Comprehensive Peace Agreement [Sudan]
CPA – Comprehensive Peace Accord [Nepal]
CPN-M – Communist Party of Nepal (Maoist)
CPN-UML – Communist Party of Nepal (Unified Marxist-Leninist)
CPP-NDF – Communist Party of the Philippines-National Democratic Front
CSO – Civil society organisation
CTC – Technical Coordinating Committee for the Reduction of Crime and Violence in El Salvador
DHS – Demographic and Health Survey
DRC – Democratic Republic of the Congo
ETA – Euskadi Ta Askatasuna
FAB – Framework Agreement on the Bangsamoro
FARC – Fuerzas Armadas Revolucionarias de Colombia
FSA – Free Syrian Army
FWRM – Fiji Women's Rights Movement
GAM – Free Aceh Movement
GCC – Gulf Cooperation Council
HPC – High Peace Council [Afghanistan]
ICRC – International Committee of the Red Cross
ICU – Islamic Courts Union [Somalia]
IDPS – International Dialogue on Peacebuilding and Statebuilding
IFCC – Independent Federal Constitution Commission [Somalia]
IRGC – Islamic Revolutionary Guard Corps [Iran]
ISAF – International Security Assistance Force [Afghanistan]
ISIL – Islamic State in Iraq and the Levant

JMP – Joint Meeting Parties [Yemen]
LAF – Lebanese Armed Forces
LCC – Local coordination committee [Syria]
MDGs – Millennium Development Goals
MILF – Moro Islamic Liberation Front
MNLF – Moro National Liberation Front
MPC – Myanmar Peace Centre
NC – Nepali Congress
NCA – National Constituent Assembly [Somalia]
NDC – National Dialogue Conference [Yemen]
NGO – Non-governmental organisation
NLD – National League for Democracy [Burma]
NSP – National Solidarity Program [Afghanistan]
NUP – National Unity Party
OAS – Organisation of American States
OPAPP – Office of the Presidential Adviser on the Peace Process [Philippines]
PDRY – People's Democratic Republic of Yemen
POLRI – Indonesian National Police
PSGs – Peacebuilding and Statebuilding Goals
TC – Transition Commission [Philippines]
TFC – Transitional Federal Charter [TFC]
TFG – Transitional Federal Government [Somalia]
TNI – Indonesian National Defence Forces
UPC – Union Peacemaking Committee [Burma]
UCDP – Uppsala Conflict Data Program
USDP – Union Solidarity and Development Party [Burma]
UNAMID – African Union–United Nations Mission in Darfur
UNSCR – United Nations Security Council Resolution
UNSRSG – UN Special Representative of the Secretary-General
WEACT 1325 – Women Engaged in Action on 1325
WGEC – Working Group for Ethnic Coordination [Burma]
YAR – Yemen Arab Republic

Foreword

2014 is a year of milestones for Conciliation Resources. Twenty years ago we set out to join the then small community of organisations offering international support to people working on the frontlines for the transformation of armed conflict. I am very proud to see how far we have come and what our partners and staff have achieved and the creative and respected work we continue to do.

This is also the 25th edition in our Accord series. I can remember in the mid-1990s when we first set out to publish an online series on how violent conflicts are brought to an end and the initiatives people have taken to "make peace" – we faced a great deal of scepticism. The web was still quite new and we were advised that an electronic publication freely available was a daft business model. At the time there was very little material available for those who wanted to know *how* others did their peacebuilding – which was not yet synonymous with the multifaceted work of our field. Yet we knew then what we still know now – that there is an enormous need and appetite to learn from the experiences of people working for peace across conflict contexts.

I often cite a visit we made to the Netherlands offices of the National Democratic Front of the Philippines when we were first thinking of launching Accord. On their shelves were fully-stuffed magazine files closely following the Guatemalan peace process, with older boxes on processes in South Africa and El Salvador. Faced with seemingly intractable conflicts many have felt the urgent need to learn more about peace initiatives. We recognised that this was a global challenge.

This edition of Accord is an effort to respond to fundamental questions of how to be more effective in ending and preventing wars and building sustainable peace. It builds on our very first cross-cutting thematic issue on public participation in peacemaking, published 12 years ago. Then, as now, we were grappling with the question of ownership. So you want to help move your country out of war, crisis or military rule, or to challenge unjust power relations? You want to be part of local and national processes that redefine a future based on nonviolent politics, rights, and justice? How do you do it? What worked (or didn't work) for others and what can we learn from them?

As my colleague Laurence Broers once said about us, we are an organisation "led by enquiry". Our approach in the Accord series is not just to document and publish, but to listen and ask. This is has been at the heart of our methodology for Joint Analysis Workshops – key activities in Accord and other Conciliation Resources projects. The idea is simple: bring together around one table people who are wrestling with real and immediate issues in their own conflict context, people who have met and overcome obstacles, and people who bring historical and theoretical perspectives and a talent for new thinking.

We are in an interesting and significant moment for the field of peacebuilding where we are seeing really innovative efforts to find "new ways to end old wars". Conciliation Resources has had the privilege to play supporting roles in a number of processes in recent years, from the constitution-making process in Fiji to the Social Forum in the Basque country, or the peace processes in Colombia and the Philippines.

We are all very excited about this edition of Accord and the contribution it will make to the essential and ongoing conversation about legitimacy in peace and conflict transformation processes. This is also the first Accord downloadable as an e-book. The articles and case studies are the results of the hard labour of many expert people from inside and outside Conciliation Resources – but the delivery of this publication and the careful and creative way it has been crafted is thanks to our very talented Issue Editor, Achim Wennmann, and the very able hands of our Head of Accord and Series Editor, Alexander "Zand" Ramsbotham.

I always say this, but this one really is worth reading cover to cover. It makes an important addition to an important series, which we hope still acts as a deep and rich resource for peacebuilders and policymakers alike.

Andy Carl
Executive Director and Co-founder of Conciliation Resources and Accord

Introduction

Legitimacy and peace processes

Alexander Ramsbotham and Achim Wennmann

This 25th publication in Conciliation Resources' Accord series explores the relationship between peace processes and legitimacy. Using first-hand case studies and expert analyses, it maps the perspectives and experiences of a range of actors engaged in processes of transition out of violent conflict – "from coercion to consent". In the spirit of the Accord series, the various insights presented in the publication hope to inform and inspire better peacebuilding policy and practice by sharing real experiences of endeavour and innovation.

International policy has increasingly stressed the importance of legitimacy in relation to preventing or ending violent conflict. The World Bank's *World Development Report* 2011 declared as its "central message" that "strengthening legitimate institutions and governance … is crucial to break cycles of violence". The 2011 *New Deal for Engagement in Fragile States* lists "legitimate politics" as the first of five Peacebuilding and Statebuilding Goals. And the UN Development Programme's 2012 *Governance for Peace* report declares that the "social contract" between states and societies can help reduce armed violence when "popularly viewed as legitimate".

Legitimacy is generally understood as the popular acceptance of political authority. Kevin Clements in this publication defines legitimacy as the acceptance of unequal political relationships (stated or unstated), where some are given, assume, or inherit authority over others. Legitimacy is not universal, but is specific to particular contexts, constituencies and circumstances. It refers to the social and political contracts that manage formal and informal relationships between states and citizens, and between traditional or charismatic leaders and their constituencies and communities. Clements explains how legitimacy "matters for peace" as it is "critical to political order, stable peace and development [and] transforms coercive capacity and personal influence into durable political authority".

Legitimacy is contested, however – especially in situations of violent conflict in which perceptions of the acceptability of political leadership or institutions are likely to be polarised. In civil war, for example, the legitimacy of the state is almost by definition fundamentally challenged by a significant proportion of its citizens. Non-state actors who use violence, such as armed groups, militias or gangs, are often seen as illegitimate (for example by certain states), but may have specific legitimacy within a given context: as champions of a popular cause; as providers of security and essential services to local communities; or as defenders of the interests and identity of their supporters.

Policy commitments to enhance legitimacy as a response to conflict have proved hard to implement. The Institute for Peace, for example, in a 2012 report asserted that the 2005 Paris Declaration on Aid Effectiveness revealed assumptions about state capacity and legitimacy that in reality did not exist in many countries affected by conflict. The report further asserted that the 2011 *New Deal* commitment to promote legitimate politics exposed contested ideas among its signatories, some of whom preferred to see legitimacy captured through election-related indicators, while others favoured a more comprehensive understanding that could incorporate the strength of opposition parties, civil society, the media, or local conflict resolution mechanisms.

So how might a focus on legitimacy help build peace in practice? One function of a peace process can be understood as providing a structure to accommodate diverse or competing sources of, or claimants to, legitimacy in conflict-affected states and societies, and to cultivate broad consent on a satisfactory way forward for peace. A peace process can help to manage transition from coercive to consensual governance as a basis for advancing sustainable peace. The legitimacy of a peace process can be understood as the extent of popular support both for

the process itself – its specific initiatives and components – and for its outcomes, including a peace deal or political settlement.

The case studies in this publication examine processes of national dialogue and constitutional review as two approaches that can help to promote political legitimacy and consensual governance in situations of violent conflict and transitions from military rule. Case studies also look at actors: at local governance and leadership as potential sources of legitimate authority and representation in peace processes; and at the transformation of "coercive actors" who use force instrumentally – specifically military regimes, armed groups and urban gangs – through engagement in processes of political transition. Case studies consider the relationship between the legitimacy of a peace process and of its outcome, and suggest that peacebuilders need to pay attention to both.

Structure of the publication

This Accord publication is structured in five main sections. Section 1 presents analyses of some key concepts and trends relevant to legitimacy and peace processes. Sections 2 through 5 present case studies – of national dialogue, constitutional review, local governance, and transformation of coercive actors. A sixth sub-section looks at efforts to measure peacebuilding performance, in particular from local perspectives. The publication concludes with analysis of the main findings and lessons.

Key concepts

Kevin Clements opens the publication by exploring **why legitimacy matters for peace**, reviewing the rich and long intellectual tradition of political legitimacy. He describes how legitimacy "lies at the heart of all political discourse and determines much political competition in both developed and less developed societies", and is "by definition ... determined by whether the contractual relationship between the state and citizens is working effectively or not". He explores challenges of addressing non-state, informal, "traditional", kin and community sources of authority, as well as state-based, formal, "modern" sources. He makes the link to current peacebuilding practice by emphasising the importance of "grounded legitimacy", which exists "when the system of governance and authority flows from and is connected to local realities".

Alex de Waal explains **how peace processes work in the political "marketplace"**. In complex conflicts involving multiple armed actors, diverse forms of violence and a breakdown in central political authority, much of politics functions through patronage. De Waal explains how external actors failed to navigate the political order in

Darfur, where violence has been used not to achieve military victory but to raise actors' status in a patronage hierarchy. International peacebuilders have not taken account of the micro-dynamics of the conflict and, as a result, peace initiatives have been unable to adjust to changing characteristics of violence, or to engage authentic sources of representation. An African Union initiative based on thorough local consultation succeeded in developing a much more accurate diagnosis of the conflict and a convincing and inclusive way to resolve it, but nobody has been prepared to back it.

Jean Arnault explores the relationship between **international norms and local realities** in peace processes – in particular means to build domestic support. He discusses three specific ways that domestic legitimacy was built in the Guatemalan peace process: through the participation of key constituencies, the representation of significant views and values, and the delivery of tangible dividends. Building the legitimacy of a peace process is especially important in low-intensity armed conflicts. International assistance can play a big role in helping to improve and ensure the performance of a peace process, but Arnault argues that a growing list of "universal" norms and guidelines risks constricting the space for international mediation.

> **One function of a peace process can be understood as providing a structure to accommodate diverse or competing sources of, or claimants to, legitimacy in conflict-affected states and societies, and to cultivate broad consent on a satisfactory way forward for peace"**

This section also takes a more detailed look at the issue of **inclusiveness** in peace processes, especially with respect to contemporary trends regarding **gender and civil society**. **Rosa Emilia Salamanca** looks at the current peace process in **Colombia**, where in November 2013 two women were for the first time appointed to the government's team to negotiate with the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) at peace talks in Havana. She stresses that the urgency of ending Colombia's 50-year-old war has lent a degree of "imperative legitimacy" to the official talks, but establishing broader legitimacy for the peace process can only come from a wider peace agenda that responds to the needs and interests of Colombian society.

Yasmin Busran-Lao tracks the increasing prominence of women in formal and informal talks in the **Mindanao** peace process in the Philippines. This has coincided over time with the evolving engagement of civil society in the process and the growth of the women's movement in the country more broadly. Although women still remain underrepresented, they currently hold key positions around many of the various negotiating tables, including as Head of the Office of the Presidential Adviser on the Peace Process. The adoption of a Basic Law on autonomous governance in Mindanao, planned for 2014, can institutionalise inclusivity in the peace process.

A box by **Desiree Nilsson** presents recent statistical analysis of 83 signed peace agreements from 40 different civil wars between 1989 and 2004 to demonstrate significant correlation between the inclusion of **civil society** in peace agreements and an increase in their durability.

Tim Sisk analyses the function of **elections in peace processes**. Elections can either support transition to more legitimate governance or lend artificial legitimacy to coercive regimes. A convergence of global norms and local expectations means that elections are well-established elements of peace processes. He argues that elections can induce violence, and that at a minimum they must "do no harm", but there are good examples of elections that have helped to promote peace. Experience shows that elections can contribute to more inclusive politics, and Sisk highlights the significance of matching the choice of electoral system to the local context and circumstances. However, the legitimacy of elections can be undermined if they are treated as an international exit strategy, rather than as one part of a much broader process of change.

> **The intractable challenge of southern Yemen and secession has caused an impasse, and Yemeni women and youths have clashed with established conservative powers on rights and freedoms**

National dialogue
Hannes Siebert introduces Section 2 on national dialogue, explaining how these processes seek to address entrenched and protracted conflict through constructing forums for political reform and constitutional change. National dialogues prioritise domestic ownership as the stakeholders determine the process, decision-making

and implementation mechanisms. They have evolved as ways to try to fix discriminatory or dysfunctional political systems and constitutional frameworks that contribute to violent conflict. They look to bring together major political decision-makers and other stakeholders and can help to promote political representation by incorporating key interest groups in society. National dialogues are extra-constitutional, and so a key challenge is how to link them effectively to existing or transitional constitutional bodies in order to effect real structural change.

Paul Rios describes civil society efforts to initiate an "informal" national dialogue process for the **Basque Country**, specifically a Social Forum organised in March 2013 and a citizen's network. In the absence of formal dialogue between *Euskadi Ta Askatasuna* (ETA) and the Spanish or French governments, Basque social movements have been working to mobilise support for a more participatory peace process that can respond to the priorities of Basque citizens – such as changing Spanish policy for ETA prisoners, and ETA's disarmament. The organisers of the Social Forum have sought to include key stakeholders and have tried to ensure that key issues for Basque society are represented on the peacebuilding agenda. Rios explains how building momentum faces many challenges, from the inflexibility of the conflict parties to the fragmentation of the Basque political scene.

Harn Yawngwhe explores the genesis of the national dialogue process in **Burma** following President Thein Sein's surprise announcement of his willingness to address decades of armed conflict in his inaugural speech in March 2011. After 50 years of absolute rule, few Burmese regard the military as the rightful authority: "not the ethnic population, not the person in the street, and not even the international community". Peacebuilding in Burma has a daunting agenda to accommodate an array of competing claimants to legitimacy, including the government and the army, Daw Aung San Suu Kyi's National League for Democracy, political parties, civil society, ethnic entities, and more than 18 ethnic armed groups. A proposed national ceasefire aims to encompass every armed group. An even more ambitious national dialogue process looks to include all stakeholders – armed groups, political parties and civil society – not just to resolve armed insurgencies, but to shape a peaceful future for the nation.

Ali Hassan explains how the National Dialogue Conference in **Yemen** has tried to tackle drivers of conflict and respond to imperatives of social and political change. The conference has organised working groups to address specific topics such as self-determination for the south, transitional justice, and rights and freedoms. It has sought to allocate representation inclusively – including 50 per

cent participation from the south, 30 per cent for women and 20 per cent for youths. The intractable challenge of southern Yemen and secession has caused an impasse, and Yemeni women and youths have clashed with established conservative powers on rights and freedoms. Meanwhile promised outreach activities to consult civil society and the Yemeni public have been piecemeal and shallow. But the conference has still created powerful political dynamism and an appetite to escape from intense crisis.

Constitutional review

Cheryl Saunders introduces Section 3 on constitutional review. She explains how a constitution can help safeguard foundations for peace by developing a new or revised framework for state-society relations. The "performance legitimacy" of a new constitution (how it works in practice) is a major test, assessed over time through the effectiveness of the state and its level of popular approval. Constitutional reviews and peace processes share core principles of best practice, including wide public participation and fair representation of views and interests, but they are not always easily compatible. The imperatives of making peace may bring in stakeholders who appear ill-suited for leadership under a civil constitution. Such realities do not contradict the potential for transformation of coercive actors, but they highlight the challenges of including controversial actors in constitutional government.

Abdihakim Ainte examines the complexities of constitutional processes in **Somalia**, explaining how the allocation of decision-making responsibilities at key moments has undermined the legitimacy of the 2012 Provisional Constitution for many Somalis. The Provisional Constitution has a core peacebuilding function to define an acceptable social contract. Many problems with the process have related to representation – from the controversial "4.5" power-sharing formula, to the opaque and rushed selection for the National Constituent Assembly. Federalism has presented difficulties, as it has tried to respond to challenges of sub-national entities and clan-based politics. Nevertheless, the current constitution-making moment offers an opportunity for Somalis to reflect on and negotiate their future political system.

Virisila Buadromo describes the constitutional process in **Fiji** in 2012, and in particular the experiences of the women's movement and civil society in engaging with it. The women's movement had initially feared that involvement in a weak constitutional process risked legitimising a flawed outcome. In the end, the process was derailed after the government rejected the constitutional commission's draft in January 2013, and subsequently enacted its own constitution in September by military

decree. However, the 2012 process demonstrated that civil society can mobilise significant levels of participation and leave a legacy of change.

Bipin Adhikari explains how peace and constitution-making processes in **Nepal** are at a pivotal point. The dissolution of the first Constituent Assembly in 2012, after four years' deliberation and with no constitution agreed, reflected the scale of the challenge of post-war transition in Nepal. Elections for the new assembly saw the Communist Party of Nepal, the largest party in the first assembly, relegated to third place. Adhikari argues that the second assembly needs to learn the lessons of its precursor's failure and engage political leaders, embrace civil society dialogue and overcome political differences in order to advance the ongoing transition.

Local governance

Ken Menkhaus introduces Section 4 on local governance by asking how viable it is to mobilise the legitimacy of local leadership for peace. Legitimate representation is difficult to identify in talks to end violent conflict that can include a proliferation of armed groups, severe social and political fragmentation, or communal or criminal violence. Local governance and leadership is not a panacea – and can encompass warlords, vigilante justice or thinly veiled political platforms. Nevertheless, there are many examples of sub-national governance arrangements emerging or enduring in the most lawless and violent environments to provide basic protection and order, structured dispute resolution, and mediation with local militia or inter-communal settlements. Local civil leadership can often make a convincing claim to a seat at national peace talks, through its proximity to local events and communities.

Doreen Khoury describes how analyses of the conflict in **Syria** routinely ignore the achievements of grassroots opposition and the resilience of the Syrian people. Syrian society is the ultimate target of deadly sectarian violence between *shabbiha* (regime enforcers) and jihadist groups. But behind this devastation lie concrete popular efforts at inclusive local organisation and self-rule, and countless local peacebuilding initiatives aimed at bridging political, ideological and sectarian divides. This capacity needs to be better recognised and supported, and local civilian leadership should be included in peace talks and transition processes to provide local legitimacy and connection to communities inside Syria.

Karim Merchant and **Ghulam Rasoul Rasouli** analyse attempts in **Afghanistan** to use Community Development Councils (CDCs) to roll out a national reintegration programme for ex-combatants at the local level. The

CDCs' main function is to implement the National Solidarity Program (NSP), established in 2003 as "the largest people's project in the history of Afghanistan". There have been challenges related to the level of CDCs' accountability to local communities. But linking CDCs with national reintegration has blurred boundaries between development priorities and a counter-insurgency agenda that many Afghans see as primarily serving foreign interests, which has further raised concerns over CDCs' integrity.

Joanna Wheeler explores relationships between citizenship, violence and authority in Rio's *favelas* in **Brazil**. Drug trafficking groups and para-state militias have become dominant actors in the city's informal settlements. Militias provide apparently contradictory functions: they protect communities from violent state intrusion into the *favelas* in the form of predatory and corrupt police; but they also dominate communities politically and socially through the use violence and other forms of coercion. Ultimately, citizenship is "drained of meaning" by all sources of violence. The complex relationship between violence and authority materialises as "perverse politics" in which interventions made by the state to promote democracy and citizenship actually reinforce the authority of armed actors.

Transformation of coercive actors
Veronique Dudouet introduces Section 5 on the transformation of coercive actors. She argues that engaging different types of armed actor is an essential part of a peace process. Negotiations to end fighting also require that armed actors reconsider their reliance on coercion to achieve their objectives. This section of the publication explores the experiences of coercive actors involved in processes of transition out of violence, charting their trajectories and identifying what factors have influenced their progress. The term "coercive actors" covers a range of conflict stakeholders that use violence instrumentally, for material gain or political power. This includes authoritarian (military) regimes, armed opposition groups that challenge state authority, and urban gangs that use violence for internal discipline and control over economic transactions – often resulting in very high levels of social fragmentation.

Isabel Aguilar Umaña, Bernardo Arévalo de León and **Ana Glenda Táger** discuss the truce between the two main gangs in **El Salvador** reached in March 2012. Levels of gang violence were comparable with war zones, with a rate of 66 homicides per 100,000 in 2011. Increasingly tough *mano dura* (iron fist) policies of criminal legislation proved counter-productive. But the truce delivered an immediate reduction in homicides: from 402 in February 2012 to 156 in April, with a sustained 60 per cent reduction up to April 2013. The truce's implementers reached out

to civil society to legitimise the process, in response to criticism and to enrol partners to support reintegration of ex-gang members. There have been worrying rises in violence in late 2013. Nevertheless, the achievements of the truce deserve recognition and offer valuable lessons for peacebuilding.

Bassel Saloukh examines the evolution of **Hezbollah** in **Lebanon** – as a political and social actor that maintains significant independent military capability. Developments inside and outside Lebanon have influenced Hezbollah's progression from an armed militia and revolutionary party to one of Lebanon's principal domestic political actors. Hezbollah's refusal to disarm challenges the authority of the state and is anathema to many in the international community. But Hezbollah is a source of security, service provision and identity to significant numbers of Lebanese, and of solidarity to strategic regional allies. Hezbollah's 2013 intervention in the Syrian conflict has added another dimension to its complex identity and possible future path.

> **Developments inside and outside Lebanon have influenced Hezbollah's progression from an armed militia and revolutionary party to one of Lebanon's principal domestic political actors**

Agus Wandi and **Nezar Patria** discuss Asian perestroika in **Indonesia**. Years of reformist mobilisation underpinned the collapse of President Suharto's New Order dictatorship in 1998 – ultimately sparked by the Asian economic crisis. Transition since then has required difficult processes to disentangle the military from the political sphere and to decentralise power. Reform has allowed the state to address conflicts in the periphery more progressively and effectively – in Aceh and Timor Leste at least, although West Papua remains beset by violence. *Reformasi* in Indonesia is incomplete and ongoing, but it has gone a long way to rectify the social contract and lay foundations for more legitimate government and a peaceful republic.

Measuring peacebuilding performance
Andrew Mack describes the extent of the current dearth in available data to realise "evidence-based" policymaking globally and to ascertain people's perceptions of the local impact of peacebuilding initiatives. Despite increasing donor emphasis on the importance of evidence, there

is very little funding available to support data gathering capacity – especially for developing countries affected by conflict. Agreeing indicators to measure peacebuilding impact and ways to gather data to monitor progress is politically contentious. But other sectors, such as health, provide workable models that peacebuilding could use, while new technology and investment in local capacity offer ways that good data could start to be collected.

Abdifatah Tahir describes efforts of the Observatory of Conflict and Violence Prevention in Hargeisa, **Somaliland**, to track peacebuilding progress in Somalia and in particular to gather local perspectives on the effectiveness of public service provision as it relates to peacebuilding.

Conclusions

A **concluding article** by the editors draws together insights and observations on peace processes and legitimacy, and distils lessons for peacebuilding policy and practice. It suggests the importance of applying a "legitimacy lens" to designing and implementing peace processes. This involves paying attention to three priorities in approach. First, context – recognising that legitimacy is specific to the circumstances and constituencies of a given conflict; second, *consent* – acknowledging that legitimacy is contested in situations of violent conflict; and third, *change* – understanding that peace initiatives are best seen as key components in ongoing processes of transition, rather than as ends in themselves.

The editors suggest that a legitimacy lens helps ensure that people affected by conflict remain central to peacebuilding responses, and that peace efforts are placed in broader processes of positive change towards more consensual forms of governance.

Alexander Ramsbotham joined Conciliation Resources in August 2008 as Accord Series Editor. Before this he was a research fellow in the international programme at the Institute for Public Policy Research. He worked as specialist adviser to the House of Lords European Union Select Committee in its inquiry into the EU Strategy for Africa, before which he was head of the Peace and Security Programme at the United Nations Association UK. He has also been an associate fellow in the International Security Programme at Chatham House. Alexander completed a PhD in July 2011.

Dr. Achim Wennmann is Researcher at the Centre on Conflict, Development and Peacebuilding (CCDP) of the Graduate Institute of International and Development Studies in Geneva, and Executive Coordinator of the Geneva Peacebuilding Platform. He is an expert on economic perspectives on violent conflict, conflict resolution, and peacebuilding and has provided intellectual mediation support in several instances. He is author of *The Political Economy of Peacemaking* (London: Routledge, 2011), co-editor (with Mats Berdal) of *Ending Wars, Consolidating Peace: Economic Perspectives* (London: IISS and Routledge, 2010), and has published widely for scholarly and policy audiences.

Section 1

Legitimacy and peace processes

What is legitimacy and why does it matter for peace?

Kevin P. Clements

Legitimacy lies at the heart of all political discourse and determines much political competition in both developed and less developed societies. Legitimacy is about social, economic and political rights, and it is what transforms coercive capacity and personal influence into durable political authority. It is the stated or unstated acceptance of unequal political relationships where some are given, assume, or inherit power over others. It is critical to political order, stable peace and development.

Legitimacy enables rulers to govern with a minimal application of force and it entitles those who are ruled to expect that political power will be exercised to advance the common good, as opposed to narrow personal or partisan interests. It refers to the formal and informal social and political contracts that govern relationships between the state and citizens, and between traditional or charismatic leaders and their followers. It is also about the management and resolution of conflict within families, kin groups, communities and society.

By definition legitimacy is determined by whether the contractual relationship between the state and citizens is working effectively or not. Individual citizens or tribal members recognise political actors, institutions and relationships in return for services, which guarantee their individual and collective welfare. When such welfare is not forthcoming, legitimacy diminishes and rulers often find themselves forced to move from persuasive to coercive governance.

What is legitimacy and where does it come from?

There is no such thing as universal legitimacy. It is dependent on particular contexts, circumstances and communities. Legitimacy has multiple formal and informal sources. But there is general agreement that it will be greater where there are high levels of political inclusion, participation, representation and achievement. Many of the conflicts of the 20th and 21st centuries have been about the legitimacy of state institutions or particular political regimes.

Donors have focused on building effective, legitimate and resilient state institutions. The enhancement of state legitimacy has become a central dimension of multilateral development assistance and a prerequisite for stable peace. But what are legitimate state and society institutions?

The Organisation for Economic Co-operation and Development views legitimacy as follows: "i) the acceptance of political authority by a population; or, ii) political authority that is acquired and exercised

according to certain socially accepted normative standards and criteria".

Max Weber in the early 20th century distinguished three types of legitimate authority, based on:

1. *Rational* grounds – resting on a belief in the legality of patterns of normative rules and the right of those elevated to authority under such rules to issue commands (legal authority)

2. *Traditional* grounds – resting on an established belief in the sanctity of immemorial traditions and the legitimacy of the status of those exercising authority under them (traditional authority)

3. *Charismatic* grounds – resting on devotion to the specific and exceptional sanctity, heroism or exemplary character of an individual person, and of the normative patterns or order revealed or ordained by him (charismatic authority).

One of the big recent peacebuilding debates has been about the adequacy of the "liberal peace" based on free markets, democratisation and militarily assured security. Critics question its Western bias and whether there are alternative ways of guaranteeing political participation and inclusion. Many exponents tend to see "process and performance" legitimacy as the evolution and smooth functioning of rational-legal political systems.

The fact is that all legitimacy has a very distinctive genealogy. It is intimately linked to specific cultures, modes of production, particular types of decision-making and law-making processes and wider theories of continuity and change.

Many "fragile" or vulnerable states were built on the destruction of pre-colonial states or other political entities and the diverse traditional social systems that existed alongside them. There is now considerable evidence to suggest that post-colonial states that have emerged from pre-colonial states and have maintained strong and resilient social relationships based on custom and tradition have a much better prospect of being effective and legitimate than those which have not. States without a pre-colonial history of statehood are much more prone to fragility, because their legitimacy rests on actors and institutions that have their roots in the stateless pre-colonial past rather than with the institutions of newly independent states.

Linking formal and informal legitimacy

The question facing peacebuilders in many post-conflict environments is how to establish "organic" connections to some of the local pre- and post-colonial sources of legitimacy so that new institutions emerge which are based on bottom-up, community-level norms, values and traditions that make sense to those who live and work in that particular location.

In order to strengthen the legitimacy and effectiveness of state institutions it is vital to address non-state, informal, "traditional" kin and community sources of authority, as well as state-based, formal, "modern" sources. These two dimensions of legitimacy can be blended and "hybridised" to establish organic bridges between the past, present and future.

Instead of assuming that traditional and charismatic authority will disappear in modernity, it makes sense to embrace progressive and functional forms of authority in order to capitalise on the social and political benefits of persistent customs and traditions.

Most customary sources of legitimacy are based on norms of trust and reciprocity. The core constitutive values that lie at the heart of traditional legitimacy enable families, kin groups, tribes and communities to exist, satisfy basic human needs and survive through time. These have in many instances been disrupted by rational-legal forms of governance and the contentious liberal peace assumption that modern statebuilding *is* peacebuilding.

> **In order to strengthen the legitimacy and effectiveness of state institutions it is vital to address non-state, informal, "traditional" kin and community sources of authority, as well as state-based, formal, "modern" sources"**

If traditional processes can deliver effective education, welfare, health and food security they should be encouraged since this will enhance overall performance legitimacy and add momentum to deeper process legitimacy – that is, the development of an acceptable rule of law and appropriate accountability mechanisms for politicians and public servants.

Stakeholders in a peace process can enhance legitimacy by taking the time to identify customary values, beliefs and practices that play strong integrative, productive, community building and peacebuilding roles. This means

giving much more attention to what can be called "hybrid" political orders, where the customary sphere of social, economic, cultural and political life is still strong.

In these contexts it is often the community that provides the nexus of order, security and basic public goods. People have confidence in their community and its leaders, but low levels of trust in the government and state performance. The state is perceived as an alien external force, far away not only physically (in the capital city), but also psychologically. Individuals are loyal to their group (whatever that may be), not the state.

Members of traditional communities are tied into a network of social relations and mutual obligations, and these obligations are understood as being far more meaningful and powerful than those of a citizen. People do not obey the rules of the state, but the rules of their group. Legitimacy rests with the leaders of that group, not with the state authorities.

Grounded legitimacy

External donors and actors need to work with the grain of local endogenous cultures, traditions and sources of legitimacy rather than against them. In this way they will help uncover "grounded legitimacy", which is a *sine qua non* for the emergence of effective, capable and legitimate states in vulnerable environments.

Legitimacy is grounded when the system of governance and authority flows from and is connected to local realities. A range of different forms or sources of legitimacy may be considered grounded. Thus traditional leadership and rational-legal legitimacy may both be forms of grounded legitimacy, depending on their context. Either can be consistent with people's sense of their needs, values and experience of the world. The term grounded legitimacy emphasises the normative aspect of leadership and governance enabling a connection with and response to people's values and beliefs on the ground.

Legitimacy that depends almost solely on instrumental performance (such as around service delivery or economic growth) is not grounded legitimacy. For example, an international transitional administration in a post-conflict state may meet a range of performance targets. But because it is disconnected from local peace and development processes legitimacy will not be grounded.

Similarly, some national governments may be fulfilling a range of state functions without having grounded legitimacy. Consequently they will not take root in vulnerable environments and will tend to govern either in a predatory or coercive fashion, or in a disconnected and

disempowering way, thereby undermining the resilience and problem-solving capacities of local communities.

Grounded legitimacy is thus both a normative concept (a form of legitimacy that external agencies should nurture as conducive to statebuilding and peacebuilding), as well as an emerging form of legitimacy in its own right. This can be observed in a wide range of different places, such as Bougainville or Somaliland.

The legitimacy enjoyed by traditional authorities and charismatic leaders can be seen as a resource underpinning important contributions to governance and law and order at the local level and as a potential resource to be drawn upon by the state system through greater interaction and engagement with local communities and their leaders.

The important point is that organic grounded legitimacy flows from the bottom up rather than the top down. It cannot be imposed. If elites lack grounded legitimacy their rule will always be precarious. Internal and external political actors, therefore, should engage with hybrid institutions in order to bridge the traditional and modern and to open ways to utilise community level legitimacy for the purposes of state formation.

Implications for international peacebuilders

The well-intentioned actions of international peacebuilders will not generate sustainable legitimacy unless they are embodied and grounded in local values, beliefs, traditions and customs. These may grate with international universal values, rights and frameworks, but unless there is a willingness to go with locality the probability of developing sustainable peace is very low. Only by paying radical attention to locality and having local people write the development agenda will external agents be able to add any value to local legitimation processes.

External peacebuilders need to rethink intervention design processes, in particular to incorporate local leadership and ownership at every possible level. Every effort should be made to incorporate familial, kin, community and sub-national actors – as well as national elites. Local leaders should be incorporated into the analysis and implementation phases and should be tasked with reviewing their efficacy at all phases of the conflict cycle.

All parties need to have trust and confidence in the legitimacy of a peace process. The slightest sense that the peace process is illegitimate, imposed or going against the grain of locality will mean it is unlikely to have a positive impact.

All of the precautionary principles apply in this kind of context and there are basic ways of working that external or international peacebuilders can usefully employ: "do no harm" by not (unwittingly or intentionally) imposing inappropriate political processes on local populations; spend more time listening to (and not just talking to) local populations; prioritise supporting local efforts to open up space for communities to resolve their own problems in their own way; and focus on the delivery of small-scale benefits for local populations while at the same time ensuring the achievement of broader strategic goals.

Good, responsible, accountable, legitimate and effective governance rests on the quality of leadership of both informal and formal leaders. More attention should be paid to culturally sensitive dialogues and leadership training to generate leaders who understand and enjoy grounded legitimacy and who can operate in customary or local community spheres, as well as in state and civil society spheres. This would focus primarily on the collective responsibilities of leaders and the question of what legitimate leadership is.

Traditional and charismatic leaders rely more on face-to-face relations and less on bureaucratic forms of organisation. Building trust requires time and continuing personal engagement. Donors will have to think afresh about their perceptions of time and their timeframes. Developing knowledge and understanding of local everyday life requires a long-term presence. Trust built on personal relationships might be more important than bureaucratic accountability procedures. Long-term positions in rural and remote areas may be essential for developing avenues of constructively utilising traditional legitimacy for state formation and development.

In order to increase levels of political responsibility and accountability, external and internal formal political actors should explore ways of finding common ground with customary law and traditional principles and leaders in order to ensure higher levels of integrity and accountability.

Traditional forms of accountability that reach beyond conventional donor understandings have to be taken into account. Notions of moral obligation and interpersonal accountability in the context of kin and other customary relations can be drawn upon; they are not merely sources of clientelism and corruption – they can also be sources of social welfare and security.

Looking ahead, questions remain regarding how traditional and charismatic legitimacy interact with young people, urbanisation, shadow economies and organised crime. Can customary governance function legitimately in an urban environment? Can traditional legitimacy be reconciled with the needs and aspirations of young people? Can traditional leaders and customary governance institutions deal legitimately with organised crime and coercive threats, or is this where the state must have sole responsibility? And how can social and political networks that mobilise around charismatic leaders be channelled to support peaceful rather than violent purposes?

Prioritising local legitimacy can help post-conflict state systems and regimes integrate with communities who draw on long-standing cultural and political practices, and it can be used to insist on higher levels of political accountability, responsiveness and effectiveness. This will lay the foundations for the emergence of new, vibrant and peaceful forms of governance and political legitimacy.

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Violence and peacemaking in the political marketplace

Alex de Waal

In this article I reflect on experiences of peacemaking in Sudan, suggesting that existing models for peace negotiations are not well suited to many of the armed conflicts that have occurred in Sudan and similar countries. I propose a distinction between two types of conflict: one of which is characterised by a high-level political contest between two opposing forces, and another kind which is a more complex conflict involving multiple armed actors, diverse forms of violence, and a breakdown in central political authority.

Existing datasets for armed conflicts do not capture this latter kind of conflict, and indeed the fact that the armed actors often change in identity and number means that they are intrinsically hard to monitor.

More importantly, conventional models of peacemaking are poorly suited to resolving the latter type of conflict, and can even make matters worse. In such complicated conflicts, I suggest that it is important to enable the people affected to define the nature of that conflict and the kinds of processes needed to resolve it.

Conventional negotiations: a square solution to a round problem

The conventional model of a peace process is drawn from international negotiations in which there are two sides with equal legal standing and roughly commensurate capabilities.

The format of the talks is a square table, with the parties facing one another, and the mediator at the head of the table. This framework has been adapted for civil wars, even though one party is typically the sovereign government

and the other is a non-sovereign challenger that has managed to get sufficient political recognition to sit with the government as an equal, at least for the purposes of the peace talks; and these parties may be highly unequal in strength. The agreement that ends a civil war possesses an odd legal status: a sovereign government is bypassing its constitutional law-making processes to sign a document with an unlawful party. Indeed, the signing of the peace agreement in itself confers a degree of legitimacy on the insurgent, but the agreement becomes a legal document only when it is adopted into law, for example by a constitutional amendment that is passed by parliament.

Drawing on the writings of the political philosopher Carl Schmitt, we might call a conflict over political matters between two well-matched parties a "Schmittian" conflict – as discussed by Sidney Tarrow 2011. Such a conflict reflects Schmitt's philosophy in two senses. First, politics is defined as a contest between "friends" and "enemies"; and second, the object of the politics is the sovereign state, with sovereignty defined as the power to make an exception from the general rule of law.

Participants exchange views at the All Darfur Stakeholders Conference, held in Doha, Qatar, 2009. © UNAMID/Olivier Chassot

Conflicts of this nature have another important feature, which is that they can also be resolved by military victory, by one side or the other. A party that can sign a peace agreement and adhere to it also has the capability to surrender or accept the surrender of the other, and to adhere to the terms of the capitulation, confident that the citizens, including the former supporters of the other, will accept the military-political *fait accompli*.

In reality, many conflicts – particularly internal conflicts in large, poor and ill-governed countries – do not fit this model. There has been an extensive debate over the concept of "new wars", coined by Mary Kaldor in the 1990s in the wake of the wars in Yugoslavia. The best definition of the distinction between "old" and "new" wars emerges in the preface to the 2012 edition of her book, in which she defines "old wars" as those that follow the Clausewitzean "ideal type" of being a contest of wills, with each party trying to compel the other to submit, and "new wars" as following variant "ideal types," such as organised violence for profit or as a means of governing an unruly periphery. In such conflicts, there may be many parties responsible for violence, with varying degrees of organisation and political coherence, and shifting patterns of violence. The shifting may take the form of armed groups switching sides, coalescing or fragmenting, or the organisation of violence moving from the local to the national and back again.

In the last ten years, political scientists interested in armed conflict have turned from analysing datasets that have wars as their unit of analysis, to much more detailed datasets compiled from reports of individual violent incidents. This turn to the micro has yielded important insights. Stathis

Kalyvas's seminal 2006 study of violence in the Greek civil war has shown how individuals' provision of information (real or fabricated) to a government or insurgent is based upon calculations of the risks and rewards of providing such information, which in turn reflects the relative power of the parties in that location.

Another case is the data that constitute the reports of the Global Burden of Armed Violence; the 2011 Geneva Declaration 2011 shows that the highest rates of homicide are found not in countries at war such as Afghanistan, Mali or the Democratic Republic of Congo, but in Latin American cities that are wracked by criminal and vigilante gangs and their confrontations with the police. This raises the question of whether, for example, Rio de Janeiro should be considered an internal armed conflict.

A third instance is the data that are gathered by international peacekeeping operations and similar missions. The incident data compiled by the African Union–United Nations Mission in Darfur (UNAMID), for example, show a highly turbulent conflict in which, over a period of several years, almost every kind of armed group had armed confrontations with almost every other kind, including security units fighting their supposed allies in the militia, militia groups fighting one another, and even violent conflicts between different branches of the national forces.

Violence and the political marketplace

In the framework of the "political marketplace", I suggest that it can be useful to understand the political calculations of armed groups and government institutions – including the army and security services – as bargaining over the

price of allegiance – as discussed for example in my 2009 publication *Mission without end*.

This is akin to the West African "warlord politics" described by William Reno in 2011, in which armed actors are primarily fighting for position in a patronage hierarchy. A non-state actor uses violence to try to extract a higher price from the government, for example by attacking a police station or hijacking commercial trucks. The government may use violence to push down the price that the local armed actor is ready to accept, by burning the villages from where the armed group obtains its support, killing men and raping women. Or the government may license one group to attack another, a cheap means of divide-and-rule counterinsurgency. The armed actors may also use violence against one another for multiple reasons, including seizing land or other assets such as livestock, or taking control of trade or smuggling routes. The state may itself be characterised by multiple centres of authority, with different army, security and police units following different agendas, and even fighting one another.

In such a conflict, it is hard to envisage what military victory would entail. It is extraordinarily hard for a government to defeat an insurgency that is so deeply embedded in the misgovernment of a periphery, and even if it did destroy the recognised rebels on the battlefield, it would not end violent contestation. Similarly, even if one of the rebel groups, or a coalition of them, were to overrun the government and install one of their leaders as head of state, this would not spell an end to the war; to the contrary, it would probably just spark another round of fighting. Examples such as the Central African Republic and Democratic Republic of Congo spring to mind.

Another feature of these conflicts is that the parties are usually talking and fighting at the same time. They are bargaining over payments for their services and local security pacts. Formal negotiations, convened or recognised by third parties such as international mediators, are only one channel for such bargaining, and can be incorporated into the parties' overall strategies for positioning themselves in the patronage hierarchy.

We might call this a "Hobbesian" conflict in the sense that it is a state of generalised insecurity in which all may fight all. Note that Hobbes defined "warre" as a state of no authority, not as constant fighting, and he compared it to inclement weather in which there is always a chance of rain.

To complicate matters, many conflicts are either a mixture of Schmittian and Hobbesian, or can morph from one into the other. Protracted civil conflicts may be intermittently Schmittian and occasionally the parties organise

themselves into highly polarised confrontations. The war in Darfur is an example: during 2003–04 it was a high-intensity conflict between two relatively coherent belligerent parties. By 2005, both parties were exhausted, and the pattern shifted. The rebels fragmented, and the government found itself unable to control the many proxy militia forces it had armed during the intensive phase, leading to the lower-level multi-sided conflict evident during UNAMID's deployment.

Formal peace agreements are almost invariably designed for Schmittian conflicts. Even though multi-party agreements are becoming more common, the documents follow a standard tripartite format of (a) power sharing and constitutional reform, (b) wealth sharing, including provisions for development assistance, and (c) security arrangements, beginning with a ceasefire and concluding with disarmament, demobilisation and reintegration, and security sector reform. Lawyers are involved in drafting these documents, and even in determining what is acceptable for a third party mediator to accept. The less formal model of an amnesty and pay-off for insurgents has almost disappeared. The validity of a formal agreement depends on the parties' acceptance of it as final and binding. In turn this requires a political order with a high level of institutionalisation, which of course is not always the case, and is especially rare in countries prone to protracted and complicated insurgencies.

If a formal agreement is imposed on a complicated conflict in a poorly institutionalised system, what may happen is that the agreement is only good for as long as the political conditions remain as they were when the deal was signed. Typically this gives the agreement a short lifespan, as those who are disaffected may turn to violence, or the signatories may use violence to suppress or disarm their rivals who did not sign or who were not even recognised in the process.

Sudan is a laboratory for complex conflicts and conflict resolution efforts. Sudanese agreements tend to be partial agreements, involving a subset of the national armed actors, and, as such, do not end the fighting. Insofar as they work, it is because of two factors.

One is that they are supported by a major exercise in distributing patronage. The 2005 Comprehensive Peace Agreement (CPA) was underwritten by a vast expansion in the government budget because of oil production. Government spending increased six-fold between 1999 and 2006, and this made possible an enormous expansion in the public sector, including the payroll of the security services, both north and south. This enormous payoff was the single most important factor in the peace.

The other is that a secondary agreement follows, which brings in some of those excluded by the main agreement. The CPA was followed one year later by the Juba Agreement whereby the Sudan People's Liberation Army brought its principal military rival, the militia formerly aligned with Khartoum, into the government of southern Sudan and on to the military payroll. The national government in Khartoum meanwhile sought agreements in Darfur (which failed) and Eastern Sudan (which ended the conflict but did not resolve the grievances).

The constitutions of Sudan and South Sudan are basically an accretion of these partial agreements. Regardless of the on-paper provisions for democracy and human rights, these constitutions are contested by those groups excluded from the process of negotiating them.

Local solutions in Sudan: the negotiating roundtable

When the participants and issues in a Sudanese peace negotiation failed to match the real nature of the conflict, failure invariably followed. This was the case for the Darfur peace talks of 2005–06, which adopted a simplified government–rebels dichotomy, ignoring the Arab militia, and which were rushed to completion to expedite a planned UN peacekeeping force. The mismatch was even greater for the negotiations in Qatar that led to the Doha Document for Peace in Darfur in 2011, which tried to impose a conventional two-party format on a multi-sided conflict, and which transferred the formula of the 2006 Darfur Peace Agreement – which had been designed as a buttress to the central pillar of the CPA – to a situation in which the CPA had lapsed following the secession of South Sudan.

There was, however, an illuminating exercise that showed what a viable peace process in Darfur might look like. Key, here, was the involvement of Darfurians to identify the nature of the conflict "problem", and to guide the response. In 2009, the African Union High-Level Panel for Darfur (AUPD), chaired by the former South African president Thabo Mbeki, spent forty days in consultations with a wide range of Darfurians – political parties, traditional leaders, civil society, business people, women, youths, nomads, displaced people and refugees – and asked them to contribute their ideas on the issues of peace, justice, reconciliation, and Darfur's position within Sudan. The outcome was fascinating, as outlined in the AUPD report of 2009.

The Darfurians defined the conflict very precisely and with a high level of consensus on the nature of the violence, albeit with considerable disagreement on who was ultimately responsible. The nature of the conflict was identified as local violence, which could be resolved by an internal Darfurian process, arising as a result of the "Sudanese

conflict in Darfur" – that is, a history of marginalisation and misgovernment, culminating in the government abandoning its basic responsibility for maintaining law and order.

What the Darfurians wanted was not a square table in which the government faced the rebels, but a round table in which all stakeholders, armed and unarmed, could represent themselves. Even those who expressed support for the rebels, such as the displaced people, demanded that they themselves should be represented at the talks. Darfurians wanted all of the issues to be addressed in a holistic manner, but emphasised that peace was a prerequisite for all others.

This exercise showed the importance of allowing the actors to define the nature of the conflict. All conflicts can be defined in many ways and there is not necessarily a "correct" way of doing so. But there is a definition that reflects the consensus of the affected people. In turn, that definition implies who should be represented in the process of reaching an agreement, and what the content of such an agreement should be.

The implication is the starting point for a legitimate process, leading to a legitimate agreement, is enabling the affected people to decide on the priority issues. There is no a priori formula for legitimacy outside such a consultative process.

This does not necessarily work for other kinds of conflict, or conflicts in other kinds of state. For example, there are conflicts in which strong leadership is required to make compromises that might not readily be supported by the wider population, especially if communities are deeply divided.

Therefore, as a tentative conclusion, we may be able to distinguish between institutionalised political orders, in which the rule of law and sovereignty are the source of legitimacy, and contexts without institutional and rule-bound government, in which the painstaking process of building a consensus among the population is the best means of generating legitimacy. And there is one simple lesson for peacemakers: take the time to consult the affected people. Ending a conflict can be a matter of urgency, but the shortcut of imposing an *a priori* peacemaking framework is a false acceleration.

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Legitimacy and peace processes

International norms and local realities

Jean Arnault

Peace processes are born, rise and prevail – when they do – in a climate of contested legitimacy. And even years after peace has been restored, the controversy over the peace process lingers on.

Challenges to the legitimacy of a peace process address its most diverse aspects, from the very principle of a negotiated settlement because "it rewards terrorism" or "the use of violence"; to its modalities because "those at the negotiating table are not sufficiently representative"; and to its outcome, because compromises "fail to match the aspirations" of the combatants themselves, their supporters or other domestic constituencies.

To say that peace processes are never unanimous affairs is not to say that how the issue of local legitimacy is handled is inconsequential. In fact, faced with opposition from those who, among the belligerents and within society at large, are convinced that the continuation of conflict is a better alternative to a negotiated settlement, a peace process will not thrive unless it is able to generate a critical mass of domestic legitimacy.

Legitimising negotiations

To a large extent it is the course of the war itself that will be the critical factor. The current Afghan conflict offers a perfect illustration of the ripening work of war. After 10 years of widening and worsening conflict with no military solution in sight, the 2011 decision taken by the North Atlantic Treaty Organisation to support dialogue with the Taliban, which would have been unthinkable in the early 2000s, is a case in point.

But more important from the viewpoint of local legitimacy is the moving statement by Member of Parliament and

woman activist Shukria Barakzai explaining why her stance against negotiations with the Taliban changed: "Everybody has been trying to kill the Taliban, but they're still there, stronger than ever. They are part of our population. They have different ideas but as democrats we have to accept that. Every war has to end with talks and negotiations. Afghans need peace like oxygen. People want to keep their villages free of violence and suicide bombers".

As the prospect of a favourable end to the war recedes, misgivings about the legitimacy of negotiations do not go away entirely, but the realisation emerges that, as William Zartman emphasised in 1995, the imperative of bringing the war to an end is inseparable from "a basic acknowledgement of the legitimacy of internal dissidence" and a recognition that insurgents "are assumed to have a point and represent legitimate grievances".

In his 2010 Compton Conference lecture, then UK Foreign Secretary David Miliband gave an eloquent illustration, in relation to the Taliban, of this process of legitimisation inherent in the recognition that an alternative to a military solution has to be found: "Without a genuine effort to understand and ultimately address the wider concerns which fuel the insurgency, it will be difficult to convince a significant number of combatants that their interests are better served by working with the government rather than by fighting against it. Some insurgents are committed to al-Qaeda's violent extremist agenda ... but the majority are not. They share conservative Islamic

beliefs and, linked to that, strong views about what is a just social order".

That it should have taken many years of an increasingly destructive war before the legitimacy of a negotiated settlement should become widely – even if not universally – recognised in Afghanistan confirms that wide disruption, loss of life and the elusive prospect of a victorious denouement do not translate quickly into a broad willingness to support a peace process.

But the cost of war is undoubtedly a major factor. And, in this respect, generating a critical mass of domestic legitimacy for a negotiated settlement is a particularly challenging task in low intensity conflicts, and in particular when only a limited part of the territory and a narrow section of the population are directly affected by the war.

Robert Clark identified the predicament in his 1995 analysis of precisely such a conflict: the confrontation between the Spanish government and *Euskadi Ta Askatasuna* (ETA). Describing the multiplicity of actors with an interest in the conflict, he observed: "Most of these groups have multiple priorities; a settlement with ETA is an important goal for them, but not an imperative one, and the cessation of violence is not the most important objective of any of the parties". Further: "Most of the other interested groups want an end to the violence, but on their own terms". And indeed, as pointed out by Teresa Whitfield, the issue of whether or not Spain should embark on a peace process with ETA remained highly contested until a subterranean form of "virtual peacemaking" contributed to an end to its violence in October 2011.

In this climate of conditional support for a settlement, a peace process cannot rely on legitimisation brought about by the unbearable cost of war; it is required to address squarely the task of *constructing* the legitimacy required to prevail over the supporters of the continuation of conflict.

Building legitimacy: representation, participation and performance

The Guatemala peace negotiations (1991–96) offer a good illustration of this challenge. In the late 1980s and early 1990s the notion of such a peaceful settlement faced outright hostility from the powerful economic and military establishment. Guatemalan elites were convinced that the continuation of the then very limited military conflict was a safer option than negotiations with the guerrilla leadership, which would entail precisely the legitimisation of its struggle and its political agenda.

Under these circumstances, the peace process could not thrive unless it made itself attractive to a wide spectrum of

interests, and established itself in the eyes of the public at large as a legitimate and viable endeavour. And to a large extent, over a period of six years the negotiations did succeed in this, not least by availing themselves of three classic sources of domestic legitimacy: representation, participation and performance. From 1994–96, the peace process also made ample use of a fourth source – international support and endorsement – to which I will return later.

In relation to *representation*, by the end of 1994 both parties to the negotiations had defined their process no longer as a bargaining exercise between government and insurgency over the settlement of *their* conflict, but rather as a joint effort to develop a broad national agenda covering a gamut of interests and issues, and in particular those ethnic, social and economic fractures that had plagued the formation of the Guatemalan society and state.

I recall a situation in 1996 when an observer cautioned against the excessive scope of this national agenda, only to be told by a member of the government delegation that the peace negotiations offered a unique opportunity to overcome long-standing obstacles to national development, and this opportunity could not be missed. In the same spirit of maximum representation of social interests, in late 1996, at the specific request of women's organisations, the parties included in their agreements a provision for the establishment of a Women's Forum as part of the implementation process.

With regard to *participation*, the parties agreed to the creation of a Civil Society Assembly under the leadership of the Catholic Church that brought together a wide spectrum of social, economic and religious organisations, including indigenous organisations, trade unions, churches, women's organisations, journalists and many more. The assembly was asked to put together consensus papers on each substantive issue on the negotiating agenda, and present them to the negotiating parties ahead of their own consideration of these agenda items. Further, it had the power to accept or reject the outcome of the negotiations.

The assembly had limitations in terms of participation – the powerful private sector and conservative organisations boycotted it – but its very existence consolidated the national credentials of the negotiations.

With regard to *performance*, the Guatemalan negotiations adopted a "gradualist" strategy, not unlike the South African peace process, through the implementation, well ahead of the finalisation of the negotiations, of a sequence of measures that served as a demonstration of the willingness and ability of the two parties to address their mutual concerns.

These measures served to build confidence between the two sides, but they also served to build public confidence in the peace process. Most notably, this confidence-building process included the 1994 deployment of a UN human rights verification and institution-building mission that was active throughout the country for over two years before the peace accord was signed. Thanks to this very tangible presence, which captured the attention of public opinion from its very inception, the peace process no longer appeared confined to distant hotels where negotiations were held, or to debates among non-governmental organisations (NGOs). It became a fact of life in the country, and generated a widespread perception that a watershed had been reached and the transition from war to peace was now irreversible.

The benefits of participation and representation in terms of legitimisation of a peace process are well covered in the literature on peacemaking; less so, the need for a protracted peace negotiation to *perform* in the public eye without waiting for the conclusion of the peace talks. This can be critical to public support, always threatened by the inevitable setbacks, delays and impasses that are common in any civil war settlement.

Performance legitimacy is one area where the international community can be particularly helpful. Negotiations between a government and an insurgent group ordinarily face a predicament when it comes to confidence building on a larger scale, beyond such narrow measures as an exchange of prisoners. There are only so many concessions a guerrilla group can make, particularly if it is not prepared to declare a truce or a ceasefire. And for its part the government, whose palette of confidence-building measures is obviously larger, cannot appear to be making unilateral concessions and bear alone the burden of demonstrating good faith.

Agreeing, during the negotiations, to the immediate deployment of the UN human rights mission enabled the government to give a powerful demonstration of its commitment to human rights. It was for the guerrillas a way of demonstrating their recognition of the state institutions the mission was mandated to strengthen. With the conflict ongoing, both demonstrations could hardly have been made otherwise. And, as mentioned earlier, the mission's deployment was a public demonstration of the peace process's viability that the parties to the conflict could never have accomplished on their own. When field conditions permit, there is a gamut of such international measures that can be harnessed to that end.

The dangers of overselling

Guatemala illustrates how a process that struggles against powerful detractors in a society where the war has become

relatively marginal can become a viable proposition: by broadening its agenda, expanding its political base and defining itself as a credible tool for change. But it is important to remain aware of the context in which the process unfolded, to understand its limitations and most of all to avoid the all-too-common idealisation of the quest for local legitimacy as a peacemaking strategy.

Guatemala ranks among the peace processes that made the most determined effort to broaden its agenda and to maximise civil society participation. All the same, as Conciliation Resources observed in 2009, "none of the most participative processes so far resulted in fundamental redistribution of wealth despite the fact that addressing economic inequality was cited by most armed movements and by civil society as a central goal".

And it is not only the effectiveness of this broad participation in terms of outcomes that raises questions, it is also its depth in political terms: at the end of 1996, the Civil Society Assembly unanimously endorsed the substantive accords reached by the parties. But two years later the main constitutional reforms proposed in the peace accords were defeated in a popular referendum. There are a host of reasons behind that defeat in addition to the limited representativeness of the assembly. Still, the participants in the peace process were undoubtedly overconfident in the depth of public support for the "national agenda" approved with such unanimity by civil society organisations.

The lesson is not only to guard against excessive expectations of what participation can deliver. It also concerns the critical issue of implementation. A proliferation of goals, as it is typically promoted by the search for representation and participation, is no guarantee that the issues included in the "comprehensive agreement" will actually be addressed. Quite the contrary, it can and often does result in a dispersion of the limited political capital and material resources available to implementation.

And, as important as the limited amount of political capital available to support reform, is the amount that is devoted to see it fail. In that sense, a comprehensive agreement is at risk of suffering the same fate as the comprehensive approaches to reform that Samuel Huntington has described: "They failed because their efforts to attempt so much mobilised so many opponents. Virtually all the social groups and political forces with a stake in the existing society felt themselves threatened".

The Guatemala peace process followed the path of the broadest possible domestic legitimacy – and under the political and military circumstances I am not sure another

option was available. But it did pay a price with an outcome that the domestic political market could not bear once the war was over. At any rate, from an implementation viewpoint a tighter peace agenda, more strategic and more consistent with the actual balance of political forces, might have been more appropriate, and less likely to suffer a backlash of frustrated expectations among its supporters. In this respect, the pursuit of constitutional reforms in a country where these required approval through referendum may simply have been a bridge too far, even though reforms enjoyed significant popular backing.

The lesson from the Guatemalan experience in relation to local legitimacy is twofold: broad legitimacy is so critical to the success of a peace process that when it does not emerge as a by-product of the unbearable cost of war, it has to be constructed. At the same time, a strategy to gain national legitimacy also involves trade-offs. It cannot be pursued in a linear "more is better" way. Context and the complex interplay of political and social forces are paramount.

International community and legitimacy

As mentioned earlier, international support is undoubtedly another significant source of domestic legitimacy. Consistent political and material support from influential states and international organisations can help reassure the supporters of the peace process, deter its detractors and sway the undecided. Would the Guatemalan peace process have survived politically without the unambiguous and public support of such long-standing influential foreign actors as Mexico, Spain or the United States?

One would certainly be entitled to suggest that if the peace process had not been completed before 2001 and the start of the Global War on Terrorism, it could have suffered major setbacks in the post-9/11 international climate, when the rhetoric of counter-terrorism displaced the earlier strong commitment to the negotiated settlement of civil wars.

Paradoxically though, while the international community can be a major contributor to domestic legitimacy, it seems to become more and more grudging in conferring international legitimacy to peace processes. The 2012 United Nations Guidance for Effective Mediation summarises perfectly that development:

> Mediators [...] conduct their work within the framework constituted by the rules of international law that govern the given situation, most prominently global and regional conventions, international humanitarian law, human rights and refugee laws and international criminal law, including, where applicable, the Rome

Brigadier-General Rodriguez of the United Nations Verification Mission in Guatemala (MINUGUA) presents a Unidad Revolucionaria Nacional Guatemalteca (URNG) member with his certificate of completion of the demobilisation process, 1997. © UN Photo/John Olsson

> Statute of the International Criminal Court. In addition to binding legal obligations, normative expectations impact on the mediation process, for example regarding justice, truth and reconciliation, the inclusion of civil society, and the empowerment and participation of women in the process.

And, as everyone with some experience of peacemaking and peacekeeping knows, this is only a sample of the international demands ordinarily placed on peace processes.

Faced with such an all-encompassing set of international norms, one may wonder how much substance is left in the concept of "national ownership", or what party to a conflict would want to involve the international community in peace negotiations when it is committed to such an intrusive agenda of its own. In addition, because you cannot escape the plague of double standards in international relations, it is wise to assume that when powerful members of the international community will find it imperative to bring to an end a civil war that affects them directly, the international community will not be so demanding in relation to the "normative expectations" to which the peace negotiations should be subjected.

But the more important question is: what relation do these normative expectations bear to peacemaking? Does consistency with this normative framework contribute to reinforcing "the durability of a peace agreement" as argued in the UN Guidance? In their 2002 analysis of the similar normative framework that came to be developed for peacekeeping operations, Steve Stedman and George Downs did not think so, and they did not mince their words:

> Mandates for peace implementation missions in the 1990s have suffered from an inflation of goals – goals that have been included in the mandate less for realistic calculations of possible accomplishments, than as a way of appeasing non-governmental organisations and domestic public opinion. As the

1990s progressed, the lobbying of NGOs, especially those involved in human rights, pressured member states to include more and more sub-goals in UN peace operation mandates.

The intervention of politics aside, it would be unfair to claim that expectations listed by the UN Guidance are unrelated to peacemaking. Many of them are *issues* that will come up in the course of a peace process. They often have developed local constituencies and are at the heart of local dilemmas. Their degree of relevance will vary according to context, but they will most likely feature prominently in Guatemala-type situations, where the peace process must embark on the construction of broad national legitimacy in order to prevail.

But they are not *peacemaking norms*. A quick comparison of peace processes over the past 25 years shows no evidence that the absence of amnesty, the existence or absence of provisions on truth and reconciliation, or the inclusion of civil society have made a difference in terms of the durability or sustainability of those peace processes. What past experience does bear out is the complexity of the choices each one of these issues involves.

As discussed earlier, inclusivity has its upsides and its downsides, to be carefully balanced in each particular situation. In some contexts, truth-seeking can result in acute polarisation rather than reconciliation because no amount of independently established facts about the past will cause the main war narratives, and the core values they carry, to fade away in the immediate aftermath of a violent conflict.

And the issue of criminal prosecution for past crimes raises the most daunting challenge of all, because no party to a conflict – short of capitulation – will sign a peace agreement if they expect that criminal prosecution and imprisonment will follow. The Guatemalan army would certainly not have signed the peace accords in 1996 had they expected that senior officers would end up being prosecuted on charges of genocide.

The important point is that the international community should tread much more carefully than it is doing nowadays with the mushrooming normative framework to which it claims to subject peacemaking. However attractive it may be to fuse peacemaking requirements with all the other values the international community currently stands for, this temptation must be resisted, not embraced.

And current international demands need evidence-based validation before they need further advocacy. What Priscilla Hayner said in 2002 in relation to truth-seeking has broad application in the field of normative peacemaking today:

"Some of the most oft-repeated statements, and those that we perhaps most wish to be true, are due careful scrutiny. Indeed they don't always hold up well even under a test of anecdotal evidence".

Recovering mediation space
From George Modelski in 1964 to William Zartman in the 1990s, and a wide range of others who have followed in their wake, scholars have attempted to show how and why the international community can play a unique role in bringing civil wars to a negotiated settlement. Together with the lessons learned from the post-Cold War peacemaking experience, this heritage was nearly lost to policy circles in the decade following 9/11.

The fundamental premises of negotiated settlements – dialogue with insurgencies and recognition of their grievances – were anathema to the international counter-terrorist consensus. Countries that would have been active Friends of peace processes a few years earlier instead championed the establishment of "terrorist lists". So did the UN, which should have known better based on its extensive experience with peacemaking in the 1990s. The retreat from the ethos of negotiations went so far as to lead Charles King to conclude in 2007 (under the telling sub-heading *Returning to Victory*?) that "the moment when policymakers worked at quelling wars – rather than just taking sides in them – may well have passed".

With the failure of the military option in Afghanistan and the dubious outcome of military interventions elsewhere, the counter-insurgency discourse appears to be losing its ascendency and the principles of peacemaking are making a comeback. If the international community is ripe again for a constructive involvement in ending civil wars, if the situation in Syria, Afghanistan and elsewhere requires it, it would be a dramatic disservice to peacemaking if the mediation community – in governments, international organisations and NGOs – now at liberty to engage, should allow itself to be constrained, no longer by international opposition to negotiations, but by well-meaning but ill-founded prescriptions for international legitimacy.

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Colombia: legitimacy, women and the Havana peace talks

Rosa Emilia Salamanca

Ending the armed conflict in Colombia with the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) is not only legitimate but essential. Fifty years of war have taken countless lives, displaced countless inhabitants, caused countless disappearances, and polarised society. And if ending the conflict is essential, the peace talks between the government and the FARC that began in Havana in February 2012 are legitimate.

But we all know that an action's legitimacy does not make the action any easier. When armed struggles first emerged in Colombia and Latin America, many people around the world saw them as necessary to achieve social and political transformation. For many, therefore, the struggles were legitimate, although not all of them were successful or ended well.

Today, most Colombians do not see the FARC as an armed group that will transform the country and its people. In the post-9/11 counter-terrorism era, the FARC is associated with drug trafficking and narco-terrorism. Colombian society as a whole does not believe in armed conflict as a way to emancipate the underprivileged. Society has become anaesthetised to violence, but rejects rebel actions.

President Juan Manuel Santos was Defence Minister under President Alvaro Uribe and some Colombians still look at him with mistrust and suspicion, despite his efforts to distance himself from his past. Uribe has claimed that his political support for Santos clinched his election victory. The shadow of the ex-president is everywhere and carries a powerful right-wing agenda. Uribe constantly attacks the Havana negotiation process because he finds it completely illegitimate to negotiate with the FARC, which he portrays as criminal and terrorist, and to be dealt with by force.

Legitimacy and the Havana talks

Some good choices have been made regarding the Havana negotiations: the way in which preparatory talks were kept discreet; the public acknowledgement of key aspects of the armed conflict – the victims and dispossession of lands; and the recognition of the security challenges faced by human rights advocates.

However, the general understanding among Colombians of the Havana negotiations is of a distant discussion among elites – government and business elites and the FARC

leadership. But this does not mean the negotiations are wrong. Precisely because they are between elites and take place outside Colombia, the talks may in fact deliver agreement on key issues.

The six agenda points of the talks address major challenges of participation, human rights, economic justice, social development, active regional and international engagement, and extending democracy.

> **Today, Colombian society wants more than an elite negotiation. It wants a profound transformation of the structural conflict drivers. This is the difference between the Havana negotiations and a peace process for Colombia**

From the perspective of Colombian society, however, the Havana negotiations are primarily a process to end fighting between the government and the FARC. But is this a peace process? The big question is: how to transform the output of the negotiating table in Havana into an input into the broader peace process that Colombia needs, and which can be validated by the Colombian people?

Today, Colombian society wants more than an elite negotiation. It wants a profound transformation of the structural conflict drivers. This is the difference between the Havana negotiations and a peace process for Colombia. Many other peace agreements have been signed, and as a result of some of them Colombia got a new constitution in 1991. But now we need more.

Women take part in a peace march in Bogota on 9 April 2013 to express their support of the negotiations to end the Colombian armed conflict and to claim their participation in the process. © Guille Legaria/Demotix

Very few Colombians today think that an armed approach is a legitimate way to engender change. But equally few consider that the political parties are legitimate, that Congress is legitimate, that the government is legitimate, or that the justice system is legitimate. There is a serious credibility crisis and intense scepticism about Colombian institutions.

Representation and the women's movement

Colombia is a country with problems: an internal political war, drug trafficking, and criminal and neo-paramilitary groups. In some parts of the country, people are overwhelmed by fear, and the country has an outdated and ineffective economic model. An agricultural strike in August 2013 shook the country and reminded people of the key challenges of justice, redistribution, trade and income generation. The place for addressing such issues, however, is not the negotiation table in Havana, but in a broader peace agenda for Colombia.

Colombian civil society is not represented by guerillas or armed groups. The different civil society movements are essential to help resolve fundamental peace issues. Take the case of women. The priorities of women's or feminist movements are not represented at the table in Havana. Why not? Because they are not the sort of political issue being discussed there. The negotiators have not had the eyes to see or the ears to hear these seemingly new perspectives of exclusion.

Women's movements have opinions about what should be discussed. They have participated in public forums, in summits and in international advocacy, but their demands do not stop at the table in Havana. Fundamental issues such as violence against women, agrarian reform, extending democracy, and the ethical crisis that is destroying us do not end in elite discussions, but are part of a broader agenda for peace.

Following women's mobilisation and advocacy, President Santos appointed two new female members to the government's official negotiating team for the first time in November 2013. This is a step forward and an example for other parts in the world. It is appreciated as a signal that women's demands are being recognised. But women want to be significant actors in defining Colombia's future.

Discussions in Havana include the provision of sufficient guarantees for FARC members to return to society, including a transitional justice arrangement. Women demand that transitional justice sets very clear conditions when facing crimes against women, internationally recognised today as torture and crimes against humanity. A key step once the agreements have been reached will be a public discussion to legitimise them, and a quick transition into a broader peace process for social change. This is what the women's movement in banking on.

The Havana negotiations are legitimate because they are seeking to end a 50-year war. But their continued legitimacy will be measured by their acceptance by Colombian society and their connection to a broader peace process. Many women are mobilising for peace, seeking opportunities for substantive change. In October and November 2013, women from diverse sectors of Colombian society launched new peacebuilding initiatives: the women's summit with more than 400 delegates from all over the country; the women's march on 22 November; and the Ethical Pact for a Country in Peace, which sets out a 15-point petition to transform social and political attitudes to promote lasting peace in Colombia. This is a petition that anyone can sign (see *Further reading*). The Havana negotiations must become the foundation for the transformation of structural conflict drivers to ensure new opportunities for a society that is both frightened and corrupt, both victimised and victimiser.

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Philippines: women and inclusivity in the Mindanao peace process

Yasmin Busran-Lao

The armed conflict in Mindanao in the Philippines has both vertical and horizontal dimensions: a secessionist conflict against the Philippine state that has lasted nearly 40 years, and a conflict among the "Tri-people" of Mindanao: the Moros (indigenous tribes who profess the Islamic faith), the Lumads (indigenous tribes who continue to practice their ancestral beliefs), and the settlers (essentially Christians originating from the islands of Luzon and Visayas). The complex peace process correspondingly entails both a formal peace process with the government and an informal one involving the Tri-people.

The Framework Agreement on the Bangsamoro (FAB – see Key texts) uses "Bangsomoro" to refer both to the people and the political entity. In this article, I use "Moro" and "Bangsamoro" to refer to the collective identity that the Moro National Liberation Front (MNLF) and its splinter group the Moro Islamic Liberation Front (MILF) employ in their peace agreements when they refer to the indigenous tribes in Mindanao who profess the Islamic faith.

Women in the peace process

Women have played prominent and meaningful roles in both the formal and informal tracks of the peace process. In the formal track, the Office of the Presidential Adviser on the Peace Process (OPAPP) is headed for the second time by Secretary Teresita Quintos-Deles. This is a cabinet rank directly under the Office of the President and is tasked with the "coordination and implementation of all the components of the comprehensive peace process".

Secretary Quintos-Deles oversees five peace "tables": three involving the Communist Party of the Philippines-National Democratic Front (CPP-NDF) and its splinter groups; and two involving the MNLF and MILF. The processes with the MNLF and the two Communist splinter groups are essentially implementation processes, since peace agreements have already been signed. The processes with the MILF and the CPP-NDF are still at the talks stage.

The government peace tables for the MILF and CPP-NDF each include two women who are respected civil society leaders. On the CPP-NDF table are Jurgette Honculada, veteran labour and women's rights advocate, and Maria Lourdes Tison, civil society peace and environment advocate. Professor Miriam Coronel-Ferrer, a well-known

expert on the Mindanao conflict, is current chair of the negotiating panel on the MILF table, which also includes the author of this article, a Muslim women's rights leader. The OPAPP technical and legal support staff of all five peace tables are also headed by women.

In 2010, the Philippines became the first state in Southeast Asia and the eighteenth in the world to develop its National Action Plan for UN Security Council Resolution 1325 on women and peace and security. This transpired through collaboration between OPPAP and Women Engaged in Action on 1325 (WEACT 1325), a national umbrella group of women's peace organisations in the Philippines. Other Southeast Asian countries' women's peace organisations have subsequently invited WEACT 1325 members to act as resource persons in the crafting of their own national action plans.

Women's evolving role

During seventeen years of peace talks with the government, the MILF peace panels and support staff were all-male delegations. It was only in 2012 that they for the first time included two women in their technical staff; one of these women, Attorney Raissa Jajurie, now sometimes sits at the negotiating table as an alternate panel member whenever one of the male members is not around.

Women's expanding role in peace processes in the Philippines has accompanied the increasing emphasis on inclusiveness and civil society engagement more broadly. During the post-Martial Law transition to democracy by the Philippine government in 1986, a strong sense of national unity, reconciliation and the desire to have peace emerged among various sectors of the Philippine society, particularly among the Tri-people of Mindanao.

Various civil society stakeholders from both inside and outside conflict affected-areas have established peacebuilding initiatives. Some examples include: academia (Notre Dame University and Mindanao State University), religious groups (the Bishops-Ulama Conference), non-governmental organisations (Mindanao Peace Weavers, the Mindanao Peace Caucus, and the Mindanao Solidarity Network), and indigenous peoples' organisations (the Tiduray-Lambangian group). Women play decision-making roles in many of these, either as the head of the organisation like Attorney Mary Ann Arnado of Peace Caucus, or as founding members who sit as advisory board members.

The Secretary of OPAPP and the members of the peace panels have developed regular consultations with the Peace Committees of both the House of Representatives and the Senate. Some of the members of these committees have participated in formal peace talks in Kuala Lumpur as observers, as have the current Regional Governor of Autonomous Region in Muslim Mindanao (ARMM) and the five Provincial Governors of ARMM. This is in addition to the peace panel members' consultations with the different local government units and academic institutions in ARMM. Some of the members of the Peace Committee of the House of Representatives are women, and women are also represented in local government units and academia. Rounds of talks in late 2013 included local civil society organisations invited as observers, most of whom were women.

Framework Agreement on the Bangsamoro: institutionalising inclusivity

Heeding President Benigno Aquino's instruction that the peace process with the MILF be inclusive and transparent, the 2012 FAB recognises women's basic right to "meaningful political participation, and protection from all forms of violence", and requires that the rights of indigenous and non-Bangsomoro peoples be respected.

In order to try to establish inclusivity, transparency and ultimately accountability in the substance, process and implementation of the FAB, the agreement provided for transitional mechanisms such as the Transition Commission (TC), tasked with drafting the Basic Law for the Bangsamoro, and the Bangsamoro Transition Authority, which will serve as the interim government in the Bangsamoro until national elections in 2016.

These transitional mechanisms could serve as strong platforms for greater inclusivity among the stakeholders in the Bangsamoro peace process. For example, the TC is a very good venue for intra-Bangsamoro dialogue where all the splinter groups of the MILF, MNLF and their communities can participate and converge their agendas.

Moro women attending the Bangsamoro Leaders Assembly in Western Mindanao, July 2012. © Emma Leslie

The TC also provides a useful platform for broader Tri-people dialogue. The 15 members of the TC represent the various stakeholders: the MILF; recognised allies of the MNLF; indigenous people; settlers; and nominees of provincial governors of ARMM. Of the fifteen members, four are women, including the representative of the indigenous people.

The international community has always played a significant role in the Bangsamoro peace process, starting with the Organisation of Islamic Cooperation in its role as facilitator with the MNLF. Malaysia facilitates the MILF peace process, and there are other support structures such as the International Contact Group, the International Monitoring Team, and the recently convened Third Party Monitoring Team to assist implementation of the FAB. The Independent Commission on Policing has also been established as part of the transitional mechanisms of the FAB, with an international expert as head; its government representative is a woman Police Director, Lina Sarmiento. The International Contact Group, established in 2009, was the first formal hybrid mediation support initiative. It comprises four states (Japan, Saudi Arabia, Turkey and the United Kingdom) and four international NGOs (Conciliation Resources, Muhammadiyah, The Asia Foundation, and the Centre for Humanitarian Dialogue).

The Basic Law, which it is hoped the TC will submit to Congress by the end of 2014, could serve as a platform for a national dialogue that would address the vertical and horizontal dimensions of the Bangsamoro armed struggle. Ultimately, this is where the issue of inclusivity and legitimacy of the Bangsamoro peace process lies – as well as the prospect for a lasting peace in Mindanao.

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Civil society in peace accords and the durability of peace

Desirée Nilsson

Over the last decade, armed conflict databases have become ever-more sophisticated and popular among academic researchers and policymakers. This box presents a brief synopsis of analysis based on data from the Uppsala Conflict Data Program (UCDP) regarding the relationship between civil society inclusion in peace agreements and the durability of peace.

Is peace more likely to prevail if the agreement includes civil society actors? This box summarises research findings from an analysis of 83 signed peace agreements from 40 different civil wars between a government and one or more rebel groups between 1989 and 2004. Texts of peace agreements were derived from the UCDP. The study shows that the inclusion of civil society in peace agreements significantly increases the chances that peace will last.

Broadly speaking, arguments regarding the value of including civil society in peace agreements fall into two camps: pro – to garner broad support for the peace process; and con – that increasing the number of actors complicates negotiations. The research focused on whether the inclusion of civil society in peace accords affected the conflict behaviour of the conflict parties following the peace agreement. Civil society was conceived as the range of voluntary organisations in society: for instance, religious associations, women's organisations, human rights groups and trade unions. Civil society groups were considered to be included in a peace agreement when, based on the text of the peace agreement, they had a role in drafting the agreement, or the agreement stipulated that they were to participate in the subsequent peace process. Durability was understood in terms of the number of years following the signing of a peace agreement that the conflict parties did not engage in armed conflict – defined as more than 25 observed battle-related deaths in a year.

Analysis of the 83 peace agreements from the UCDP database showed that one-third (28) included civil society in some way, while two-thirds (55) did not. Notably, in the peace agreements where civil society actors were included, the involvement could be more or less extensive; sometimes the actor had a more prominent role by participating in the formal negotiations and in other cases the agreement merely called for the involvement of civil society. The analysis also showed that of the 28 peace agreements that involved civil society actors, 22 also included one or more political party – for example in Burundi, Colombia, the Democratic Republic of Congo, Guatemala and Mexico. Peace settlements that involved civil society but did not involve political parties included the Mindanao Final Agreement (1996) and the Bougainville Peace Agreement in Papua New Guinea (2001).

In terms of durability, the results show that if civil society is included in a peace agreement the risk of peace breaking down between the signatories is reduced by 64 per cent. This finding suggests an important role for civil society in peace processes: we may expect that if actors from civil society are allowed a place at the negotiation table, or are stipulated to play a role in the implementation of an agreement, the post-agreement peace among the signatories stands a better chance of lasting. Even if other factors that can explain why peace prevails are taken into account, such as the level of economic development or the intensity and duration of conflicts, civil society inclusion still plays a significant role. This research also invites further investigation to unpack the relationship more closely, for example by differentiating between civil society actors, roles and levels of engagement, and establishing specifically why inclusion affects durability in some cases, and why it does not in others.

This article is based on research originally presented in the journal article "Anchoring the Peace: civil society actors in peace accords and durable peace" by Desirée Nilsson, published in 2012 in International Interactions Vol. 38, No. 2: 243–266. Reprinted with permission from Taylor & Francis.

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Elections in the wake of war

Turning points for peace?

Timothy D. Sisk

The 7 July 2012 elections in Libya were hailed locally and internationally as a significant turning point toward peace. The polls, barely a year after the violent ousting of Colonel Muammar Gaddafi, saw 200 candidates elected to the General National Congress, which would serve both as an interim parliament and as a constitutional assembly to guide the country into a new era of democracy, peace and stability.

Remarkably, the elections were comparatively peaceful. A small but significant boycott centred on the oil-rich city of Benghazi. The elections were carried out mostly by Libyans, reflecting a high degree of local ownership, and were hailed as a "light footprint" success for the United Nations Support Mission in Libya. People who had served in the Gaddafi regime were banned from participation, but the election was otherwise largely inclusive. Peace, however, has not come easily to Libya. Armed militias continue to hold considerable sway and the central government has yet to extend its authority across the country. Without a central system of accountability, crimes and insecurity continue, including widespread torture in informal prisons run by militias. The elections do not appear to have made much difference to most Libyans.

Do post-war electoral processes advance peace and democracy? Or do they lend artificial legitimacy to dubious governments? Do they even induce further violence – instigating conflict, exacerbating social differences, and abetting ethnic, sectarian or religiously inspired "entrepreneurs" who mobilise around society's fault lines in pursuit of personal power?

Elections can be a turning point either away from or toward peace: much depends on the why, when, and how of specific electoral processes. From the celebrated 1989 elections that brought independence to Namibia, to Libya in 2012, to the looming presidential elections in Afghanistan in 2014, debates continue about whether and how electoral processes help advance legitimate governance in countries emerging from conflict.

Compounding conflict

The controversial elections in Côte d'Ivoire in December 2010, verified by the UN but disputed by local parties, led to violence that cost an estimated 3,000 lives and displaced nearly half a million people. The genesis of the poll can be traced to a commitment in the 2003 Paris Peace Accords. Delays in holding the elections exacerbated divisive factionalism among the principal contenders for the presidency.

In the past, international actors have prematurely pushed election processes. The 1996 elections in Bosnia and Herzegovina, for example, were held a year after the Dayton Peace Agreement according to a timetable that had more to do with domestic electoral politics in the United States than

any objective assessment of the conditions on the ground. The Bosnian elections arguably exacerbated conflict as the electoral process effectively legitimised nationalist political elites and factions with a highly dubious commitment to peacebuilding.

But it is not the case that post-war elections are always externally driven. The impetus for quick elections after the guns fall silent often comes from within, including from those parties and factions who believe they will win and hope that their rule can be legitimised by an external pronouncement that the vote credibly reflected popular preferences. In fact, donors often seek to slow down the election timetable, to improve the technical aspects of elections (particularly voter registration processes) and to encourage the parties to adopt an electoral system that will yield inclusive parliaments and realise other international standards, such as the inclusion of women.

Political elites in societies divided along ethnic, sectarian or religious lines may have incentives to "play the ethnic card" in electoral processes as a way to induce fear among the population and to manipulate support for more extreme positions, as Jack Snyder has previously described. This poses a security dilemma for other groups, who counter with their own claims, thereby generating a centrifugal or outward spin to the political system. Under such conditions of deep social division, elections can become something of an ethnic census.

The problem of elections inducing conflict is directly related to three additional factors. First, losing an election may jeopardise personal or group security. This problem is particularly acute in presidential elections like in Côte d'Ivoire, which are perceived as winner-takes-all. In Iraq, insurgents who expected to be systematically excluded from power mobilised to disrupt governorate or provincial elections in 2013.

Second, parties may resort to political violence as a strategy to influence the electoral process or outcome. In parliamentary elections in Afghanistan in 2005 and 2010, insurgents targeted election workers (both international and Afghan) and sought to disrupt balloting as a way to undermine the legitimacy of the process and of the regime of President Hamid Karzai.

Third, where capturing state power brings opportunities for enrichment, such as access to revenues from natural resource exports, this creates an incentive to use violence, intimidation and electoral fraud. Sudan's elections in 2010 are a case in point: the regime used a wide array of tactics to ensure that the ruling National Congress Party would stay in power and retain access to revenue derived from exports of crude oil.

Authorising autocracy

Post-war elections can also provide a cloak of legitimacy to governments that have won militarily on the battlefield. For example, the *Economist* reported that 2013 parliamentary elections in Rwanda were used to legitimise the rule of the Rwandan Patriotic Front and President Paul Kagame in a poll in which opposition forces had been imprisoned or otherwise suppressed for fostering ethnic "divisionism".

The Rwandan elections are indicative of a broader concern that many governments with dubious democratic credentials have used elections to mask autocratic rule. Such cases of "facade democracy" reflect how ruling elites have learnt the electoral game and devised ways of controlling, managing and ultimately determining the outcome of elections well before the first vote has been cast.

In Angola, Cambodia and Zimbabwe, elites who prevailed in conflict have used the levers of state power – such as control of the judiciary, manipulation of the electoral system, restrictions on or vetting of candidates, or falsifying the voters' roll – as a means to prevail in elections. International efforts to monitor elections and prevent electoral fraud are also often highly constrained or "stage-managed". In Zimbabwe, monitors with the Southern African Development Community have been prevented from revealing electoral fraud by the sensitivities of regional and neighbourhood politics.

When electoral processes fail to be sufficiently inclusive, or when they are managed and controlled by wily governments seeking to predetermine their outcome, elections can lend a facade of legitimacy to otherwise undemocratic ruling elites.

Promoting peace

International law in effect provides for a right to democracy. Instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (particularly Article 25) include specific rights to freedom of association, to choose representatives, and to participate in elections. It is well-nigh impossible for external peacebuilders working for the UN, for example, to say that any country or any person is not ready for democracy when it is codified in international norms – including in the charters of European, Latin American, and African regional organisations.

But electoral processes can provide a turning point toward more "normal" politics and peace. The 1994 elections that signalled an end to apartheid in South Africa are often seen as archetypal. Despite a very bloody transition in which some 14,000 people lost their lives in widespread political violence, the elections led to the creation of a constitution-making body and interim parliament that eventually produced a new constitution in 1996, and which many saw as the basis of a new social contract for a long-divided society. There had been widespread fears that the elections would generate new conflict; in fact, violence diminished dramatically and President Nelson Mandela's new government enjoyed broad internal and external legitimacy.

> **When electoral processes fail to be sufficiently inclusive, or when they are managed and controlled by wily governments seeking to predetermine their outcome, elections can lend a facade of legitimacy to otherwise undemocratic ruling elites"**

Electoral processes can include public decision-making – usually by majority rule – through a referendum process designed to lend direct public legitimacy to a peace agreement. Following 27 years of conflict in Northern Ireland, a 1998 referendum revealed widespread public support (71 per cent) for the Good Friday Agreement (Belfast Agreement) reached earlier that year. Likewise, the 2011 referendum on independence in what was to become South Sudan was the culmination of a multi-year peace process that also produced the Comprehensive Peace Agreement of 2005. Nearly 99 per cent of the southern electorate cast votes in favour of independence from the north, lending strong (but perhaps not enduring) legitimacy to the ruling Sudan People's Liberation Movement regime.

Properly designed and implemented elections can lead to broader inclusion in governance for marginalised and historically disadvantaged groups, particularly women and minorities. Rwanda's managed elections have helped women to join the political elites – Rwanda has the highest proportion of women in government according to the International Parliamentary Union.

Similarly, previously excluded minority voices can be brought into politics through mechanisms such as low-threshold proportional representation. In Nepal, following the 2006 Comprehensive Peace Accord, the 2008 Constituent Assembly elections led to the inclusion of 25 political parties in the constitution-making process, among which were parties representing Madhesi groups from the Terai region and indigenous and minority groups that had suffered discrimination during the royalist *ancien régime*. That process failed in the end, but the 2013 elections, which were mostly peaceful, may give Nepal a new chance at creating a Constituent Assembly to draft a new charter for this deeply divided society.

Lessons for peacebuilding

Electoral processes are too complex and diverse, with too many moving parts and too many variations of experience and examples, to warrant generalisation. Much depends on the nature, trajectory and manifestations of the conflict, the ways in which elections are defined and agreed in peace accords, and the nature of international–local partnerships for election administration. Each and every context deserves very specific assessment across a wide range of factors, and strategies for intervention to tip the balance of any electoral process toward peace must be carefully designed based on the outcomes of such assessments.

The electoral system is, as Giovanni Sartori has said, the most manipulable element of politics. Whichever electoral system is ultimately chosen for any given electoral cycle, it must be based on a broad consensus to ensure it is acceptable – across political parties, civil society, academia, and traditional or informal leaders. Such acceptance is only likely to be found when the electoral system is highly proportional.

The choice should belong to local stakeholders. External partners can encourage a system that provides for the broadest possible inclusion in post-election governing bodies as the most important ingredient to sustainable peace. This means promoting a mindset for inclusion and proportionality and paying attention to how the choice of election system leads to stable and capable governing coalitions. As in Liberia, majority-rule systems that are centrist and inclusive can lead to a more "developmental state".

In Nepal, failure to build a stable, inclusive nationally-oriented governing coalition has impeded development. Political polarisation along identity lines meant that the Constituent Assembly ran aground over whether Nepal should adopt an "ethnic federation". The most important challenge for Nepal is not about whether to have elections, but how to balance the need for inclusion and representation across a wide range of social cleavages with the need for stable government that is focused on development and can provide inclusive economic growth and a shared national vision. Given the likelihood that there will be no majority in the new constitutional assembly, the focus in Nepal will likely progress from elections to coalition building.

It is vital that elections do not themselves encourage violence. Preventing election-related conflict requires a continuous programme of work focusing on a range of issues including the legal and constitutional framework, election-related security, electoral management bodies, civil society training and engagement for monitoring and observation, dispute resolution, informal "infrastructures for peace", and public awareness campaigns demanding a peaceful and credible election. New social media approaches have rightfully gained attention in recent years as innovative ways to more effectively link citizens directly to monitoring and accountability for the electoral process.

The credibility of the state runs much deeper than the fleeting credibility of elected elites. Yet Libya shows that electoral processes are essential components of modern democracy for many people. The internationally recognised National Transitional Council led the election process in Libya, and the UN was able to provide critical technical and administrative assistance. But Libya also challenges common assumptions around the need for statebuilding before democracy or peace. Perhaps it would have been wise for the Libyans to have engaged in security sector reform (integrating the militias into the state), rather than rushing into elections so quickly after the end of the civil war. In the end, it was their own decision.

Today, the confluence of global norms and local expectations means that elections are essential to peace agreements and their successful implementation. But the Libya case acts as a reminder that elections are but one of many turning points in transitions from war to peace and a democratic and capable state.

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Section 2

National Dialogue

National dialogue and legitimate change

Hannes Siebert

This section of Accord 25 explores how national dialogue processes deal with deep-rooted and protracted conflict through state reform and constitutional change. The cases in this section together with others contribute to a mounting body of experience suggesting that strong and inclusive national dialogues based on national ownership and political inclusion hold immense potential to facilitate fundamental, sustained and just change.

Uprisings around the world over the past three decades have seen mass people's movements claiming back their history from autocratic and oppressive powers. New political forces and popular movements have been redefining nationhood, innovating new forms of representative government and reconsidering the nation-state concept. And many among them have been diligently working to transform and advance their societies from within.

The role of non-state actors has also grown as they have struggled to protect minority rights and fight political and economic oppression. Many non-state actors have been barred from negotiation processes by state antagonists or dominant international actors. This exclusion has often accompanied a counter-terrorism agenda and has been applied selectively, despite the fact that many non-state actors are credible and legitimate representatives of groups that have suffered state oppression and discrimination. Non-state actors have often resorted to armed struggles because states have refused to listen and address grievances through dignified mechanisms and credible processes.

Accompanying the rise of these movements has been the evolution of inclusive and participatory mechanisms for change. In particular, processes of national dialogue have developed as in-country tools for political transformation, whereby local and national peacemakers and concerned

parties work together to resolve their conflicts through the creation of joint instruments and supporting peace infrastructures.

Emergence of national dialogues

National dialogues have been used in one form or other for several centuries, but recently there has been a profusion of public consultations or political dialogues that go by this name. National dialogues and constitutional change processes are today taking place or evolving in Nepal, Burma, Tunisia, Egypt, Yemen, Lebanon, Morocco and Jordan, and are gradually emerging in Libya, the Basque Country and Syria.

Several forms of national dialogue have developed from change processes. The Yemen and Burma processes discussed in this section are *formally mandated national dialogues*. As two of the most significant current examples of such processes, they emerged after civil wars, successful people's uprisings or resistance, a ceasefire (13 signed agreements in the case of Burma), or a peace accord (the Gulf Cooperation Agreement in the case of Yemen). These formal processes are mandated to develop constitutional frameworks as a basis for a new constitution to be adopted by their countries' parliaments. The third case in this section, from the Basque Country, can be described as an *informal national dialogue* that has been incrementally building foundations for change and will

hopefully result in a formal process that can effect desired constitutional and political reform.

In all three cases the existing constitutional frameworks and mechanisms were not acceptable or were defective and needed to be changed through inclusive extra-constitutional decision-making mechanisms that represented parties both inside and outside the constitutional representative bodies (parliament and government). A major challenge that each of these processes has faced has been how to link change processes to existing constitutional bodies and stimulate real structural reform.

Looking at the issues on the agenda and the work of the various committees and bodies, mandated dialogue structures have not only provided new constitutional frameworks to address the root causes of conflict or constitutional failures, but have also served a much broader function: to provide spaces and instruments for reconciliation, developing joint visions between former enemies, and slowly evolving an understanding of the needs, perceptions and perspectives of the "other".

" **Processes of national dialogue have developed as in-country tools for political transformation, whereby local and national peacemakers and concerned parties work together to resolve their conflicts through the creation of joint instruments and supporting peace infrastructures**"

We have seen in the case of Yemen and other historic examples such as South Africa and Nepal that dialogue structures are by their nature vulnerable and imperfect instruments. In Yemen some of the key issues were not yet resolved as the National Dialogue Conference reached the end of its mandated period at the end of 2013. The outstanding disagreements will require a restructured mechanism.

In South Africa, the Convention for a Democratic South Africa – the formally mandated multi-party forum for negotiations – failed twice before it delivered a final framework at its third attempt. And in Nepal, although multi-party talks were chaotic and unstructured, senior leaders from all parties nevertheless negotiated directly for weeks until they reached agreement on the challenges they faced. To the leaders in these transformative dialogue processes who carry the burden to deliver peace on behalf of the people or the ideals they represent, peace and dialogue structures are temporary symbols of hope and an alternative to armed conflict.

To ensure formal dialogue structures function well, and to create a conducive environment for breaking deadlocks, generating options and jointly creating innovative solutions, a number of safety nets or peace support structures have been developed to backstop national dialogue processes. In Burma the stakeholders established joint ceasefire monitoring and peace structures; in South Africa they developed the National Peace Accord structures; in Nepal the parties and government created a Ministry for Peace and Reconstruction and an informal dialogue forum – Nepal Transitions to Peace; and in Lebanon the parties created the Common Space Initiative as a permanent knowledge-based dialogue structure to address root cause issues and advise the formal National Dialogue process.

The case study on the Basque Country in this section describes the role of the Social Forum as an informal dialogue structure formed initially to resolve immediate issues, but which has also created the foundations for a future formal dialogue and which would be ideally placed to function as a safety net for any ongoing process.

Authentic national dialogues as mechanisms for legitimate change

In the midst of serious conflicts or deadlocks, national stakeholders are often tempted to adopt or explore "good models" that have worked in other countries. Good models, however, can be deceptive, as it is not always clear how these models evolved and what the nuances and particularities were in the context in which they developed.

Sometimes we would be better served by learning from our own and others' failed models and experiences. Further, many cultures in the world have practices, rituals and assets that they have drawn on for centuries to survive. Building on and strengthening cultural assets in societies in conflict is as important for developing a good national dialogue as drawing on best practice models from relevant international experiences.

The most effective dialogue and peace structures are those that are carefully designed by national stakeholders themselves to collectively address their conflict and broken constitutional instruments. They are the authentic structures and common spaces that have grown into an "immune system" that strengthens a society from within.

NATIONAL DIALOGUE PROCESS TOOL

KEY COMMON ELEMENTS OF NATIONAL DIALOGUES
- Mechanism bringing all major political decision makers and stakeholders together after serious conflict or when constitutional bodies (e.g. Parliament, Government) and constitution fail to address needs, rights and expectations of all groups and communities
- National dialogue constitutes political representation and reflects all major interest group in society
- National dialogue is a non-constitutional entity that functions best when it is linked to existing constitutional bodies or interim structures to guarantee implementation
- National dialogue results in decisions and binding frameworks for political reforms and constitutional changes
- National dialogue table, process, decision making and implementation mechanisms are determined by the parties themselves
- National dialogues are mandated by participating political stakeholders and parties

MECHANISMS

SEQUENCING

SUPPORT STRUCTURE

MANDATE

- DECISION MAKING
- PRINCIPLES
- AGENDA
- PARTICIPANTS

MANDATE
- Agreement of all major parties
- Formal mandate through ceasefire or peace agreements
- Call by the majority of citizens
- National dialogue mandated by Parliament
- Recommendation by highest judicial body
- National dialogue by regional or international pressure or treaties

MECHANISMS
- Technical committees and task forces
- Expert advisors
- Expert groups
- Research unit for joint knowledge creation and options generation
- Parties research units
- University networks and strategic partners
- Common language dictionary of dialogue terms
- Steering, managment or planning committee
- Implementation mechanisms

SEQUENCING
- Urgency
- Immediate demands and needs
- External events and influence
- Ripeness and capacity of participants
- Consensus/Long term policy issues

PROCESS PRINCIPLES
- Northern Irland: Mitchell principles
- Lebanon: Suleiman constants
- South Africa: Codesa principles
- Sri Lanka: One text shared values

SUPPORT STRUCTURES
- Common spaces for dialogue and shared knowledge
- Local and regional peace structures
- Civil society programmes
- Citizens' assemblies and dialogue
- Media programmes
- Parliamentary committees
- Multisectoral safety net areas

DECISION MAKING
- Consensus
- Sufficient consensus
- Voting by simple majority
- Voting by 2/3 majority
- One text process
- Other process procedures

AGENDA SETTING
- Mandated issues
- Identify relevant common national issues and priorities
- Related root cause issues
- Addressing 'unacceptable' issues
- Addressing 'conditional' issues
- Confidence and trust building issues
- Framing / Re-framing
- Sequencing

PARTICIPATION CRITERIA
- Political representatives
- Communal
- Confessional / Religion
- Ethnic
- Gender
- Historical
- Power / Balance
- Economic
- Security / Arms
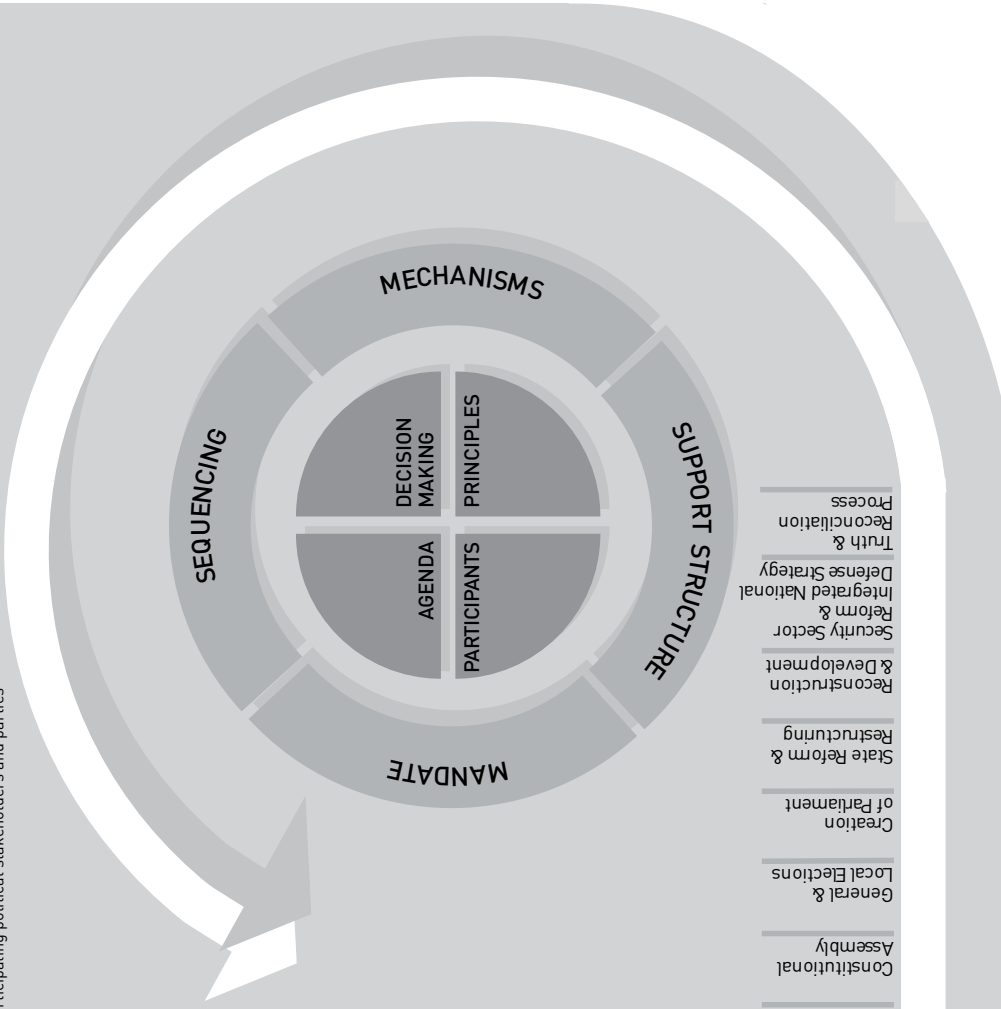
ANATOMY OF A PEACE PROCESS

- Non Formal Negotiations
- Ceasefire
- Formal Negotiations
- Peace & Framework Agreement
- Constitutional Elections
- Constitutional Assembly
- General & Local Elections
- Creation of Parliament
- State Reform & Restructuring
- Reconstruction & Development
- Security Sector Reform & Integrated National Defense Strategy
- Truth & Reconciliation Process

> " **The most effective dialogue and peace structures are those that are carefully designed by national stakeholders themselves to collectively address their conflict and broken constitutional instruments** "

National dialogues hold the potential to reinforce constitutional, state and political reform processes with joint knowledge creation and comprehensive approaches to reform and transformation. Key political reform issues can be addressed if national dialogues based on national ownership and political inclusion involve participation of all key stakeholders. There is scope for national dialogue instruments to be developed beyond the current frameworks by using integrated multi-disciplinary assessment and diagnostic frameworks for process design and conflict analysis. Many informal and formal dialogues have wider process and change impacts beyond their intended purpose, such as for reconciliation among the participants.

National dialogue processes share some common elements:

» They are mechanisms to bring all major political decision-makers and stakeholders together after serious conflict or when parliament, government and the constitution itself fail to address the needs, rights and expectations of all groups and communities.
» They can constitute political representation and should reflect all major interest groups in society.
» They are non-constitutional entities that function best when linked to existing constitutional bodies or interim structures in order to guarantee implementation.
» They develop and decide on binding frameworks for political reform and constitutional change, and the process and decision-making and implementation mechanisms are determined by the parties themselves.
» They are mandated by participating political stakeholders to effect constitutional change.

Key elements to consider in designing national dialogue processes include: the mandate of the mechanisms by all relevant and legitimate stakeholders; the constitutional links to mechanisms for implementation, constitutional change and adoption of its agreements; criteria for participation; decision-making processes and procedures; framing, structuring and deciding on the agenda; management and support structures; and public participation mechanisms. The figure opposite illustrates various elements of national dialogue more clearly.

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Basque Country

Experiences of the Social Forum to invigorate peace
Paul Rios

Sunday 20 October 2013 marked two years since the armed organisation *Euskadi Ta Askatasuna* (ETA) announced the definitive cessation of its armed campaign, in response to a call made by international leaders at the San Sebastian Conference three days before.

Since then all reports have indicated that ETA's use of violence has effectively ceased, although ETA still retains its weapons and organisational capabilities. This, together with the subsequent legalisation of the Basque pro-independence *abertzale* ('patriot') Left, whose parties had been banned for 10 years, has allowed the Basque Country to enter a new phase. Today the basic conditions are in place for a more substantial peace process, with an absence of violence and broadly inclusive political participation.

But there is currently no peace process for the Basque country in the conventional sense – ie a political dialogue between the government and the armed group. The Basque process has had to be innovative, mainly because of the very limited contact between ETA and the Spanish or French governments. Much of Basque society understands it as a peace process, but the Spanish government does not want to be a partner in this and many issues that Basque society sees as vital to progress are not being addressed.

The question of who or what has been driving change in the Basque process is very sensitive in Spain. But seen from within Basque society, the key actors have been ETA, the pro-independence Left – some of whom decided to push a new, non-violent strategy – some international facilitators who have worked independently, and a number of social movements in the Basque Country.

Basque social movements during the conflict
Basque social movements worked for peace during the worst years of the conflict. Basque society has mobilised intensely to propose ways of solving the problem, marking out a route for political parties and articulating the desires of the majority – an end to violence, respect for human rights, and dialogue as a tool for solving political problems.

Since the late 1980s the pacifist organisation *Gesto por la Paz* has mobilised thousands of people against all forms of violence, including ETA's. Elkarri – a social movement for dialogue and agreement in the Basque Country and the immediate predecessor to my own organisation, Lokarri – stressed the primacy of dialogue and pluralism. These organisations have been able to call on wide-ranging and diverse support in Basque society. For example, in 2004 Elkarri managed to get 150,000 signatures (five per cent of the population of the Basque Country) in a petition to support a citizens' dialogue to solve the conflict. In this way Basque society has played a major role in creating the social conditions that have enabled the peace process to move forward.

More recently, an opinion poll conducted in spring 2013 by Euskobarometro (Basque barometer, a sociological statistical survey run by the Public University of the Basque Country) indicated broad consensus in Basque society on the way to consolidate peace: 80 per cent supported conversations between the Spanish government and ETA; 80 per cent called for recognition of all victims; 80 per cent wanted ETA to disarm; and 70 per cent supported prison reform for ETA prisoners (around 550 at the time of writing).

Basque society and peace
The basic problem for achieving peace in the Basque Country is the stalemate between ETA and the Spanish

Basque Country

> **The Spanish government should modify its prison policies, not because ETA is asking for it, but because Basque society is calling for it. And ETA should take steps towards disarmament, not because the Spanish government is demanding it, but because Basque society needs it to eliminate any kind of threat**

government. ETA is not moving towards disarmament, and the government refuses to enter into dialogue or to take steps on key issues like prisoners, countenancing only the dissolution of ETA.

The Spanish government's refusal to modify its prison policies has been part of a hard line, justified by the "war against terrorism", that ignores contentious issues relating to ETA prisoners such as their dispersal around the country, away from their families, or their need for reintegration into society. It has not responded to arguments presented by the Basque government. Nor has ETA made progress on disarmament: while it is open to discussing the matter with the Spanish government, it has disregarded the will of Basque society on moving forward on disarmament and disbandment.

This situation reflects an outdated model of peace negotiations whose protagonists are exclusively a government and an armed group locked in a conflict of mutual destruction. There have been processes like this in the past. Talks in Algiers in 1989 or the 2006 peace process were both bilateral negotiations, and both were marked by belligerence and a lack of transparency – and failure.

Such "classic" peace processes are not participatory and lack channels through which other stakeholders can participate. This is more than a question of principle: the effectiveness of the peace process is at stake. When citizens have no role to play or are marginalised, they have no ownership of the results of the process, and therefore do

not get involved in working towards coexistence or creating a safety net to prevent a return to violence.

Basque society needs to be a key player in defining and constructing peace in the Basque Country. For Basque society, this is the starting point for an effective peace process. It also has the potential to unblock the current situation. In this respect, the Spanish government should modify its prison policies, not because ETA is asking for it, but because Basque society is calling for it. And ETA should take steps towards disarmament, not because the Spanish government is demanding it, but because Basque society needs it to eliminate any kind of threat.

Although major ETA decisions, such as to end violence, have been made largely outside negotiations with the Spanish government, they were not unilateral. Basque society, alongside international and other groups, has been a key player for some time.

The permanent, general and verifiable ceasefire announced by ETA in January 2011 was a response to the 2010 Brussels Declaration, signed by a number of international Nobel Prize winners and experts in peace processes, which called for an ETA ceasefire and urged the Spanish government to respond. The commitment of and relationships between the signatories and promoters of that declaration was critical.

Likewise, the decision to put an end to the armed struggle was a response to the Declaration of Aiete, the result of the

San Sebastian Conference involving major international figures and almost all the political parties and trade unions of the Basque Autonomous Community, Navarre and the French Basque Country – the territories that make up the cultural mosaic of the Basque Country. As a result, a bilateral relationship was set up between these groups and ETA.

These relationships are not easy. One challenge is the apathy in Basque society today. Most Basques have moved on from the peace process, or are preoccupied by the current economic crisis. The failure of the 2006 peace process, in which great hopes had been placed, led to considerable frustration. There is no longer the powerful critical mass of people willing to mobilise and participate that there was 10 years ago.

A second challenge lies in the lack of consensus among the Basque political parties. This is ironic at such a potentially propitious moment for making progress towards peace, with no elections on the horizon, without violence and with all political sectors represented in parliament. But differences among the parties have become very pronounced.

The Social Forum
Harold Good, a Protestant clergyman who was a witness for the disarmament of the Irish Republican Army, has stressed that when the Northern Ireland peace process became blocked it was important to provide opportunities for citizens' dialogue to generate an undercurrent that could help motivate progress.

The Social Forum of March 2013 sought to strengthen the role of Basque society in the peace process and generate new ideas on key challenges. The initiative was created by Lokarri, *Red ciudadana por la paz* (Citizens' Network for Peace)*, Bake Bidea* (a peace organisation in the French Basque Country), *Ahotsak* (a network of political women who work on the peace process), and groups of young people of all ideologies. International organisations and NGOs also provided support.

More than 700 people took part in two sessions, with 12 international experts speaking on subjects such as disarmament, reintegration of prisoners, human rights, and dealing with the past, memory and reconciliation. The organisers opened different channels of participation so that all interested people and groups could contribute. In addition to the event's web page, there was intensive work on social networks like Twitter and Facebook. The experience and knowledge that international experts brought was crucial for helping to define solutions and overcome obstacles. The aim was not to copy other peace process, but to generate new ideas by learning from other experiences.

The promoters of the Social Forum worked hard to ensure a wide range of perspectives were represented: victims, groups defending human rights of prisoners, pacifist groups, associations that work on memory or reconciliation, and representatives of the main trade unions. Nationalist and left-wing political parties sent official representation, while socialist party activists participated on a personal basis.

Unlike official national dialogue processes, the Social Forum has not had a direct mandate from state institutions and political parties. The Social Forum has not set out to replace institutions and political parties, but rather to urge them to find new solutions for dialogue. The ultimate objective of the forum has not been to become a formal arena itself, but to contribute to setting up a formal space for dialogue.

Some political parties think that legitimate dialogue can only take place in parliament and decline to participate in any other forums. In response, the Social Forum tried to be transparent, sharing information about the content of the forum and how it was organised with the political parties, and giving them the opportunity to comment on draft recommendations coming from it. The basic principle was to work with those who were willing to work with the forum, and leave the door open to those who were not.

Some of the parties that did not participate argued that the forum was the product of the pro-independence Left. And it is true that many people associated with the Left took part in the forum and publicly supported it. But overcoming stereotype and prejudice has been one of the objectives of the forum, and this can only happen through open communication and information sharing among groups with different perspectives. In fact, the recommendations from the forum tried to reflect the concerns of people who did not to participate – even we as organisers disagreed with some points in the document.

Recommendations from the forum
Some 500 groups and citizens made submissions to forum discussions. After the forum the organisers worked with the main political parties and with international experts to try to develop recommendations that could really add momentum to the peace process. Twelve recommendations were published in May 2013.

The recommendations have tried to be constructive. Their basic premise calls for "an exercise of dialogue and reconciliation that establishes a solid basis for future coexistence through the wide-ranging and active participation of institutions, political parties and civil society". In other words a commitment to a peace process in which Basque society plays a key role.

One recommendation urges designing a process to disarm ETA and dismantle its military structures, which suggests a controlled, orderly and agreed process, carried out to a reasonable timescale and involving independent facilitation to promote security of state institutions and public safety.

Another recommendation relates to "integration of prisoners and people 'on the run'". This promotes seeking consensus on a comprehensive solution to this issue as an essential part of building stable and lasting coexistence. It suggests as a starting point revising aspects of prison policy that contravene human rights or the humanitarian treatment of prisoners – for example, those relating to prisoners who are seriously ill, measures that deny release to prisoners who have served their sentences, and the dispersion of prisoners away from their families. Prisoners for their part would need to show commitment to a "new scenario for peace", renounce violent means, and where relevant acknowledge the harm they caused. But they would be seen as active agents for peace and normalisation, through facilitation of contact and dialogue between prisoners, Basque society and competent institutions.

Other recommendations relate to the promotion of human rights, for example through relevant legislative reform, and preserving "truth and memory to deal with the past" – to recognise and provide reparation for victims and acknowledge all harm that has been caused. This would involve "facilitating different ways of narrating and remembering what happened, encouraging self-criticism in every social and political sector and an honest exercise of recognition of the serious mistakes made".

What has the forum achieved?

Despite its weaknesses and challenges, from my perspective as someone involved in organising the Social Forum, I believe it has major potential to contribute to peace in the Basque Country.

It has sought to identify and focus an agenda on the main challenges involved in the Basque peace process. Key issues of disarmament or the reintegration of prisoners were not being addressed rigorously, but they are now being debated in a way that looks for concrete solutions. In a context in which space for dialogue has been missing, both officially and informally, the Social Forum has provided an opportunity for participation between people of different ideologies.

Both ETA and the main groups of its prisoners have indicated that they will respond to the recommendations of the Social Forum. This opens up a new opportunity for progress in the peace process. Nevertheless, the Spanish government has not responded, nor are there any indications that it will do so.

The results or the potential of the Social Forum should not be underestimated in a situation where the consolidation of the peace process faces major difficulties. The Social Forum is not the solution to all the problems for the Basque Country, but it can be a milestone in bringing together social sectors willing to cooperate to boost the peace process. In the same way that Basque society has tried to challenge indifference among the population, it has also contributed new solutions and initiatives like the forum to motivate the will to transform the situation so that this historic opportunity is not wasted.

The Social Forum has helped add legitimacy to an agenda for the Basque peace process, at least by ensuring that key issues for Basque society are represented in discussions. While the forum was broad-based, it could not be said to have been fully inclusive. There are a number of reasons for this – including that victims groups did not feel comfortable with the language and the framing of the discussions. Others do not perceive the social organisations that convene these types of initiative as neutral.

Overall, I am optimistic that peace can come for the Basque Country. I think that the Basque peace process, with all its difficulties, is opening a more democratic and legitimate track to move forward. Dialogue and agreement are needed between Basque political parties, along with social participation, to add legitimacy to the process and press states to become involved; there are many difficulties – the result of so many years of disagreement – but I do not see any other way forward.

This article presents an insider's perspective of civil society efforts to bring peace to the Basque Country, in particular the Social Forum organised in March 2013.

Paul Rios is the founder of Lokarri, a citizen network for peace in the Basque Country. Lokarri has played a significant role in mobilising citizen support for the resolution of the Basque conflict, organising key conferences that influenced ETA to announce a definitive end to violence in 2011. Paul holds a law degree from the University of Deusto, Bilbao.

Burma

National dialogue: armed groups, contested legitimacy and political transition

Harn Yawnghwe

Legitimacy is the key challenge for the Burma Army or *Tatmadaw*, even after 50 years of absolute rule. There is no doubt that it has the coercive power to continue ruling. But no one – not the ethnic population, not the person in the street, and not even the international community – sees the military as the legitimate and rightful ruler.

The armed struggles that have beset Burma /Myanmar since independence in 1948 have involved multiple armed groups seeking recognition and representation and ongoing demands for political transition of the military regime. Recent reformist moves by the state have raised hopes that there is an opportunity for real change. A proposed nationwide ceasefire aims to bring in all armed groups – those that have already signed ceasefires and those that have not. A subsequent National Dialogue looks to include all stakeholders – armed groups, political parties and civil society. The dialogue is not just about resolving armed insurgencies, but about the future of the country.

State legitimacy

Even after writing a new constitution in 2008, holding elections and establishing a "democratic" system of government, President Thein Sein's administration of ex-generals still faces a legitimacy deficit. For many Burmese, the rightful heirs to political authority are symbolised by Daw Aung San Suu Kyi, daughter of independence hero General Aung San, her National League for Democracy (NLD), and the ethnic nationalities.

The *Tatmadaw's* vision of the great Myanmar nation looks back to the reigns of King Anawrahta (beginning 1044), Tabinshwehti (1531) and Alaungpaya (1752), who conquered neighbouring kingdoms from Manipur in India to Thailand. According to this narrative, the British conquest (1886–1948) was an aberration of 62 years. The *Tatmadaw's* mission is to re-establish this mighty empire, which must come at the expense of the ethnic nationalities

who constitute at least 40 per cent of the population and whose homelands make up about 60 per cent of Burma's current territory.

The ethnic nationalities' competing national vision acknowledges only temporary subjugation by three Myanmar kings, looking instead to their own kings and traditional rulers, including those reigning during British rule. They do not consider that they were part of the Myanmar empire; in fact, they agreed to join their territories to Myanmar at the 1947 Panglong Conference and claim that they and not the *Tatmadaw* are the legitimate co-rulers of the nation.

British annexation of Burma in 1886 had excluded a number of provinces: Chin Hills Frontier Area (now Chin State); Kachin Hills Frontier Area (now Kachin State); Shan States Protectorate (later Federated Shan States – now Shan State); Karenni States Independent Protectorate (now Kayah State); and Trans-Salween Frontier Area (now Karen State). These were nominally administered separately. The current Arakan and Mon States were part of British Burma.

In the process of winning independence after World War II, Prime Minister Aung San (from the predominant Bamar ethnic group) negotiated the Panglong Agreement with ethnic leaders, which promised them equality and encouraged subsequent demands for federalism. But while the 1947 constitution recognised the various constituent states it gave them no power. Everything was centralised and the Burmese state effectively replaced the British as the new colonial power.

The elected government agreed to amend the constitution in 1961, responding to the ethnic federal movement. The *Tatmadaw*, claiming that federalism would break up the country, seized power in 1962 and promised to oversee a gradual democratisation process. Since then the *Tatmadaw* has re-written history. Many Bamar are not aware of ethnic viewpoints and few understand why ethnic people have been so "troublesome".

Competing claims to legitimacy

Given the disappointment with the 1947 constitution and the 1962 coup, most ethnic political movements began as independence movements. At the grassroots, ethnic people still want to be freed from the Bamar, whom they do not distinguish from the *Tatmadaw*. But in the last 25 years, ethnic leaders have been persuaded that independence is not an option and have generally accepted the idea of a federal union with equal power and autonomy.

Burma

KEY

⊛ National capital
◉ Division or state capital
● Town, village
- International boundary
- Division or state boundary

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0    100    200    300 km
0         100        200 mi
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In addition to President Thein Sein's government, the *Tatmadaw*, Daw Aung San Suu Kyi, and the ethnic nationalities, competing claimants to legitimacy include:

» the ruling Union Solidarity and Development Party (USDP)
» the National Unity Party (NUP) – formed from the Burmese Socialist Programme Party that ruled from 1974–88
» the governments of the seven ethnic states and seven regions
» the more than 18 ethnic armed groups who are negotiating ceasefires with the government
» the ethnic parties that won seats in the 1990 elections and those that won seats in the 2010 elections
» the more than 50 opposition parties
» thousands of civil society movements, rights-based groups and informal community groups that have spoken up on behalf of people in the absence of organised opposition.

The USDP is a military creation – no more than 30 per cent of the Bamar population supports it. Most people – Bamar and non-Bamar – support the NLD because they believe Daw Aung San Suu Kyi can bring about freedom from military rule. However, the NLD is weak, having failed to build up the party while waiting 25 years for Daw Aung San Suu Kyi's release. All ethnic armed groups have both hardliners bent on armed struggle and moderates who want to convert to a political struggle. The situation is fluid, but today moderates are ascendant.

In Burma, policies and strategies are second to personalities. Disputes (between or within groups) are generally over who will lead. Burmese society was atomised during 50 years of military rule. There were no organised societal groups or political parties. Civil society and political parties have started to revive but remain small, localised and often ethnically based. Other than the USDP, NUP and the NLD, there are no national political bodies.

Women in Burma have equal status in theory, but in reality most Burmese women play a supporting role and are generally discouraged from leadership. Women are active and are the "doers", but they are not recognised. Bamar women still eat after men and guests have eaten. They are not supposed to touch the head and shoulders of males (even boys) or the male's power will be diminished.

Peace process
The Myanmar peace process came from within and not from international pressure. In his inaugural speech on 30 March 2011 President Thein Sein surprised everyone

by stating that his top priority was to build national unity by addressing decades of armed conflict with ethnic nationalities caused by "dogmatism, sectarian strife and racism". Never before had any ruler made it a priority to address the ethnic problem, let alone acknowledge its root causes.

> " **In Burma, policies and strategies are second to personalities. Disputes (between or within groups) are generally over who will lead** "

On 18 August 2011 the government offered to talk with armed groups that wanted peace. Informal talks began on 19 November and the first ceasefire was signed on 11 December with the Restoration Council for the Shan State/Shan State Army–South. To date, 13 other ceasefire agreements have been signed, and a nationwide ceasefire is being proposed. However, while the government is signing agreements and making commitments, it does not seem to be able to control the *Tatmadaw*. Serious ceasefire violations continue.

The government initially mimicked 1990s ceasefire models, which were negotiated surreptitiously as gentlemen's agreements that granted special economic privileges in exchange for an undertaking not to join the democracy movement. Except with the Kachins, nothing was put on paper. Like their predecessors, the president and his chief negotiator, Minister Aung Min, thought they could grant special economic privileges, sign ceasefire agreements and get the ethnic armed groups to disband. The idea was that the armed groups would embrace democracy, form political parties, contest elections, and argue their case for a federal system in parliament.

A critical flaw in this concept was that most armed groups that agreed to ceasefires in the 1990s (again except the Kachins) were not the main ethnic nationalist movements. Most used their privileges to trade in opium and other illicit drugs. The ethnic nationalists want political settlement, not economic privileges, and have rejected the notion of surrendering their arms without a guarantee that their grievances would be heard favourably in a parliament that is more than 95 per cent controlled by the government.

Ethnic civil society groups have protested against their exclusion from talks and the possibility of armed groups "selling out". A Norwegian initiative to provide peace dividends for ceasefire areas and support implementation

was criticised by sceptical civil society actors as an economic incentive to deliver ceasefires. The European Union's promotion of the government's Myanmar Peace Centre (MPC) as a neutral inclusive space was also disputed as an attempt to impose the government's programme. Also, the newly unfettered Myanmar press tended to equate ceasefires simplistically with peace, causing other stakeholders to worry they were being excluded from negotiations.

Initially the government did not have a clear plan as two different government negotiators pursued competing agendas. In May 2012 the government consolidated its peace initiative behind Aung Min and formed the Union Peacemaking Committee (UPC), chaired by the president. The MPC was also established in November 2012 to support Aung Min.

The birth of the National Dialogue

The ethnic groups dispersed along Burma's international borders are extremely diverse with different historical and cultural backgrounds, religious affiliations, political aspirations and revolutionary histories.

In February 2012, 19 ethnic armed groups were invited to coordinate their individual ceasefire negotiations and plan together how to transform their ceasefire talks into a collective political dialogue as part of an inclusive peace process. An Ethnic Peace Plan emerged that called for an extra-parliamentary dialogue to seek a political solution in the form of a federal union. The ethnic armed groups then met monthly to share notes and coordinate. In response to growing resistance to the government's plan, Aung Min proposed a Panglong-type extra-parliamentary conference to resolve the problem, instead of his original scheme to amend the constitution through parliamentary debate.

Recognising that they could not alone force the government to agree to a federal system, the ethnic armed groups invited some of the 2010 election-winning ethnic parties and ethnic civil society actors to a workshop in May 2012. They discussed the approaching end of President Thein Sein's government in 2015 in the light of the need for negotiations extending beyond that date, especially given that the armed groups did not plan to relinquish arms before 2015. How could they ensure that the next government would continue the talks? What guarantees could they seek?

The rudimentary concept of an inclusive National Dialogue with deadlock-breaking and consensus-building mechanisms began to emerge. A more permanent Working Group for Ethnic Coordination (WGEC) was established in June 2012. To gain an even broader acceptance for

the National Dialogue concept, an Ethnic Nationalities Conference was convened in September 2012. The conference endorsed the idea and tasked the WGEC with further developing a Six-Step Road Map in order to:

» develop a Framework for Political Dialogue
» agree this framework with the government
» organise conferences by states and regions, as well as by ethnic nationalities
» hold a nationwide Ethnic Nationalities' Conference to discuss the framework
» hold a convention based on the Panglong spirit, with equal representation from ethnic nationalities, democratic forces and the government
» implement the *Union Accord* within the agreed timeframe.

From September to January 2013, the WGEC Core Group worked out the details for a National Dialogue, which was then taken in February 2013 to all the ethnic armed groups' headquarters for their endorsement. The documents were subsequently released for public consultation with ethnic political parties and civil society in March 2013.

The key concepts of the framework, as presented to Aung Min in May 2013, include that it must be jointly managed, must continue beyond 2015 and must be inclusive. The framework stipulates a nationwide ceasefire to facilitate the peace process, and a joint military code of conduct to ensure that the ceasefire holds. A joint monitoring mechanism would then oversee adherence to the code, with a joint ceasefire committee to facilitate the monitoring mechanism. All signatories must be removed from the Unlawful Association List and other restrictive laws.

The concepts were all accepted by Aung Min, who was so enthusiastic he prematurely announced in June 2013 that all groups would sign a nationwide ceasefire in July. Caught by surprise, the armed groups back-pedalled. But despite the negative reaction and criticism from within the government's own ranks, the MPC began seriously negotiating the draft framework and the text of the Nationwide Ceasefire Agreement.

Transforming the process

Originally, the government may have envisioned the process narrowly as a quick win: provide economic incentives in exchange for laying down arms, gain support for the government's democratisation plan, and win international kudos. But the ethnic armed groups saw an opportunity to push for what they really wanted – a political dialogue on the future of the country. There had been no opening in the last 50 years and they were determined to make it work in their favour.

7 CONTINUATION OF PEACE AND DIALOGUE PROCESS

2015

6 ELECTIONS

DEC
2014

5 UNION ACCORD

JAN/
DEC
2014

4 PANGLONG UNION CONFERENCE

» Central body of dialogue process, guarantees wide representation (900 members, 300 each from government/army; democratic forces and opposition)

» Panglong union conference concludes with the drafting of the final union accord that settles relevant issues to the peace and dialogue process

TASK FORCES AND THEMATIC COMMITTEES
Provide technical expertise, conduct background studies, prepare decision-making

JOINT REGIONAL AND STATE LEVEL COMMITTEES
Works on development, humanitarian and health issues

REGIONAL/ STATE-BASED PEACE MONITORING COMMITTEES

JOINT DIALOGUE MANAGEMENT COMMITTEE AND SECRETARIAT
Takes care of logistical and managerial issues, appoints facilitators, establishes drafting committee, documentation and library

INTERNA-TIONAL OBSERVERS

REGIONAL/ STATE JOINED MONITORING COMMITTEES OF ARMED FORCES

JOINT CEASEFIRE COMMITTEE

Oversees im-plementation of ceasefire agreement and code of conduct

HUMAN RIGHTS COMMITTEE

Regional independent, reports and monitors human rights and humanitarian law violations

JOINT PEACE SECRETARIAT
Oversees the development and overall implementation of the peace process and Comprehensive Agreement, responsible for conflict resolution and prevention, humanitarian and development issues, and creating a conducive environment for the dialogue and political reform process; also supports the work of the Regional/ State Peace and Monitoring Committees

NATIONAL DIALOGUE STEERING COMMITTEE
Comprised of 20 senior members each from government/army ethnic nationalities and armed groups; democratic forces and opposition

Focuses on preparation of decisions, consolidates proposals which are submitted to the Panglong Union Conference for approval

DEC
2013

3

CEASEFIRE PROCESS

PEACE PROCESS

DIALOGUE PROCESS

2 HIGH LEVEL JOINT PEACE COMMITTEE

Comprised of the members who signed the agreement
TASK: Appoint the Joint Ceasefire Committee, Joint Peace Secretariat and National Dialogue Steering Committee

MAY
2013

1 COMPREHENSIVE NATION-WIDE CEASEFIRE AND PEACE AGREEMENT

Signed by top leadership of Government/Army; Ethnic Armed Groups and Nationalities; Opposition and Democratic Forces

The government could not depend on its own support base, which was not open to such rapid changes. Instead, a small circle of reformers began to see that winning over the ethnic armed groups would help build the momentum they needed to press ahead with the reform agenda. The armed groups also saw that if the reformers gained momentum, they could actually get the government to commit to a political dialogue. So what began as a one-sided push became a common process. The government and the armed groups began parallel informal campaigns to win over doubters within the parliament, military, political parties, civil society and the ethnic population.

> **International peacebuilders might best use their experience and knowledge to help build the capacity of multiple local stakeholders (and help facilitate dialogue within each stakeholder group), rather than try to impose an overall solution"**

This effort received an unexpected boost when the speaker of the Lower House of Parliament, in alliance with Daw Aung San Suu Kyi, started to publicly attack Minister Aung Min and the MPC for not being inclusive enough and for being too tentative. This fitted the ethnic armed groups' agenda exactly: in defending itself the MPC fully endorsed the framework.

The armed groups were then encouraged to brief Daw Aung San Suu Kyi, the commander-in-chief and the Union Peacemaking Working Committee (UPWC) chaired by Vice-President Dr Sai Mawk Hkam, an ethnic Shan. This was a key move since the working committee includes key actors within the executive, the military and the parliament. The proposal was well received and UPWC agreed to report to the UPC and meet again on a regular basis with the ethnic armed groups, thereby elevating the negotiations to a higher level.

At the time of writing, it seems as if a National Dialogue might begin early in 2014. Major threats to the process include the commitment of the *Tatmadaw*, which will be determined by whether the commander-in-chief is prepared to sign the agreement and arrange intra-military talks to separate troops in the conflict zones, and the inclusion of the Kachin Independence Organisation and the United Wa State Army, the two largest armed groups.

The situation remains uncertain and much could go wrong, but the opportunity is there for Burma to resolve its outstanding problem of the last 60 years. A lot of preparatory work has already begun on fundamental issues such as power- and revenue-sharing; reform of the security sector, the judiciary and land; and community, ethnic and minority rights.

How can international peacebuilders best support this domestic process? The conflicts are too diverse, multi-layered, deep-rooted and complex for a single mediator. The National Dialogue will require technical support from domestic and international experts. International peacebuilders might best use their experience and knowledge to help build the capacity of multiple local stakeholders (and help facilitate dialogue within each stakeholder group), rather than try to impose an overall solution. And because the dialogue is a domestic process, it struggles to attract financial support. Both financial and technical support will be needed if the process is to be sustained.

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« The dialogue framework designed by the Working Group for Ethnic Coordination (WGEC), and agreed to by seventeen Burmese ethnic armed groups in April 2013 in order to finalise a new constitutional framework for Burma. © Working Group for Ethnic Coordination

Yemen

National Dialogue Conference: managing peaceful change?
Ali Saif Hassan

The 2013 National Dialogue Conference (NDC) was seen by many Yemenis as the only non-violent means of resolving the crisis in the country. The legitimacy of the conference is essential to its success, but is complicated and contested.

The NDC has been supported – or at least accepted – by many international and regional actors as well as most Yemeni parties. The huge media campaign that surrounded the inauguration of the NDC in March 2013 helped persuade many Yemeni people that it could bring them closer to stability and peace. Careful efforts to build equitable representation in the process, as well as outreach activities and a participatory approach, have sought to promote popular buy-in and ownership – although support has been much weaker among southerners. But balancing Yemenis' diverse and often divergent priorities and perspectives has presented a major practical challenge for the conference.

Uprising
The contemporary state of Yemen was established on 22 May 1990 under a unification agreement between the Yemen Arab Republic (YAR) in the north and the People's Democratic Republic of Yemen (PDRY) in the south. The new state incorporated all the contradictions and conflicts of its forebears, which had been allied to the two opposing Cold War blocs: YAR with the West, and PDRY with the Soviet Union.

Residual tension between north and south escalated into war in 1994, which culminated in the defeat of the south and northern hegemony over the whole of Yemen – including the imposition of conservative Islamic practices on the predominantly leftist and socialist society in the south. The victorious political elite comprised northerners and their allies from the southern military leadership in the 1994 war. It did not govern equitably or effectively – neither in relation to the south, nor regarding the various political and economic challenges that faced the nascent state of Yemen as a whole.

Political failure degenerated into crisis by the mid-2000s, giving rise to rebel movements in Sa'dah governorate in the north and a number of southern governorates. The Houthi resistance movement that emerged in Sa'dah in 2004 pitted Shia Zaydi revivalists against the predominantly Salafist military and political elite. By the end of the decade Houthi fighters (by now named Ansar Allah) controlled the whole governorate of Sa'dah.

Despite wining elections in 2006, President Anbi Abdullah Saleh's faith in his grip on power had been seriously dented by the newfound audacity of opposition parties, now allied as the Joint Meeting Parties (JMP), who dared to nominate a southern challenger to the presidency in the elections. In 2007 the Southern Movement, a popular protest movement, began demanding social justice and increased local autonomy. Spurred by government indifference to their cause and emboldened by increasing support from former political leaders from the south, the movement's demands became increasingly radical – ultimately calling for secession.

The Gulf Cooperation Council initiative
By the end of 2010 the regime had exhausted much of its social and political legitimacy among large parts of the population. The onset of the Arab Spring inspired Yemeni youth to mobilise in a non-violent movement. Massive demonstrations involving hundreds of thousands of pro-democracy protesters ensued in the capital Sana'a and other cities in early 2011.

President Saleh's long-time ally, General al-Ahmar, defected from the regime to support the revolution on 21 March 2011. Many political and military leaders, and

Women shout slogans during an anti-government rally outside Sanaa University on 17 April 2011. © Reuters/ Ammar Awad

a number of senior Yemeni tribal chieftains, soon joined him. These defections strengthened the uprising, but also politicised it and challenged its peaceful nature and pro-democracy objectives, raising serious concerns that Yemen could slide into bloody civil war.

Concern that growing instability would leave Yemen exposed to al-Qaeda and other extremist organisations helped to consolidate international response. Combined with the comparative weakness of conflicting parties in Yemen, international partners, in particular the European Union, Saudi Arabia, the United Kingdom and the United States, were able to persuade a number of major Yemeni parties to enter talks.

> **Defections strengthened the uprising, but also politicised it and challenged its peaceful nature and pro-democracy objectives, raising serious concerns that Yemen could slide into bloody civil war"**

Some opposition political forces such as the Southern Movement and Ansar Allah refused to take part, and did not endorse or recognise the resultant agreement. Nevertheless, Saleh signed an initiative under the aegis of the Gulf Cooperation Council (GCC) on 23 November 2011 in Riyadh, which included a series of steps that together added up to a comprehensive political deal to end the conflict.

The initiative gave Saleh legal immunity in return for conceding power to his deputy (and current president) Abdo Robo Mansour Habdi. A consensus government was set up, which shared power between the former ruling General People's Congress and the opposition JMP alliance.

National Dialogue Conference

The NDC is the most important part of the GCC initiative. The conference sought to incorporate new forces for change in Yemen – predominantly driven by women and youth – as well as serious challengers to the state – Ansar Allah in Sa'dah and the Southern Movement – involving them in a process to draft a new social contract through comprehensive national participation. There were further hopes that the conference would present a promising model of what can be achieved through international consensus in resolving armed conflicts and civil wars, in the Arab Spring countries and more generally.

Yemen: Structure of the National Dialogue Conference

LEADERSHIP COMMITTEE	CONSENSUS COMMITEE
nominated/approved	leadership com, chairs of WG, 10 nominated by President

PRESIDENT PLENARY: OPENING MEETING

» 565 participants: representing Political Parties (GPC, JMP, et al), Southern Movement, Houthis, Women, Youth, Civil Society; 50% from South; 30% women

» Opening speeches; to agree on procedures; elect committees

WORKING GROUPS

Working Group South	Working Group Sa'ada	Working Group State building	Working Group Security	Working Group Rights & Freedoms	Working Group Devel- opment	Working Group Trans. Justice	Working Group Special entities	Working Group Good Govern.

PLENARY: MEETING

» To review state of discussion in working groups

WORKING GROUPS (2 MONTHS)

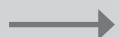| Working Group	Working Group	Working Group	Working Group	Working Group	Working Group	Working Group	Working Group	Working Group

PLENARY: FINAL MEETING

» To finalise all open issues

» Approval of final report
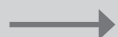
» Closing session

COMMITTEE FOR NORMS AND DISCIPLINE	GENERAL SECRETARIAT

DECISION-MAKING BY VOTING

Plenary and Working Groups 90% majority vote → Consensus Committee 75% majority vote → Discussion & proposals until 75% consensus

© Political Development Forum/The Berghof Foundation

The initiative stipulated that the NDC would lead to the drafting of a new constitution and the holding of a referendum, with the transitional period (ending February 2014) culminating in parliamentary and presidential elections. By the end of December 2012 a preparatory technical committee, comprising most parties and political components along with active women's participation, had developed procedures for the NDC. The committee stipulated that the NDC would comprise 565 members. It set terms for representation in the conference designed to promote "achieving change and facilitating Yemen's transition" through the "establishment of principles of reconciliation and true partnerships in building a new Yemen".

The committee guaranteed 50 per cent representation from the south, 30 per cent for women and 20 per cent for youth. It allocated conference seats among political parties and sectors of society, including the General People's Congress and its allies, the Yemeni Congregation for Reform (Islah Party), the Socialist Party, the Nasserite Unionist Party, the five government parties (Arab Socialist Baath party, Yemeni Unionist Congregation, Union of Popular Forces, National Council and Al-Haqq Party), the Southern Movement, the Houthis, and independent youth, women, and civil society organisations. Other entities included the Rashad Party, the Justice and Development Party, and members appointed by the president.

The procedures defined the conference structure, presidium, decision-making mechanism and consensus-building mechanism. The technical committee further identified nine specific topics to be addressed at the conference and designated working groups to address each one: the southern issue; the Sa'dah issue; transitional justice; statebuilding; good governance; the armed and security forces; special entities; rights and freedoms; and development.

By providing the south with equal representation with the north – all groups participating in the conference had to nominate half of their members from the south – the NDC sought to encourage participation of the Southern Movement, representatives of which were also given special representation and voting privileges in the Southern Issue Working Group.

As the NDC prepared to begin, Yemen faced severe problems: national survival, deep national divisions, threatened identity, dysfunctional state bodies and structures, and severe economic strains. All these problems were compounded by the overarching challenges of corruption and terrorism. But at the same time there was great hope among many Yemeni people that the NDC could be a gateway to peace and national reconciliation, and would address the specific and urgent challenges represented by the nine NDC working groups.

The NDC was inaugurated on 18 March 2013 with a remarkable presence of regional and international partners. International support has accompanied Yemen's political settlement since its inception and members of the UN Security Council visited Sana'a in January 2013. During the six months since its inauguration the NDC has been engaged in intense dialogue, with technical and expert assistance from the UN team led by the Special Adviser on Yemen, Jamal Benomar, and support from a number of specialised international and local non-governmental organisations. The NDC Secretariat, comprising Yemeni experts who provide administrative and facilitation support, has played a key role in assisting the work of the conference bodies, and supporting media, communication and education, and documentation.

An important component of the NDC relates to outreach and consultation, through which the conference has sought to include civil society, the media and the Yemeni public. It was intended that citizens would participate directly and indirectly in outreach activities to try to increase the legitimacy of the NDC process. But outreach consultations were carried out in a shallow way, and the input and feedback gathered were not properly streamed into the deliberations of the NDC.

Federalism and the southern issue

The NDC has encountered major challenges and confrontations, sometimes reaching deadlock. The Southern Issue Working Group has faced especially severe problems securing a workable compromise, as the Southern Movement for a long time continued to demand the restoration of the southern state and the right to self-determination for southerners – against the stipulations of the GCC initiative and relevant UN Resolutions that preserve Yemen's unity. The failure of the government to implement the technical committee's "20 points" package of measures to address key challenges – 11 of which expressly addressed southern grievances – did not make things easier.

Many southern Yemeni leaders rejected the whole NDC process and denied its legitimacy. Some even considered the establishment of the NDC as defying their will and as a challenge to their own authority. When NDC working groups wanted to visit Aden in southern Yemen as part of the outreach consultations they were not welcomed.

A major complication has been tensions between representatives of the Southern Movement inside the NDC

and southern Yemeni leaders outside the process, and in particular gamesmanship between these two groups over who was doing the most to protect the interests and rights of the southern Yemeni people. This made it very difficult for representatives of the Southern Movement in the NDC to be accommodating or flexible for fear of being accused of surrendering southern priorities. The president and the government, and even some international conveners, unhelpfully disregarded the boycott and considered the NDC to be fully inclusive. In fact, a preliminary south-south dialogue may have helped the north-south dialogue (ie the NDC) to function more smoothly, and there were some attempts to facilitate such a process near the Dead Sea in Jordan, although these were not followed up.

As the NDC neared conclusion, the government, fearing that the southern issue could torpedo the whole process, eventually began to respond to concerns – although not without procrastination. International pressure from the Friends of Yemen – a group of 39 countries and international organisations, co-chaired by Saudi Arabia, the United Kingdom and Yemen – further tried to concentrate efforts to resolve these challenges.

Participants from the Southern Movement subsequently softened their secessionist demands, but maintained a minimum prerequisite of a federal state composed of two provinces, southern and northern, demarcated along the former international border. Northern parties, on the other hand, conceded that they had waived their insistence on the simple form of a unified state and would now accept what they described as the "maximum" federation – a federal state comprising several overlapping provinces that traverse the old border.

This "reluctant consensus" on a federal state, whether of two or several provinces, has remained unpopular in both the south and the north. Meanwhile, in this federal tug-of-war, southern and northern negotiators try to pull the rope as hard as they can in opposite directions – for something resembling the restoration the former southern state at one end, to something resembling a local government system at the other.

Rights, freedoms and transitional justice

Rights, freedoms and transitional justice are the biggest challenges facing the women and youth-led forces calling for civil change in Yemen, and there has been intense confrontation between these forces and conservative powers throughout the process. Thanks to their persistent (at times pushy) participation and perseverance, women and youths have managed to create political dynamism in the conference that was enhanced by unprecedented support from Yemeni and international civil organisations.

Of course, neither Yemeni women nor youth groups are politically homogenous, but comprise independent individuals as well as supporters of several political parties within the NDC. This reality has made it hard for these components to agree, organise themselves and choose their representatives. Nevertheless, they brought a particular dynamic of inclusiveness and participation, and also strong voices for freedoms and rights that traditional Yemeni politicians rarely consider or emphasise.

Women made major advances during negotiations to guarantee their right to 30 per cent political representation. But many human rights gains won during the first rounds of the NDC were later clawed back in sharp counter-attacks by conservative powers. Transitional justice experienced especially tough challenges from inside and outside the conference – not least as many key players in the process are themselves guilty of gross violations of human rights.

Implementation?

As the NDC neared its conclusion in late 2013, it was becoming clear that the conference was successfully creating powerful political dynamism in Yemen to challenge the dominance of the former regime and its political and social alliances and structure. But the wave of popular expectation around the outcome of the NDC has diminished. International aspirations have also progressively moderated to local realities as international partners have come to better understand the traditional culture of Yemenis, which does not say "no" directly, but replaces it with "yes, but...".

There are still many concerns and questions lying ahead. Can the parties in the conference, northern and southern, sell their decisions on the southern issue and statebuilding to their respective constituencies? Can the fragile Yemeni state provide the necessary conditions to complete the remaining requirements of the GCC initiative, including the referendum on the constitution and the parliamentary and presidential elections scheduled for the first half of 2014? And can political parties accommodate the new political variables in Yemen – stemming from the peaceful youth movement and reinforced by the political dynamism generated by the active participation of women and youth in the NDC – in the light of ongoing instability and the enduring conservative muscle of traditional powers? The failure of the NDC would allow the roadmap of the peace process to be designed exclusively by conservative parties and under the auspices of the president – with no progressive participation of women and youth.

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Section 3

Constitutional review

Constitutional review in peace processes

Securing local ownership

Cheryl Saunders

This section of Accord 25 deals with the relevance of constitutional review to building sustainable peace. For this purpose, constitutional review may involve either changes to an existing constitution or making a completely new constitution. Major changes can be understood as renegotiation of the "social contract" between the state and society as a basis for peaceful governance.

Constitutional review often occurs in association with a peace process. Ideally the two will reinforce each other, although in practice this is not necessarily the case. While both a peace process and constitutional review can refer to participation, representation and performance as elements of their legitimacy, the conditions that satisfy these elements may differ between the two. In the imperfect situations of fluid transitions, however, mishandled constitutional review can detract from the achievements of a peace process and vice versa.

This section of Accord 25 aims to enhance understanding of how constitutional review works in the context of peace processes so as to ensure that the relationship between them is as productive as possible. To that end, it draws attention to some of the key pitfalls of constitutional review and identifies ways to enhance best practice.

There are many current examples of constitutional review processes that are associated, in one way or another, with peace processes. Some are discussed in other sections of this Accord, notably in relation to national dialogue in Burma and Yemen. This section draws on three cases in particular: Fiji, Nepal and Somalia. In all three, constitutional review is underway at the time of writing in late 2013, although in Fiji it is almost over, at least for the moment. All three cases also follow a period of significant internal conflict. Otherwise, however, the cases differ: in

the nature of the conflict; in the context for constitutional review; in the problems that have arisen in the course of the constitutional process; and in the prospects for sustainable peace. They thus provide a range of diverse experiences from which to draw analysis.

Constitutional review in peace processes

It is no surprise that constitutional review often accompanies peace processes. A constitution may be seen as the means to protect some of the foundations on which peace is agreed, both in the short term and over time. In some cases, constitutional change may be a component of a peace agreement itself, especially if the agreement has a double identity as a founding constitutional instrument. The Interim Constitution of South Africa is a classic example.

Even where constitutional review is not a formal condition of peace, in many post-conflict states there is no existing, appropriate framework for government, and constitutional review is needed in order to provide one. In such cases, both the substance of the new or amended constitution and the process through which it is made can assist to build and maintain trust, engendering a sense of commitment to a shared state.

If the conditions are right, a process of constitutional revision can give both elites and the people understanding and ownership of a new system of government, maximising

chances that disagreement can be managed through politics and that peace can be sustained.

Legitimacy is important for constitutions too. This follows from their role as fundamental law with which other laws and all public action are expected to comply, and which in turn is justified by sourcing the authority for constitutions to the people.

Superficially at least some of the key conditions on which constitutional legitimacy is based are shared with peace processes. Best practice constitution making requires wide public participation and fair representation of all relevant views. The manner in which representation and participation are ensured is one of the principal challenges for any constitution-building process. The performance of a constitution also is a critical factor in sustaining its legitimacy – understood to require the delivery of effective government over time, in ways that are accepted by the people at large.

Both peace processes and constitutional revision thus depend on local context and reaction and can be undermined by external involvement unless it is sensitive, appropriate and informed. The many problems that follow from self-interested or ill-judged international involvement include promotion of the authority of the "wrong" local actors, inappropriate (often meaning rushed) timetables for constitutional revision processes, including elections, that do not fit with the circumstances on the ground, and substantive decisions that do not work or are not locally owned, leading to failure in implementation and compliance.

There is no complete symmetry between the factors that sustain peace processes and constitutional revision, however. Legal legitimacy plays a role in constitutional processes, requiring compliance with provisions for amendment in the existing constitution, or the adoption of a process that is accepted locally as a basis on which a new constitution can be made. Increasingly, constitutional revision culminates in a direct vote, in the form of a referendum, which on the face of it enhances legitimacy, but can fall short in many ways.

A defective constitution-making process is not necessarily fatal over time if the constitution lasts and proves to deliver stable, effective, peaceful and inclusive government. There is now considerable experience with the phenomenon of transitional constitutionalism, in which a flawed constitution made by a flawed process acquires acceptance over time through amendment and effective performance.

> **" A process of constitutional revision can give both elites and the people understanding and ownership of a new system of government, maximising chances that disagreement can be managed through politics and that peace can be sustained "**

There can be tension between peacebuilding and constitutional revision in some circumstances. The imperatives of peacebuilding may engage stakeholders who are not suitable for leadership under a civilian constitution. This is not to deny the importance of the transformation of coercive actors in the transition from conflict, but to point to the potential pitfalls of encouraging players to take roles in constitutional government to which they may be unsuited.

Similarly, peace processes may involve agreements on principles or practices that are not appropriate in a new or amended constitution, at least in the longer term. Concessions to the military or immunity for wrongdoers are obvious examples, which sometimes can be mitigated through time limits or workable procedures for constitutional change.

Difficulties can also arise from premature agreement on more mainstream constitutional arrangements (including, for example, forms of federalism or autonomy) for which there is no adequate capacity or which entrench divisions that caused the conflict in the first place. Conversely, constitution building can inadvertently undermine a fragile peace, including by moving to normalise politics too early or by taking steps that erode trust.

Case studies: Nepal, Fiji and Somalia

The interdependence of peace and constitutional review processes, together with many of the difficulties that arise, are illustrated by the cases of Nepal, Fiji and Somalia. All three cases involve intra-state conflict to which constitutional revision is seen as part of the solution. While the nature of the conflict is different, in all three conflicts the process of constitutional revision has raised acute problems about inclusion that are relevant to sustainable peace. There has also been substantial international involvement in all three cases, not only in geopolitical pressures placed on the states concerned, but also in the design and operation of the constitutional revision processes themselves.

So far the process of constitutional revision followed in each of these states has been flawed, raising concerns about legitimacy and the potential implications for peace. But each case shows progress, too, providing grounds for measured optimism about the future – depending on how things are handled.

In Nepal, the first Constituent Assembly failed to produce a constitution, leading to widespread disillusionment and the installation of an interim government by questionable legal means. On the other hand, the militia have been absorbed into the institutions of the state and the conflict parties are pursuing their goals through a continuation of the constitutional revision process rather than through further armed conflict.

An election was held for a new Constituent Assembly in November 2013, from which a constitution will be expected to emerge with at least broad majority support. If this occurs, the process is likely to be seen to have been broadly inclusive, however unusual, moving the focus of attention to the implementation phase. This will be challenging if, as seems likely, the constitution makes provision for both federalism and semi-presidentialism, each of which is completely new to Nepal.

The reasons for the failure of the first Constituent Assembly are complex, making lessons difficult to draw – apart from a somewhat negative conclusion that an apparently inclusive process will not deliver results if the real bases of power do not engage with it. If nothing else, however, the Nepali example illustrates the point that initial failure of a process is not necessarily fatal, either to constitutional revision or to peace.

In Fiji, a new constitution was made by military decree in September 2013 and the government asserted it would be final by the end of the year. The process was seriously flawed and continues to be contested, but evaluation of the outcome is more complex. The new constitution provides permanent immunity for the coup leaders and will be difficult, if not impossible, to amend in the future. And it is weak in its express protection of civil and political rights.

On the other hand, it is (almost) racially neutral in its application for the first time in modern Fijian history, thus striking at the source of the original conflict. At this point, the political elite, civil society and the people of Fiji face a difficult choice between adopting strategies to make the best of this constitution during the implementation phase or rejecting its legitimacy altogether.

It therefore remains to be seen whether the new constitution of Fiji can initiate a process of transitional constitutionalism, providing a more satisfactory framework for government over time for a stable, non-discriminatory Fiji, or whether the degree of mistrust engendered by the constitution-making process and its outcome are too great. The case of Fiji illustrates the challenges of constitutional revision while military rule is ongoing, suggesting the need for more nuanced procedures that take realistic account of the circumstances on the ground and accept the possibility of phased transition.

> **Peacebuilders and constitutional experts should work together closely enough to be aware of each other's perspectives. Both need to give priority to local knowledge and context**

In Somalia, a new provisional constitution in 2012 makes elaborate provision for the adoption of a final constitution at the end of the current parliament. Already, however, the process to date has been complex, multi-staged, opaque and protracted. It can be criticised on a variety of fronts: the degree of external involvement; the self-interest of political actors; the marginalisation of minorities; and continuing division over institutional arrangements, including the form of federalism.

But there are also signs of incremental progress. A president has been elected in accordance with the terms of the constitution and the task of constitutional revision has required negotiation between the clans. There are lessons to be learnt from the case of Somalia about the limited effectiveness of external actors in devising and imposing workable constitutional institutions and processes. Nevertheless, while much remains to be done to consolidate peace in Somalia there is now a constitutional platform on which local capacity can be built to develop local solutions that fit the local context.

Constitutional best practice

Constitutional revision is one tool that peacebuilders can usefully use. As peace is consolidated, a constitution will be necessary in any event and can help to sustain peace in the longer term. But there are pitfalls in linking peace processes and constitutional revision that must be avoided if both are to be effective.

The exigencies of peace processes can entrench the position of actors or principles that work against peaceful,

constitutional co-existence in the longer term. Where a peace process is assisted by external actors, there is a danger that the constitution itself will be perceived as externally imposed. The gradual transition to a final constitutional settlement may take longer than anticipated when the peace accord was negotiated.

Some obvious prescriptions can assist to avoid these pitfalls. Peacebuilders and constitutional experts should work together closely enough to be aware of each other's perspectives. Both need to give priority to local knowledge and context. It follows that international assistance should be selective and carefully considered, devised in consultation with appropriate local interests that also are chosen with care.

Constitutional revision may require novel processes and solutions not in existence elsewhere to fit the circumstances of a given community. Above all, patience is necessary and rushed processes can be counter-productive. Elections and other key decisions should be determined by conditions on the ground and may take time. Outcomes are rarely perfect, from either a local or external perspective. Implementation is as important as initial agreement and design and is likely to require attention for years. An imperfect constitution may prove with hindsight to be part of a longer transitional process.

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Somalia

Legitimacy of the Provisional Constitution

Abdihakim Ainte

On 1 August 2012 Somalia adopted a Provisional Constitution marking the official end of transition and the establishment of the new Federal Government. A month later, on 10 September, Hassan Sheikh Mohamud was appointed President of the Republic of Somalia, bringing a dramatic change to the political landscape of the country as for the first time in over 20 years the presidency had been decided within Somalia.

Somalia's constitutional process dates back to the establishment of the Transitional Federal Charter (TFC) in 2004 and has been a cornerstone of the September 2011 Roadmap to chart Somalia's path out of transition and towards permanent and representative government. The UN Special Representative of the Secretary-General (UNSRSG), Augustine Mahiga, described the Roadmap as "the most inclusive process of all the efforts to rebuild Somalia's governance", with the UN's role merely to "facilitate a Somali-led process". Mahiga signed the Roadmap along with six Somali "Principal" signatories: the President and Prime Minister of the Transitional Federal Government (TFG), the Speaker of the Transitional Federal Parliament, the President of Puntland, the President of Galmudug, and the Chair of the Islamist group *Ahlu Sunna Wal Jama'a*.

But the legitimacy of the Roadmap and constitutional process is contested. In early January 2012 185 Somali parliamentarians wrote to the UN to protest that the Roadmap had not been submitted to parliament for approval, while Somali diaspora leader Abdi Dirshe has complained that the level of external oversight of the Roadmap has undermined Somalia's sovereignty. Quoted in the UK *Daily Telegraph* in August 2012, Abdirashid Hashi of the International Crisis Group described the Provisional Constitution as essentially "handing over from one interim authority to another, from one transition to another".

The constitution has a peacebuilding function in defining an acceptable social contract between state and society – the lack of which has been a key element in civil war and failed reconciliation in the country. As Sally Healy pointed out in Accord 20, the Somali social order places great importance on contracts (*xeer*) that regulate relationships among Somali clans and lineage groups. And so the level of consequence – and controversy – of the constitution for many Somalis is no surprise, but makes the legitimacy of the constitutional process all the more important.

The constitutional process

The Provisional Constitution tries to pave the way for a Somali nation that pledges both Islamic and democratic values. It establishes Islam as the state religion and requires all laws to be compliant with *shari'a*. It sets up a federal system based on two levels of government – the Federal Government level and the Federal Member State level, comprising the local governments and the Federal Member State governments. Both levels are elected.

A permanent constitution is to be adopted by public referendum before the end of the first term of the Somali Federal Parliament in 2016. The specific allocation of powers and responsibilities are subject to further negotiations – except for foreign affairs, national defence, citizenship and immigration, and monetary policy, which fall within the remit of the Federal Government.

Other key issues are left open to modification by parliament. The UN *Guidebook on the Provisional Constitution of Somalia* notes that the creation of Federal

Somali delegates hold up the book of the constitution on 25 July 2012 during the National Constituent Assembly meeting in Mogadishu.
© Mohamed Abdiwahab/AFP/GettyImages

Member States was highly controversial and so the Provisional Constitution does not create Federal Member States, but entrusts this responsibility to parliament to decide on their number and demarcation.

Amendments to the Provisional Constitution are to be prepared by an Independent Provisional Constitution Review and Implementation Committee – a 5-strong team of independent legal experts. This will operate under the oversight of a parliamentary Provisional Constitution Review and Implementation Oversight Committee, comprising members of both houses of the Federal Parliament, and one additional member per existing federal member state.

The constitutional process was built on three primary objectives: to unite the republic; to lend legitimacy to future political leaderships; and to introduce institutions that are representative, responsive and accountable to the people. The new constitution was born out of a near decade-long review process since the founding of the TFG in 2004, and was a stipulation of the TFC. The TFC further provided for an Independent Federal Constitution Commission (IFCC), established in 2006 and mandated to draft a federal constitution.

In 2008 a new political agreement was reached between the TFG and the Alliance for the Re-Liberation of Somalia (ARS) – an Islamist association established in 2007 out of the deposed Islamic Courts Union (ICU) and other Somali leaders opposed to the TFG. After the election of former ICU Chair Sheikh Sharif as TFG President in 2009, the size of the IFCC was doubled in 2010 with the addition of fifteen new members in order to reflect and accommodate ARS interests. A Committee of Experts (CoE) was subsequently set up in 2011 to support the work of the IFCC, comprising nine members and led by Legal expert Mohamed Jawari. The CoE was established in part to try to offset growing misgivings over the competence and independence of the IFCC, which many Somalis saw as increasingly deviating from the TFC mandate and as being politically motivated.

> " **The constitutional process was built on three primary objectives: to unite the republic; to lend legitimacy to future political leaderships; and to introduce institutions that are representative, responsive and accountable to the people** "

The IFCC agreed a Consultative Draft Constitution in July 2010 and various sectors of society were consulted on it over subsequent months. The CoE and the IFCC then revised the 2010 Consultative Draft Constitution and produced a Harmonised Draft Constitution in early 2012,

following which, at a meeting in Addis Ababa in April, the Principal Roadmap Signatories (ie without the UNSRSG) established a Technical Review Committee to assess and amend the Harmonised Draft.

Two consultative conferences were held in Garowe, Puntland, in December 2011 and February 2012, involving the TFG and other Somali stakeholders. These agreed the "Garowe Principles", which developed language on the content of the constitution, for example relating to federalism, and also outlined plans for a National Constituent Assembly (NCA) to finalise the Provisional Constitution.

The Garowe Principles agreed that the NCA would comprise 825 delegates selected according the 4.5 formula of fixed proportional representation of Somali clans – introduced at a national reconciliation conference in Sodere, Ethiopia, in 1996–97. The formula allocates political representation (for example, in relation to distribution of parliamentary seats) equally to the four major Somali clan-families, Darood, Digil and Mirifle, Dir and Hawiye, with the remaining 0.5 allotted to "minority clans" and to women. NCA membership would include "youth/students, business people, diaspora, religious and traditional leaders, professionals, scholars and existing and emerging administrations". At least 30 per cent would be women. Women were to be nominated for NCA membership first to ensure the minimum quota would be reached, while nominations that failed to return 30 per cent women would be rejected.

Nominations for NCA membership were made by the Principal Roadmap Signatories, assisted by traditional leaders and civil society, and overseen by a 135-member Technical Selection Committee to evaluate candidates. Nominations were verified by an Interim Independent Electoral Commission comprising 15 voting members – again based on the 4.5 formula – who had to be "patriotic, honest, of good standing in Somali society". The NCA met for eight days in July 2012 and finally adopted the Provisional Constitution on 1 August 2012.

Legitimacy of the constitutional process and its outcome

Agreement on a Somali Provisional Constitution is a major achievement. But many Somalis have serious doubts about the legitimacy of the constitutional process and its outcome. Since 1 August 2012 there have been numerous delays in carrying the process forward towards a permanent document – such as in the establishment of independent commissions to advise on key issues such as human rights, boundaries and federation, elections, security, and truth and reconciliation.

A fundamental problem relates to representation. Many Somalis see the 4.5 power-sharing formula as crude and simplistic. Marginalised groups and minority clans in particular perceive it as having reduced their political representation and access to authority. This resentment has been transferred to the constitutional process, as the 4.5 formula has been used to select membership of key constitutional decision-making bodies – including the IFCC and the NCA. Somali analyst Professor Ayfare Abdi Elmi has observed that the use of the 4.5 formula in the selection of the IFCC encouraged many politicians to see it as an employment opportunity for their allies and affiliates, while paying scant attention to the technical qualifications for the job.

> **Many Somalis see the 4.5 power-sharing formula as crude and simplistic. Marginalised groups and minority clans in particular perceive it as having reduced their political representation and access to authority"**

The haste and lack of transparency of the selection process for NCA membership has also raised concerns among a number constituencies in Somalia. Jason Mosely has described how, after the Garowe II meeting in February 2012, the Principal Roadmap Signatories on 23 May finally agreed an "aggressive" timeline and criteria for selection, significantly streamlining the process for vetting membership from the more rigorous framework presented in the Roadmap. The signatories also strengthened the role of technical committees to advise elders on NCA membership selection, thereby establishing key points where less representative or accountable bodies could significantly influence the process. Perceptions of a lack of checks and balances to ensure accountability of the NCA to the people of Somalia have further raised questions over its mandate to amend the draft constitution and whose interests these amendments would serve.

Differences over the substance of the constitution have centred on federation as an appropriate framework for establishing more representative governance: whether Somalia should be federated at all (parliament is divided into two distinct camps that support or oppose a federal system); or, more specifically, over the nature of the federal system that should be adopted. Many Somalis see federalism as overly complex, alien and potentially divisive, and a threat to the homogeneity of Somalia's population.

The role of sub-national entities is especially difficult, particularly in relation to clans. A 2012 Chatham House report noted that the TFG failed to realise a federal framework for Somalia that could maintain national coherence at the same time as allowing space for the emergence of sub-national entities. It identified a discrepancy between a nominal commitment to federalism and decentralisation and the reality of the TFG's focus on statebuilding efforts to develop central institutions. In fact, potential federal entities have emerged at their own initiative through processes of local reconciliation and peacebuilding that are rooted in Somali practice and have occurred largely outside the constitutional process. There are fears among many Somalis that the development of new and competing sub-national entities could threaten Somali national identity and strengthen clan-based association and identification, which has been a major component of violence since 1991 and remains a threat to national government.

A key challenge to the domestic legitimacy of the constitutional process relates to perceptions of the level of international engagement and the extent to which the process has been engineered and accelerated to hit external benchmarks. The public consultation phase of the constitutional process was truncated under pressure (widely perceived as coming from international partners) to deliver a draft constitution before the end of transition on 1 August. This not only raised questions over the wisdom of linking the constitutional process so closely to political developments, but also contributed to waning popular trust in and ownership of the process.

Ownership, transparency, representation and accountability

The birth of the third Somali republic presents a real chance to develop a common framework of social and political values for Somalia. The mere fact of negotiations among clan leaderships, as well as among regional administrations, such as during the Garowe I and II constitutional conferences, demonstrates a new level of political maturity and will. For a country like Somalia emerging from decades of violent conflict, the current constitution-making moment should provide an opportunity for its people to reflect and negotiate their future national direction, as well as to enhance the social contract between state and citizen.

BOX 1
Timeline of the Somali constitutional process: 2004–12

2004 Transitional Federal Charter adopted. Transitional Federal Government (TFG) established and provides for the Independent Federal Constitution Commission (IFCC).

2006 IFCC established to work on a new federal Constitution.

2008 Moderate wing of the former Islamic Court Union (Alliance for the Re-Liberation of Somalia – ARS) included in the TFG and 275 new Members of Transitional Federal Parliament sworn in.

2009 Sheikh Sharif (former Chair of the Islamic Court Union) elected as new TFG President.

2010 – January Fifteen new commissioners of IFCC sworn into office. **July** Consultative Draft Constitution presented by IFCC and public consultation process commenced.

2011 – September Roadmap to End the Transition adopted by the Somali Roadmap Signatories. **November** Committee of Experts (CoE) established by the Roadmap Signatories to complement the work of the IFCC, comprising nine "experts selected based on their knowledge and experience in law". **December** Garowe I Constitutional Conference introduces a National Constituent Assembly (NCA) to replace the national referendum in the adoption of the new Constitution.

2012 – February Garowe II Constitutional Conference develops procedures for the adoption of the new Constitution, and makes substantive decisions about the content of the new Constitution, eg to establish a parliamentary system of government and ways forward for federalisation. **March** Galkaayo Agreement introduces Somali Traditional Elders as a mechanism to select members of the NCA and the new Federal Parliament. **April** Harmonised Draft Constitution presented by IFCC and CoE. Addis Ababa Agreement by the Roadmap Signatories establishes the Technical Review Committee (TRC) to review and amend the Harmonised Draft. **June** Nairobi Agreement by the Roadmap Signatories transforms the TRC into the Technical Facilitation Committee (TFC) to finalise the Harmonised Draft Constitution and establishes the Technical Selection Committee to vet members for the NCA and the new Federal Parliament. TFC publishes the Draft Provisional Constitution for presentation to the NCA.

1 August Provisional Constitution adopted by the NCA. End of transition. **20 August** The 275-member Federal Parliament of Somalia inaugurated. **28 August** A new Speaker of the Federal Parliament selected. **September** A new President of the Federal Republic of Somalia selected. **6 October** A new Prime Minister of the Federal Republic of Somalia appointed. **13 November** The Council of Ministers endorsed by the Federal Parliament.

Adapted from the United Nations Political Office in Somalia

But fundamental flaws in the constitutional process have undermined the legitimacy of the Provisional Constitution for many Somalis, provoking controversy over issues of ownership, transparency, representation and accountability as key actors like civil society organisations and political parties have felt excluded. The constitutional process grew from the TFC and transitional institutions, whose legitimacy was fundamentally challenged as having been developed outside Somalia with too much foreign influence. Important parts of the constitutional process have subsequently been modified to respond to events and political developments – for example the expansion of the IFCC in 2010, or the streamlining of NCA selection process. The common perception that important constitutional decisions have occurred behind closed doors has not helped to ensure a broader acceptance of the Provisional Constitution.

There are some measures that can potentially address these flaws. For example, building local technical capacity through training and support for Somali constitutional experts who can then oversee implementation of the constitutional process and thereby increase local ownership. Institutions and independent commissions that are stipulated in the Provisional Constitution are behind schedule and should be established forthwith to ensure public discussion and promote broader engagement and ownership of the constitution as the process progresses.

The international community can help by supporting both formal and informal governance structures in Somalia to engage traditional clan-based arrangements in order to accommodate the realities of authority and power in Somalia – in other words, developing a hybrid approach to infuse constitutional reform in the local context rather than imposing it. The government will need to monitor progress closely to ensure the gains are felt by both majority and minority groups. Divergent views should be welcomed and the state must remain self-critical in its pursuit of democratic self-governance.

There is a real opportunity for more emphasis on dialogue and reconciliation to address key debates that surround the constitutional process: between communities and clans to respond to clan rivalries; and between national and sub-national administrations to mitigate state fragmentation. Somaliland's declaration of independence is still contentious in relation to the provisional document. Although members of Somaliland clans have been included in Somali institutions, Somaliland still rejects the idea of a unified Somalia and can point to a constitution of its own.

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Fiji

The constitutional process: a view from the Fiji Women's Rights Movement

Virisila Buadromo

Early in 2012 Prime Minister Frank Bainimarama launched a constitutional process for Fiji to deliver a new constitution in February 2013 ahead of 2014 elections. He promised "true consultations" with "ordinary Fijians, not just the elite or the well-connected".

The process included a five-member Constitution Commission to produce an initial draft, comprising two international experts and three Fijians. The constitution was to be approved by a Constituent Assembly, representing the people but appointed by the government, and requiring a two-thirds majority to change the commission's draft. The decree by which this process was put in place stipulated some essential features of the constitution, including racial equality and immunity for coup leaders. The constitution would not come into effect until a court had certified compliance with these constitutional principles.

The Fiji Women's Rights Movement joined others in Fijian society in participating actively in the constitutional process and making thousands of submissions to the commission. But in January 2013 the process was derailed when the government rejected the commission's draft, proposing instead to make a draft of its own. In time, the idea of a representative Constituent Assembly was also abandoned in favour of allowing a limited period of time for people to comment on the government draft. The revised constitution was finally enacted by military decree.

Racial divisions between indigenous Fijians (i'Taukei) and Indo-Fijians date from colonial times. The first independence constitution entrenched racial difference, including by providing for separate voters' rolls. The first two of a series of four coups in Fiji were prompted by an election in 1987 that returned a government in which Indo-Fijians were prominent. The constitution of 1997 was intended to heal divisions, but like previous constitutions, it continued the use of separate voters' rolls and also privileged the position of the i'Taukei in other ways.

A third, more violent coup in 2000 followed a change of government in which an Indo-Fijian became prime minister. It involved a temporary seizure of power by the military and an attempt to abrogate the constitution, which the courts subsequently ruled to be still in effect. A fourth coup in 2006 installed a government led by military commander Bainimarama and led to the abrogation of the constitution in 2009. The architects of the coup justified it in terms of needing to save Fiji from a corrupt and racist government. Bainimarama advocated multiculturalism and anti-corruption, and promised to concede office and return to the barracks after implementing electoral reform and a "clean-up campaign". But eight years on from the coup, Bainimarama remains in office.

Mobilising for change: the experience of the Fiji Women's Rights Movement

For some, conflict in Fiji relates to ethnic tension between Indo-Fijians and indigenous i'Taukei. Others blame the military and its usurpation of democratic governments. From a women's rights perspective, the conflict in Fiji is about a fundamental power imbalance.

Fiji is a patriarchal society that favours men over women. It is superficially multi-racial, but Fijians are highly polarised among different ethnicities, and are essentially conservative. In Fiji, where the government is so tied to the

Participants at the Fiji Young Women Forum wearing the Fiji Women's Rights Movement's 'I Am Voting' t-shirts – a campaign encouraging young women's participation in the electoral process. © Fiji Women's Rights Movement

military, the women's movement is perceived as a threat to the establishment. The military is hierarchical and patriarchal: when one person gives an order, everybody follows. The predominantly male military perspective sees a group of female-led agitators as inimical to the military psyche. Fighting for women's rights is perceived as an attempt by the weaker sex to dominate men or take their space.

> **" FWRM was initially very wary, fearing that involvement in a weak process could legitimise the Bainimarama government and imply agreement with its abrogation of the 1997 constitution "**

A number of women's organisations unequivocally opposed the 2006 coup and have maintained their resistance to it. One of these is the Fiji Women's Rights Movement (FWRM), a feminist advocacy organisation established in 1986 whose core work is to promote legislative reform and policy change. FWRM has been targeted by the military on several occasions – including through physical attacks. But civil society and women's organisations more broadly were split over the coup and whether to accept or reject Bainimarama. FWRM initially had very little to do with other civil society organisations, often working in isolation because it mistrusted pro-regime organisations.

But from 2009 FWRM began to think more practically in terms of the conflict in Fiji. As FWRM members we

asked ourselves how our own actions impacted on the conflict: were we helping to resolve the conflict, or make it worse? We realised that simply taking a position, without listening or speaking to other groups or the government, was not contributing to progress. Responding to this recognition required a U-turn, reversing a strict policy of non-engagement with the government or civil society organisations aligned with it. So FWRM started working with other organisations and individuals and got involved in a dialogue process that developed into a multi-sectoral initiative called Dialogue Fiji. This provided a framework for civil society organisations, community leaders and some government representatives to start talking about the conflict – in effect, a mini "community" reconciliation process.

During three years of dialogue before the constitution development process began in 2012, we came to see the government and some civil servants in a different light and understand how we could engage with them. As women activists we also realised the need to consolidate the women's sector and from 2011 started mobilising women's organisations and people interested in gender equality and women's rights. We convened a consultation, in conjunction with the National Council of Women of Fiji, *Soqosoqo Vakamarama I Taukei* (Cakaudrove Women's Resource Center Project), and FemLINKpacific, which was attended by almost 100 women from across the country and developed into the Fiji Women's Forum.

Fijian women and the constitutional process

A key factor invigorating the 2012 constitutional process was the mobilisation of different groups to make it happen. FWRM was initially very wary, fearing that involvement in a weak process could legitimise the Bainimarama government and imply agreement with its abrogation of

the 1997 constitution. There was widespread distrust of the role of the government, including in relation to the appointment of the Constituent Assembly. Nevertheless, we recognised an opportunity for change: the announcement of an independent Constitution Commission was seen as a very positive step insofar as it included highly renowned and credible commissioners – Professors Yash Ghai and Christina Murray – who it was felt would only be part of a process that was capable of supporting real change.

> " **Women have taken the lead and have been pushing boundaries. The Fiji Women's Forum has been instrumental in getting women invloved. Women made almost a third of all submissions to the commission, and the Women's Forum was a big factor in enabling this**"

So FWRM and others got involved. As it gathered pace the constitutional process increasingly gave civil society a sense that change was possible, and that people and communities could participate and influence decisions that would impact upon their lives. It was a beacon of hope after many years of military government and draconian laws. FWRM and civil society more broadly felt that through their submissions Fijian people could influence the process and reaffirm some positive aspects of the 1997 constitution – for FWRM, the Bill of Rights in particular – but also to acknowledge areas to be strengthened and reformed. Some 7,000 submissions were made to the commission, with people walking many miles to have their voices heard. But the government underestimated people's level of criticism.

Women have taken the lead and have been pushing boundaries. The Fiji Women's Forum has been instrumental in getting women invloved. Women made almost a third of all submissions to the commission, and the Women's Forum was a big factor in enabling this. The women's movement tried to be involved in the Constituent Assembly that was supposed to follow the consultation and went to some lengths to choose representatives in an inclusive way. As the process progressed the government became extremely apprehensive and defensive, resorting to tactics to undermine the forum's credibility. But the forum managed to sustain united action to increase women's participation in the process and to get more women into parliament, focusing on the 2014 elections.

From the standpoint of the FWRM, the government's 2013 constitution was a great disappointment. It threatens women's rights in a variety of ways and is certainly much less favourable to the position of women than the draft originally proposed by the commission in December 2012. As it stands, moreover, this constitution will be hard to amend, requiring a three-quarter majority both in parliament and in a referendum. This is the constitution on the basis of which the elections expected sometime in 2014 will be held.

Supporting transition or legitimising autocracy?

Fiji's military leaders and the Fijian people both want legitimate governance. But legitimacy means very different things for each. FWRM sees legitimacy in terms of human rights and the rule of law. From our perspective, the constitutional process had to be independent and representative. The inclusion of two external commissioners, and the fact that three of the five commissioners were women, was seen as very positive. Participation was crucial to the process's legitimacy. For the women's movement and civil society more broadly this meant ensuring submissions could be made to the commission in a way that was free and fair and not coercive. The process progressively gained legitimacy as people became increasingly involved and took ownership, and space opened up for debate without interference from the security forces.

When the government rejected the draft in December 2012 legitimacy instantly evaporated. The state was subsequently prepared to *consult* people on the constitution in order to provide a superficial rubber-stamp of popular legitimacy, but it was not prepared to allow genuine *participation*. Now, irrespective of whether or not the proposed 2014 electoral process is free and fair, the government will declare itself legitimate. This does not give power back to the people, but centralises and reinforces it among the elite.

FWRM drew on experiences from other processes to try to find ways of holding the government to account. In Kenya, we saw that a parallel structure called the Citizens Assembly had been established to promote public participation in the constitutional process. We saw the benefits of this for Fiji and set up our own People's Assembly after the government repudiated the "people's draft", as the commission's draft came to be known. We created a space where different representatives could come and debate – including from both civil society and government. The Fijian media self-censors out of fear, but we were able to stream the whole process live on the internet. We encouraged people to send in questions for their representatives to respond to. The last day of

the People's Assembly coincided with the release of the government's draft constitution – the same day that it also announced it was scrapping the Constituent Assembly. In the end, the only space where were able to participate was the People's Assembly.

The Constitution Commission's independence gave it credibility and meant that the public and civil society had huge confidence in it. But the commission did not understand Fijian politics well, particularly in terms of its relationships with powerful figures like the attorney general and the prime minister. Its emphasis on independence also meant that communication with the state was weak and led to tension, which ultimately contributed to the draft constitution being discarded.

> **" Fiji's military leaders and the Fijian people both want legitimate governance. But legitimacy means very different things for each "**

The commission's expertise, combined with the huge number of submissions it received, meant that the draft constitution was a very strong document. It reiterated important parts of the 1997 constitution, but also strengthened it. FWRM was critical of some parts of the draft: for example, there was a proposal to replace the Senate with a Citizens' Assembly, but with no clarity on how many people would be appointed to it, or to whom it would be accountable. This lack of detail meant that a potentially good idea was ultimately idealistic, with question marks over its feasibility, which presented a basis for government resistance. Also, for procedural reasons it would have been difficult for the Constituent Assembly to have changed the draft.

Looking forward, the 2012 constitutional process demonstrated that civil society can effect change – even when the situation appears hopeless. There are many limitations in the government's new constitution. But civil society now has to try to interpret parts of it in ways that can work positively to give people more power and access.

FWRM's job now – as part of civil society and the women's movement – is to work to help the government understand that they do not need to fear us. They should be working with us to try to decentralise power back to the people. Military rule only works for the military, not for civilians. So peopled must be mobilised across a range of movements – not just the women's movement. It is about getting citizens to become active, rather than just being bystanders watching events unfold. It is about empowering the community and citizens to say, "You can make this change!"

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Nepal

Constitutional reform: peace, power and representation

Bipin Adhikari

After the 10-year "people's war" and another six years of tough transition, Nepal's peace and constitution-making processes are at a difficult crossroads. The dissolution of the first Constituent Assembly (CA) in 2012, with no new constitution agreed, reflected the scale of the challenge of post-war political transition in Nepal. As Nepal re-launched its constitutional process in November 2013, a second CA needs to learn the lessons of its precursor's failure and engage political leaders, embrace civil society dialogue and overcome political differences in order to reach consensus on key issues such as federalism.

Peace process and constitutional review

The Communist Party of Nepal (Maoist) (CPN-M) took up arms against the state in 1996, challenging a political system it accused of being feudal and failing to serve the needs of the people. Before it declared war, the CPN-M had submitted a 40-point list of demands. Among them were that a new constitution be drafted by "people's elected representatives" to abolish the special privileges of the king and the royal family, and that the army, the police and the bureaucracy be brought under democratic control.

The list also included a call for the removal of discriminatory legislature, including relating to the 1950 Nepal–India treaty, which contained measures related to supporting the "public and its well-being" and "people's lives". The Maoists further called for a secular state (rejecting its existing Hindu identity), the end of discrimination against women and of all class exploitation and prejudice – including the Hindu system of "untouchability" – and the formation of autonomous governments in areas where ethnic communities were in the majority.

The Maoists' social reform agenda and armed insurrection techniques initially attracted support from many poorer people in the outlying hills and mountainous areas. The government soon realised that the Maoist uprising was much more than a law and order problem. The mysterious assassination of King Birendra and his family in 2001 helped to fuel fighting between the state and the Maoist insurgency. The existing constitution and parliamentary institutions came under increasing stress, and neither national nor local elections could be held. The parliamentary parties generally sided with the state, despite their differences with the king. The war cost the lives of approximately 15,000 people, with many more displaced, and led to serious human rights violations and abuses.

In 2005 the Maoists were able to strike a deal with the major political parties to jointly challenge the monarchy. The new king Gyanendra, crowned in 2001, had alienated mainstream political parties by using the war as a pretext for his oppressive handling of them. The deal followed a three-month unilateral ceasefire declared by the Maoists as a way to reach out to political parties, and included a 12-point Understanding which required the dismantling of the "autocratic" and "illegitimate" rule of the monarchy and called for elections to establish a CA to draft a new constitution.

The parties and the Maoists agreed to pursue democracy as a way to restore peace. It was to be based on a forward-looking restructuring of the state that would respond to grievances related to class, caste and gender, as well as to other political, economic, social and cultural challenges.

Nepalese political leaders from 22 parties join hands during a protest demanding the resignation of Prime Minister Baburam Bhattarai in Kathmandu on 8 June 2012. © Prakash Mathema/AFP/GettyImages

The parties were prepared to dismantle the monarchy and abandon the parliamentary constitution of 1990 if the Maoists agreed to give up arms and join the democratic political mainstream. The Maoists wanted to show that the protracted "people's war" had been a success, while the parties wanted an end to violence and resumption of a democratic process.

The Comprehensive Peace Accord (CPA), signed by the government and the Maoist leader Prachanda on 21 November 2006, formally ended the armed conflict, enabling the Maoists to take part in government and placing their weapons under UN supervision. It required Maoist fighters to be put in temporary cantonments and the scrapping of the Maoists' parallel administration. The king was stripped of political powers and his properties were nationalised under public trusts. The CPA also formed a national peace and rehabilitation commission, a truth commission, and a high-level commission for state restructuring.

In 2007 the Interim Constitution was promulgated and, after some delay, the CA was elected in April 2008. The Interim Constitution was drafted by a commission on which the Maoists and other political parties were represented, led by a former Supreme Court judge. Royalists, though, were excluded and the monarchy was subsequently abolished. The CA, which also served as Nepal's parliament, was given a two-year term under the Interim Constitution.

After several extensions to the CA's term, the Supreme Court eventually refused to prolong it beyond May 2012

on the grounds that its parties and the representatives needed a fresh mandate from the people. So, following four years of deliberation, the CA was dissolved on 28 April 2012 without adopting a new constitution or establishing a mechanism to move on from the prevailing impasse.

Constituent Assembly I: why it failed

Along with the existing major political parties, the CA election brought in the Maoist and new Madhesi parties. A number of parties supported constitutional and parliamentary democracy, including the Nepali Congress (NC), the oldest Nepali party, and the CPN (Unified Marxist-Leninist – UML). The Madhesi parties, drawn from different existing parties and political groups, were also broadly democratic. The CPN-M, the largest party in the CA, remained avowedly Maoist.

Politics

The Interim Constitution required the establishment of Nepal as a republic, the progressive restructuring of the state, and an end to discrimination. But these ambitions were increasingly superseded by politicking among three broad, primarily ethnically organised groups: Bahun-Chhetris (high caste hill communities), Janajatis (smaller ethnic groups) and Madhesis (the people of the plains along the Indian border). The first group came to be identified as establishment, and the other two as opposition. Many parties had predominantly internal and often contradictory agendas, and disagreed on the contents of the constitution.

There were many reasons behind the failure to draft a constitution. Four different coalitions and alliances led

the country during the CA's four years. All the major parties, including the Maoists, prioritised their own supremacy. There was lack of trust between Maoists and non-Maoists about the change agenda, underpinned by radical differences of vision. The major parties disagreed fundamentally on the system of government: a parliamentary system, a presidential system or a mixed system. All parties wanted a representative parliament, but differed on the electoral system and allocation of seats – first-past-the-post or closed-list proportional representation.

The Maoists accused mainstream parliamentary parties of remaining essentially feudal and of being unprepared for the radical change required to address grievances that they said underpinned the war. Non-Maoists saw the Maoists as inherently undemocratic. The Maoist model envisioned a government that included all parties with more than five per cent of seats, led by a directly elected president but leaving little space for opposition. The Maoists' concept of property rights and popular sovereignty did not tally with modern principles of human rights and the rule of law, while they also believed in parliamentary sovereignty over the constitution and that the judiciary should be governed by parliamentary majority. An additional challenge to progress was the growth of intense internal disagreements between Prime Minister Baburam Bhattarai, who led the country during the last leg of the CA, and senior colleagues and other influential members of his party.

Throughout the CA period, efforts to form a national consensus government to support constitution-making and lead the peace process, including the reintegration of Maoist combatants, failed. Neither did underlying threat of a Maoist split help the cause of transition. Meanwhile, deteriorating law and order caused by strikes and closures over political issues continued even after the start of the CA. Underground armed outfits started to proliferate in the southern plains, many of them based outside Nepal's borders.

Federalism
The extent and precise nature of federalism that the new constitution would provide was a key issue. The United People's Front, a leftist party on the margins, opposed moves towards the division of Nepal along federal lines. The National Democratic Party came out openly in favour of the restoration of the monarchy within a parliamentary framework. The Maoist and Madhesi parties, the two major new groups who had relatively common objectives on federalism, ethnic autonomy and devolution of power, allied against other parties, particularly the NC and CPN (UML) – the largest mainstream parliamentary parties.

Indigenous people pressed for identity-based restructuring through federalisation along ethnic lines. This implied allocating territory for major indigenous groups like the Magar, Gurung, Tamang, Kirant and Limbu. The Maoists in particular were committed to ethnic federalism because they believed these communities had suffered the most in the state formation process. The Bahun-Chhetris (also commonly known as the Khas community) vehemently refused ethnic division, even though they accepted federalisation, and there was intense debate about who was indigenous in Nepal and who was not. The indigenous people, Madhesis, Dalits and women of all parties formed their own advocacy caucuses, formal and informal, demanding increased representation and affirmative action.

In such a climate of ethnic tension, all political parties, even the major ones, struggled to maintain a national outlook and a stance supportive of democracy. This encouraged intra-party squabbles and delays in calling and setting the agenda for CA meetings. The first president of the new Nepalese republic, Dr Ram Baran Yadav, elected in 2008, put intense pressure on the prime minister and political parties to agree a constitution, but ethnic polarisation undermined the chances of reaching the required two-thirds majority in the assembly. Snowballing differences between political parties meant that reconciliation efforts by some of the major parties, such as the Maoists, Nepali Congress, CPN (UML), and Madhesi parties, also failed.

Power and inclusiveness
Although the CA was an inclusive body, ensuring diversity and ethic representation, political leaders were unable to get the best out of it and craft a workable constitution. The CA process, as set out in the CA rules, was under-used. The thematic committee system was not efficient. There was not enough discussion on constitutional forms, norms, standards and procedures, and little effort to go beyond partisan approaches.

Senior party leaders were hardly involved during committee-level discussions. Senior party members were barely even aware of many choices made at committee level by CA backbenchers. The thematic committees could have managed the widening gulf between different parties if senior leaders had participated, but senior leaders prioritised political exigencies, especially making and unmaking governments, over delivering a new constitution.

Civil society was also divided along political and ethnic lines. Civil groups were not able to speak independently and thus help political parties to forge a consensus on contentious issues. The dominant Bahun-Chhetri communities did not reach out to deprived and marginalised groups. New socio-political forces,

notably Janajati (indigenous) groups, Madhesis and Dalits, were increasingly radicalised because their reasonable demands for inclusion, affirmative action and support were overlooked.

The CA could have been successful had the Maoists been more sympathetic to constitutionalism and the rule of law. The Maoist dialogue on federalism over-emphasised autonomy and self-determination at the expense of balancing self-rule against shared rule. The Maoists' commitment to ethnic autonomy was difficult to reconcile with the requirements of a modern federal state. However, none of the parties, revolutionary or conservative, had done enough homework on what type of reform they wanted. The people's war was not, in the end, a war with clear parameters for constitutional democracy.

These dynamics played out in a regional context of the evolving relationship between India and China, Nepal's immediate neighbours. Each considers Nepal to be in its security "backyard" – close to New Delhi in India, and bordering with Tibet in China – and strategically significant.

Constituent Assembly II: looking forward

Elections for a second Constituent Assembly (CA II) held in November 2013 were contested by 122 parties – up from 56 that contest the previous elections – and saw the CPN-M, the largest party in the first assembly, relegated to third place.

In March 2013 President Yadav had appointed Supreme Court Chief Justice Khil Raj Regmi as chair (effectively prime minister) of a new interim government tasked with holding the elections. The Chief Justice was selected because the major political parties were unable to agree a leader for this critical phase. But this raised concerns over the blurring of lines between the judiciary and the executive. And while the president has the power to issue orders to facilitate implementation of the constitution, there was at the time no accountable government or parliament to endorse his decision, and such a development is not provided for in the Interim Constitution.

The Chief Justice traditionally leads the judiciary and presides over the Supreme Court, taking on administrative responsibilities for it. He is chair of the Judicial Council, which recommends the appointment of judges, and is the principal point of contact between the executive and the judiciary. But for the Chief Justice to lead the government is unprecedented and there has been pressure on Regmi to resign – for example a splinter group of CPN-M made it a condition of taking part in the elections.

It is not clear that the newly elected CA will learn the lessons of the past and successfully deliver a new constitution for Nepal. There has been little real change in the leadership of political parties. Some new parties have emerged on the fringes, but these are essentially ambitious splinter groups rather than parties deeply committed to long-held values.

The focus on elections has meant that not enough has been done in the interim to resolve contentious constitutional issues like ethnic federalisation, for example through increased dialogue between the political parties and intensified civil society involvement. Opportunities to discuss the number of provinces, identity issues and the establishment of self-governance structures for smaller ethnic groups were missed.

It is entirely possible that the same challenges that sunk the first CA will reappear unchanged. The new CA and civil society will have to work hard and harmoniously to ensure that there is national reconciliation and that essential reforms are not subjugated by politics.

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Section 4

Local governance

Local governance and peacebuilding

Challenges of legitimate representation

Ken Menkhaus

One of the scarcest commodities in violent conflict is legitimate representation for peace processes. The question "who has the right to represent whom?" is always contentious and is especially difficult when violence features a proliferation of armed groups and high levels of social and political fragmentation, and when it goes beyond conventional notions of war to include communal and criminal violence. Many efforts to build peace over the past two decades have foundered over the selection of illegitimate or contested representation.

International peace actors have repeatedly observed that the most legitimate community representatives are often found in local-level governance systems that either survive or spring up to provide basic protection and order in dangerous, lawless environments. Not surprisingly, international mediators have wanted to tap into local administrations and their leaders as participants in peace processes.

This section of Accord 25 explores links between local-level governance systems, legitimate authority and violence in Syria, Afghanistan and Brazil. It looks at Syrian civil society efforts to organise locally and resist both regime and opposition violence; at initiatives to support community reintegration of ex-combatants in Afghanistan as part of a national reconciliation strategy; and the relationship between the state, communities, militias and drug traffickers in *favelas* in Rio de Janeiro.

As an introduction to this section, this article tackles a fundamental question: how viable is the aspiration to harness the legitimacy of local leadership for national peace processes? The article proposes four key determinants of whether local leaders can or cannot play a positive role in peace processes: (1) the actual legitimacy of local leaders; (2) their political will for and interest in engaging in national peace processes; (3) their capacity or opportunities to engage; and (4) what local governance systems have to offer.

Legitimacy of local governance in conflict zones

Local leadership is not a panacea for conflict. In many violent settings, local governance systems are not legitimate and must not be idealised. They include warlord fiefdoms, crude protection rackets meting out vigilante justice, or communal enclaves that advance the security interests of one group at the expense of others. Local leadership can sometimes constitute thinly veiled platforms for political figures seeking to advance their own parochial ambitions.

Local governance systems can also embody ethnic or communal demands for autonomy or even secession that, whether justified or not, can complicate rather than complement a national-level peace process. Local governance leadership is often self-appointed, unelected, and, even at its most enlightened, reliant on forms of customary or religious law. The Brazil case study shows how militias operating in some *favelas* in Rio de Janeiro

have established alternative governance structures that rely on coercive power in the absence of any meaningful state presence. Local leadership is often unconstitutional and can fall short of basic standards of due process and equality.

Nonetheless, in an impressive number of cases, local governance arrangements in conflict and post-conflict settings have not only provided basic law, security, and routinised dispute resolution, but have also helped to solidify inter-communal peace accords at the local level. The Syrian case study in particular highlights concrete local efforts at inclusive grassroots organisation and self-rule that have tried to span sectarian and other divides amid the most destructive and pervasive fighting. For millions of people caught in zones of protracted violent conflict and fractured authority, local governance arrangements are the only form of protection and order they have. This has earned some local governance arrangements "performance legitimacy" among their populations, and has attracted the interest of diplomats and mediators seeking to identify grassroots representation in peace processes.

But performance legitimacy can be situational and perishable. A local government's ability to "deliver the goods" of basic law and order may earn it legitimacy and public gratitude in a turbulent war setting, but in a more peaceful environment restive local populations may demand greater voice, services or an end to exploitation by their protectors. Some local leaders whose principal value to their community is their ability to provide protection against external threats can develop an interest in perpetuating communal tensions as a way of maintaining their local value. Context is thus critical in determining when local leadership is genuinely representative.

Political will and interest in peace
Local governance authorities may or may not have an interest in joining peace processes beyond their immediate sphere of influence. It is useful to distinguish between local and regional governance. Truly local governance systems – at the district, town, neighbourhood, or village level – are quite distinct from self-declared regional polities. Regional polities typically represent (or claim to represent) large ethnic or communal groups, attempt to replicate state-like administrations (including assuming the title of governor or president), are keen to assume prominent roles in national peace processes, and are led by figures with national political ambitions. Thanks to their strong bargaining position, sub-national regional polities usually enjoy a seat at national peace processes.

Local governance systems at the village or town level are not necessarily interested in national peace processes but maintain primarily local ambitions, and the governance arrangements over which they preside are informal and hybrid. They often perceive national-level political processes either as distant affairs over which they have no say, or as potential threats. The idea that a peace process could pose a threat may seem counter-intuitive, but makes sense for many local actors because most national-level peace processes focus entirely on the allocation of positions, power and resources in central government. The new political order emerging from these deals rarely recognises existing local authorities and can sometimes undermine local peace and governance arrangements.

Moreover, many local authorities and their constituents are keenly aware that, precisely because the stakes are so high, national level peace processes carry a high risk of heightened communal violence if they fail to produce an accord that is acceptable to all. National peace processes can trigger major political changes, and local-level governance arrangements tend to be defensive, survivalist and risk-averse. All this points to a common obstacle to inclusion of local governance arrangements in national peace processes: their own reluctance to be drawn into processes they understand poorly and view with suspicion.

Local leadership and national peace processes
The provision of effective local governance in violent settings is a major accomplishment and requires a wide range of skills. In Syria, grassroots administration has managed to survive and provide a range of local services and functions in the midst of intense civil war. But local governance skills are not necessarily relevant for peace. The case study of Rio de Janeiro in this section shows that local militias know perfectly well how to work politically in their environment: by monopolising external relations and protecting communities from state violence, they have bolstered their own power and their control over residents of the *favelas*.

The capacity to govern locally does not necessarily translate into the right knowledge, skill sets and mandate to engage in peace processes at regional or national level. And there are also challenges of opportunity. The Syria case study describes how local coordination committees have struggled to gain access to national peace talks, despite their convincing claims to significant representation within Syria – not least in comparison to diaspora bodies like the Syrian National Coalition, which is now officially recognised by some governments as the "legitimate representative" of the Syrian people.

The gap between the capacity to govern locally and represent nationally is a challenge for many traditional authorities who can find themselves out of their depth.

Putting unprepared local authorities in national peace talks can not only lead to failure, but can erode their legitimacy back home. Discerning when local governance authorities do and do not possess the capacity to play a constructive role in wider peace processes is thus critical if the "do no harm" principle is to be respected.

Four factors matter most in local capacity. The first is knowledge of the political and conflict issues at play in wider peace talks. Local authorities must not only understand what their constituents want out of a peace process, but must be able to master the many complexities of national-level politics. Peace processes often focus on matters such as provisional constitutions involving issues ranging from systems of electoral representation to executive-legislative relations, and to citizenship and land laws. Few local authorities have adequate knowledge of these kinds of national political issues, and are usually not in a position to learn quickly enough to play a constructive role.

They may also not have competence or fluency in the language employed in peace talks, and so cannot appreciate the nuances and implications of word choices in peace accords. All this can result in peace processes being dominated by a small number of seasoned political figures and the marginalisation of local representatives. On this score, the most promising local authority representation is by hybrid groups including both traditional leadership and professionals or former civil servants who understand the political implications of different options raised in peace processes. If allowed to work in teams like this, local authorities can overcome knowledge deficits in peace processes.

A second, related factor involves skill sets. Local political leaders may find themselves in talks with powerful militia figures, national-level politicians and senior international diplomats, and may be addressing conflict issues that overwhelm the tools they use to manage conflict locally. An elder may not find that skills in the use of customary law to manage land disputes or murders locally prepare them for ethnic cleansing or war atrocities.

But local authorities also have much to offer national-level peacebuilding. Legitimate local administration represents what good governance looks like, and sets a high bar for aspiring national elites. Their experience and skills in building and maintaining community cooperation on functional issues of order and basic services locally are invaluable. Their "performance legitimacy" is a critical reminder to national elites to deliver a peace dividend to citizens – not just in the abstract but also in specific places and on specific issues.

Third, local leaders need a mandate from their constituents to represent them. Local support for maintaining law and order may or may not translate into a mandate to represent the community at the national level. This is especially challenging when a local administration reflects a governance accord between two or more communities. In national peace processes, having a seat at the table can become critically important to ethnic or communal groups, so that a leader they support for local administration can be unacceptable as a national representative. Mediators need to be confident that local government leaders have the backing of their people to take on a new task in the wider peace process.

Finally, local governance leaders need to be able to implement the broad terms of peace accords to which they are a party. Local governance arrangements in some violent conflict settings derive much of their legitimacy from consensus-based, consultative and inclusive decision-making processes that give all local groups a sense that they are stakeholders in local governance. These "powers of persuasion" are tested when leaders sign accords that require local compromises. Legitimate local authorities do not need to rely on force.

Underlying these four factors is the fact that local governance authorities are often able to manage local spoilers and militia leaders – in part because comparatively little is at stake (in strategic terms, at least) in remote towns or villages. But once local leaders assume a role in regional or national peace processes, the strategic stakes are raised and competition over the right to represent becomes much fiercer. This is even likely if local leaders support peace processes that threaten the interests of powerful armed groups. Peacebuilding is high risk, and local governance arrangements can be vulnerable to reprisals by militia groups, unscrupulous political elites and others with the capacity to undermine local government, sow local divisions, offer bribes, or coerce local leaders. Local governance systems that lack the resilience to withstand these external pressures may not be viable participants in peace processes.

What local governance systems have to offer

Legitimate local governance systems in violent settings work because they embody and advance shared communal interests in law, order, security, predictability, basic regulatory functions and access to markets and basic services. These are tangible and essential needs that cut across conflict lines and focus communities on functional cooperation for mutual benefit. Local governance arrangements also routinise conflict over resources (which at the local level are usually quite modest) in ways that reduce the likelihood of renewed violence.

> **Under the right circumstances, bringing in legitimate local government leaders can help inject a greater level of representation and popular voice into wider peace process"**

Trust – a critical commodity for the legitimacy of any governance arrangement, and one that is in notoriously short supply in countries emerging from communal violence or civil war – is somewhat easier to rebuild at the local level, mainly because local communities have long-standing business and social ties. They may not like each other, but at least they know each other.

Local governance arrangements have several other advantages. Local leaders are in much closer contact with the community, so constituencies enjoy a degree of communication, information, oversight and voice that enhances the legitimacy of the governance structure. They can also draw on customary and religious laws that local communities know and understand.

Customary dispute resolution is typically compensational rather than punitive in nature, and negotiated rather than adjudicated, which helps to promote peace after a crime or clash. Finally, local governance in conflict zones is often an informal, fluid, hybrid arrangement that draws together a wide range of social groups, including religious and ethnic leaders, business figures, women's groups and others. This gives local governance a high level of flexibility and resilience as well as greater legitimacy across a full spectrum of local interests.

The virtues of local governance arrangements are precisely what is usually lacking in national-level peace processes. National peace processes are a "trust desert". They are approached by protagonists as a zero-sum game, the object of which is to settle the critical question of "who rules?" Resolution of core conflict issues is invariably postponed while representatives haggle over positions in a unity government and debate clauses in draft constitutions that promise but rarely deliver decentralisation of power to local polities. The figures invited to the talks are often militia leaders or elites with few links to wider society, and who hence enjoy little legitimacy. Under the right circumstances, bringing in legitimate local government leaders can help inject a greater level of representation and popular voice into wider peace process.

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Syria

Organising for the future: grassroots governance and national peace

Doreen Khoury

Since March 2011 the Syrian conflict has evolved from a genuine popular uprising against an oppressive regime to a violent war between the regime and numerous armed opposition groups. A struggle against 40 years of oppression and human rights abuses has become a murky and highly complex geopolitical battleground, engaging multiple actors with diverse interests.

Through it all the Syrian people have suffered from regime violence, torture, prolonged artillery shelling and aerial bombardment, and, more recently, chemical weapons attacks. In northern Syria and other regions where the regime has been forced out, communities now have to contend with the equally oppressive Islamist jihadi groups. Many towns and villages are enduring harsh sieges, acute humanitarian crises and massive population displacement. UN figures for late 2013 estimated 2.2 million Syrian refugees in neighbouring countries and 6.5 million internally displaced.

Most analyses of the conflict ignore the real achievements of the grassroots opposition – the primary engine of the revolution – and the resilience of the Syrian people as a whole. Behind the current dismal portrayal of the conflict lie concrete popular efforts at inclusive grassroots organisation and self-rule, and countless peacebuilding activities and ventures aimed at bridging political, ideological and sectarian differences between Syrian people. The focus on the brutal *shabbiha* (regime thugs) and the jihadist groups affiliated to al-Qaeda who jointly wage a sectarian war of elimination against society ignores local activists' resistance to their tactics and designs.

The National Coalition for Syrian Revolutionary and Opposition Forces, recognised by the United States and the European Union as the official and "legitimate" representative of the Syrian people, is becoming increasingly irrelevant – beset by infighting, foreign interference and unpopularity within Syria. Recognising and engaging the legitimacy of the many grassroots networks, civil society and local organisations should be a key policy objective for the proposed transition period and the Geneva II peace negotiations scheduled for 22 January 2014, as announced by UN Secretary-General Ban Ki-moon at the end of November 2013.

Uprising in Syria

Shortly before the uprising and in the midst of the Arab Spring, President Bashar al-Assad told the *Wall Street Journal* in January 2011 that he was closely linked to his people through anti-Western and anti-Israel beliefs, as ideology bound Syrian citizens to the regime. Soon after, however, residents of the south-west city of Deraa reacted with outrage at the security forces' brutal treatment of young boys who had sprayed anti-regime graffiti around the city.

By dismissing the wave of popular Arab uprisings, Assad showed his inability to recognise changes in Syrian society in the decade since he had taken over from his father, Hafez. The top-down ordering of society created by Assad senior after the 1970 coup that brought him to power was designed to maintain the Assad family's grip on power, dividing society along sectarian, ethnic, regional and social lines – as described by Hassan Abbas, a respected Syrian analyst, in 2011.

The post-2000 "liberalisation" process initiated by the young president amounted to trusting the state's welfare responsibilities (health, education, housing, employment) to tightly controlled confessional charity associations, and keeping a close eye over the activities and foreign links of newly authorised non-governmental organisations (NGOs).

By 2011, grievances – especially those of young people – had accumulated against the regime. The rigid statist system allowed little space for free initiative. The regime's radical foreign policy isolated Syrians and made it difficult for them to travel or connect outside national borders. The flagrant corruption of the regime and the infamous extra-judicial practices of the state security apparatus also angered many Syrians. Prospects for poor internal migrants in the crowded belts around major Syrian cities were especially bleak. Deraa, for example, was by then already under severe social pressure because of the arrival of Syrians from the drought-ridden north-east.

In urban centres informal networks of young people began to emerge, comprising both urban educated youth and poor young rural migrants. These strove to claim a small part of public space not dominated by Baath ideology and regime cronies. Inspired by mass protests in Tunisia and Egypt, they played a crucial role in maintaining the revolutionary momentum by organising and documenting protests and acts of civil disobedience and motivating people to mobilise.

The initial stages of the revolution were spontaneous popular revolts organised mostly by youth grassroots but soon joined by rural tribes, women's rights groups, human rights activists, veteran opposition politicians and swathes of the disenfranchised rural working class. Each neighbourhood organised separately according to its relationship with the regime's ideology, ruling group and armed forces.

Inter-group planning meetings became impossible due to tightening police repression. But communication through online social networks and forums, relayed and amplified by activists in Lebanon and European countries such as Sweden, provided the Syrian uprising a popular and efficient dynamic despite the regime's aggressive censorship.

Local coordination committees

Tansiqiyyat, or local coordination committees (LCCs), began as spontaneous meetings of young activists in neighbourhoods and towns across the country and were the main vehicle for mobilisation in Syria. LCCs coordinated with each other, rapidly creating a networked structure. One year after the beginning of the uprising, observers

counted several hundred LCCs, many of them assisted by self-designated local councils.

Solidarity between activists and communities was forged as grassroots networks connected people in villages and towns, especially in peripheral and neglected areas, which became important centres of defiance against the regime. LCCs provided support for victims and families of prisoners, organised alternative hospitals, took charge of water distribution and bakeries, collected garbage and informed the population through a wealth of local magazines and alternative radio stations.

LCCs also became the interface between society and military actors (militias and government forces), in some cases even mediating local humanitarian access. More often than not they were left by hostile or powerless state officials to manage the settling of hundreds of thousands of war displaced among already devastated suburban communities.

By mid-2012, particularly in northern Syria, regime forces had withdrawn or been forced out of many areas by rebel armed groups. LCCs and newly formed local civil society organisations (CSOs) filled the void left by defunct regime structures, transforming their resistance function into local government responsibilities by establishing ad hoc administrative structures whenever they could – resuming some state services, but also providing leadership in communities threatened by disintegration.

This rapid self-organisation and self-rule proved that, contrary to Assad's assertions, the regime itself had caused the chaos, not the people. Local councils, often aided by CSOs such as the Union of Free Students (established in September 2011) and the Kurdish Youth Movement (established in 2005), were able to deliver essential services in the most difficult conditions.

In the province of Aleppo they have reopened schools, run health-care services, offered legal services, and treated victims of rape and traumatised children in both government and non-government controlled areas. In the city of Raqqa many activists and youth-led CSOs have been striving to maintain normal life despite the heavy presence of Islamist jihadi groups and a scarcity of resources, for example by opening youth recreation centres and organising cultural events, such as art and traditional craft exhibitions and plays mocking the Assad regime.

CSOs and activists are also working on numerous peacebuilding initiatives among communities and sects. These call on people not to deviate from the original goals of the revolution and condemn the actions of warlords in

multi-sectarian regions such as the province of Homs. They try to protect minorities such as Christians in the Euphrates valley or Alawites in Aleppo. For example, the Nabd (Pulse) Coalition for Syrian Civil Youth, a cross-sectarian movement with branches in several cities set up by young activists in mid-2011, addressed the increasing influence of jihadi fighters through activities promoting sectarian unity.

Women's CSOs have also organised peacebuilding activities between opposition and regime supporters, bringing together female regime loyalists and opposition supporters in activities aimed at highlighting the commonalities between them. Still, such initiatives remain scattered and sporadic. They lack moral support from political leaders and material support from the international community, as international NGOs' engagement in Syria is tightly restricted by the regime. Civil leaders pay a high price (imprisonment or even death) and many have to emigrate, leaving society adrift.

Militarisation of the uprising

The Assad regime's violent reaction to peaceful protests itself produced a violent response. At first this was defensive, as defected soldiers and ordinary citizens took up arms to protect themselves from regime snipers; but then it turned offensive, as armed brigades formed under the loose umbrella of the Free Syrian Army (FSA) and began to fight the regime.

Funding and supply of arms to rebels particularly by Arab Gulf countries played a big role in transforming the revolution into all-out war. But the regime bears primary responsibility for choosing to use force in response to the legitimate demands of citizens, and branding protesters terrorists and Israeli agents.

The proliferation of autonomous armed groups, the perennial lack of a unified command structure, and the rise of warlords claiming liberated land as their fiefdom has undermined civilian structures. FSA brigade offensives provoked violent air reprisals by regime forces, jeopardising communities. And the FSA has sometimes committed gross human rights violations on a par with the regime. Dialogue between the FSA command based in Turkey and the LCCs in Syria has never been systematically organised.

The sustainability and independence of local councils and CSOs in many towns and villages in northern and eastern Syria has been severely challenged by the arrival and eventual domination of al-Qaeda-affiliated groups, notably *Jabhat al-Nusra* and the Islamic State in Iraq and the Levant (ISIL). ISIL is a jihadist insurgent group from several Muslim and European countries, originally based in Iraq. *Jabhat al-Nusra* emerged in 2012 as one of the principal

armed rebel groups in Syria and is also designated as a terrorist group by the United Nations, the United Kingdom and the United States. Like ISIL, it uses harsh sectarian rhetoric against non-Muslims and non-Sunni Muslims, and its goal is to establish an Islamic Caliphate. It has carried out several sectarian attacks and executions of Christians, Shia and Alawites (the sect of the Assad family).

Wherever ISIL or any other jihadi group "liberate" a village or a city suburb, they not only impose their military rule, as they are better equipped and organised than FSA forces, but they also attempt to take over civilian, economic, cultural and religious structures, legitimising their claim to leadership through their military power. In the areas where they dominate, they pose a serious threat to the independence of local councils and to the emerging Syrian civil society as a whole. This has led many activists to believe they are facing two enemies: the regime and the Islamists.

Civil resistance and local leadership

CSOs and local councils have sought to position themselves as legitimate future leaders in Syria by resisting jihadis' efforts to impose religious rules and parallel governance structures such as *shari'a* courts.

Raqqa, a province and city deserted by regime forces and government administrations in March 2013, is a prime example of the detrimental effect of *Jabhat al-Nusra* fighters operating in "liberated" areas where they have no grassroots base. ISIL is also present in Raqqa and has targeted local activists, used kidnapping as a means for extortion, exploded suicide bombs in front of the local FSA brigade office, and shot at demonstrators.

In the northern town of Tal Abyad the main Islamist armed groups – *Jabhat al-Nusra* and the *al-Farouq* Islamic Brigades – set up judicial and security institutions independent of the local council, including a *shari'a* court, and refused to include lay judges from law universities. They also prevented the local council from forming an independent defence force.

There have been numerous examples of civil resistance of al-Qaeda affiliates and their autocratic Islamist practices. On 17 June 2013 in Raqqa women led a demonstration outside ISIL's headquarters against arbitrary detentions of their male relatives. A CSO also ran a counter campaign against Islamists trying to impose their black flag on the city. Many demonstrations have targeted ISIL and *Jabhat al-Nusra*'s manipulation of religion for their own purposes. The Raqqa protest introduced the now prominent Syrian slogan, "There is nothing holier than freedom, and no worse sin than stealing it".

Organising for the future: grassroots governance and national peace

Many activists and civil society leaders have become disillusioned with the current situation in Syria. Syrians are appalled by the violent excesses of both regime and opposition fighters. More and more of them have rejected both sides, and only obey local rulers out of fear for their families.

> **Including civilian-led grassroots structures in future peace negotiations and the proposed transition process is a strategic necessity – not only to give negotiations credibility and legitimacy inside Syria, but also to convey an accurate representation of the Syrian "street"**

Local civilian activists are deprived of basic resources to provide for their communities and many are entirely cut off from external support. They especially resent the lack of solidarity with their efforts from the international community and most of the Syrian diaspora opposition. The September 2013 US-Russian agreement reduced the Syrian conflict to a chemical weapons issue, rather than focusing on the real challenge of stopping the killing of civilians. This has greatly dented the morale of many inside Syria.

Organising for a future democratic and inclusive Syria should not wait until the fighting stops. The international community, particularly international NGOs and UN bodies, should step up support for authentic, home-grown CSOs and local governance structures, and in particular help them secure a place in peace negotiations.

The Syrian diaspora, especially the National Coalition, is also a source of local frustration, not only because of its incompetence but also because it neglects domestic local capacity: when 14 representatives from inside Syria were chosen as members of the coalition parliament in November 2012, clients and friends were nominated rather than local activists unknown to the coalition leadership in Turkey.

Grassroots structures – CSOs, LCC activists or local council members – are much more aware of domestic realities than the diaspora opposition. This type of local leadership is crucial, as the diaspora opposition, fragmented and reliant on Arab Gulf funding, time and again has failed to propose an inclusive and cohesive vision for Syria. It has ignored significant parts of Syrian society, especially regime supporters and those unsure whether to support the revolution or not.

Including civilian-led grassroots structures in future peace negotiations and the proposed transition process is a strategic necessity – not only to give negotiations credibility and legitimacy inside Syria, but also to convey an accurate representation of the Syrian "street", as many Syrians are today distanced from both regime and the opposition. Their empowerment and involvement in peace negotiations envisaged at the time of writing to take place in Geneva on 22 January 2014 is a basic condition of a successful transition.

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Afghanistan

Local governance, national reconciliation and community reintegration

Karim Merchant and Ghulam Rasoul Rasouli

Many governance structures coexist in Afghanistan today – foreign-based and domestic, modern and traditional. Reflecting the priorities of different sets of actors and different perceptions of what represents good governance, they include customary institutions, recently established civil society organisations, the Afghan state, the International Security Assistance Force (ISAF), international aid agencies, and insurgent and criminal networks.

In rural areas, host to almost 80 per cent of the population, justice is primarily delivered through less formal structures, including customary law (eg *pashtunwali*) and Islamic law (*shari'a*). Traditional decision-making assemblies (*jirgas*) still deal with the vast majority of legal disputes throughout Afghanistan. A *jirga* typically comprises esteemed elders that consider a case – for example, a dispute over water access – in order to reach a settlement that is socially and morally binding on the parties. Elders are regarded as the link between the community and the government, although the hierarchical *jirga* structure is difficult for local people to approach directly and often requires additional mediation. A new elite of self-appointed warlords consisting largely of *mujahidin* commanders has emerged over recent decades. Supported by local militias, these new power brokers have eroded the authority of *jirgas* to administer disputes.

The relative urgency of shaping and supporting the post-Taliban Afghan government has meant external actors have overlooked, undervalued or in some cases just failed to understand local cultural and customary governance structures. For many Afghans, the government in Kabul has not yet earned the right to rule. Failure to connect with local governance has undermined the legitimacy and effectiveness of national peacebuilding initiatives, and has contributed to blurring the boundary with counter-insurgency initiatives that many Afghans see as irrelevant to their needs and as primarily serving an external agenda.

The National Solidarity Program (NSP), established in 2003 by the Ministry of Rural Rehabilitation and Development and a number of international and donor agencies as "the largest people's project in the history of Afghanistan", aims to support community governance nationwide. The NSP is implemented locally through Community Development Councils (CDCs). But more recent attempts to use CDCs to help roll out a community reintegration initiative across the country have reflected tensions between national peace efforts and local governance, raising concerns about CDCs' integrity as they have struggled to muster support for host communities.

National reconciliation and reintegration

National Consultative Peace Jirga was held in Kabul in June 2010 to establish a nationwide framework for peace and provide ways for Taliban and anti-government elements to renounce violence. It was boycotted by several key political figures, and parts of the Afghan media accused it of aggravating ethnic splits between the majority Pashtun and other groups prevalent in north and central Afghanistan. Some members of the Taliban rejected the *jirga*'s authority and publicly threatened to disrupt it. Nevertheless, 1,600 delegates, vetted and selected by the government to reflect Afghan society, supported a strong mandate for peace.

A former insurgent commander has his eyes scanned during a biometric enrollment with an Afghan government official in Khas Uruzgan district, Uruzgan province, Afghanistan, 29 March 2012. © U.S. Navy / Jacob L. Dillon

The National Jirga resulted in the creation of the Afghanistan Peace and Reintegration Programme (APRP) and the High Peace Council (HPC) in June and October 2010. The HPC is a 70-strong body formed to advise the president, and oversee implementation of the APRP and progress towards reintegration of ex-combatants. Currently the HPC is the only mechanism offering a platform for national negotiation and reconciliation in the absence of a broader peace process or cessation of hostilities.

Reconciliation with senior Taliban and anti-government elements has been conducted in a variety of ways, drawing on the political authority and influence of HPC members and their networks of contacts that can be used as mediators. The idea is that news of successful examples of reconciliation can encourage other senior insurgents to view it as a way to switch allegiance without losing face.

The APRP offers a more programmatic process to reintegrate less senior opposition commanders and fighters. The Afghan government issued detailed instructions to provincial governors on how to implement the APRP and ministries were instructed to incorporate a reintegration component in their respective national programmes. The APRP project document describes its goal as to "encourage combatant foot soldiers and commanders, who previously sided with armed opposition and extremist groups, to renounce violence and terrorism, to live within the laws of Afghanistan, and to join a constructive process of reintegration and peace".

The APRP provides leadership support to provincial governors at the sub-national level, for example by chairing provincial peace and reintegration committees, mobilising *shuras* (local decision-making bodies), mediating local grievances, and supporting local reintegration initiatives.

According to the APRP Project Document, reintegration involves a three-stage process:

1. *Social outreach, confidence-building, and negotiation*: implemented at provincial level to agree the terms of reintegration.

2. *Demobilisation*: Provincial Joint Secretariat Teams begin a complex and laborious process of vetting potential reintegrees through background checks. At the same time Provincial Peace Councils conduct their own independent investigations. The results are then sent to the Joint Secretariat in Kabul for a further vetting procedure conducted by several key ministries in the security sector and by ISAF. Details are biometrically registered on to a national database.

3. *Consolidation of peace*: a list of project choices are offered to a community, usually based on a pre-existing needs assessment undertaken by the community thereby making the community the main beneficiary, not the reintegree.

The APRP has been criticised for its slow and complicated procedures and for over-emphasising job creation for reintegrees at the expense of other pressing issues such as land grabbing, political marginalisation and corruption. Many Afghans see implementation of the APRP as an extension of the counter-insurgency agenda and a condition for continued international funding. In the absence of a peace agreement, the APRP has only been able to approach reintegration in a piecemeal fashion – group by group, individual by individual – and convincing individual commanders to defect separately has been an unwieldy process.

The APRP has had enough government support and international funding to implement its mandate at national and provincial levels. However, anchoring the APRP in communities has been much more difficult. In numerous meetings, district and community representatives say that they perceive Provincial Joint Secretariat Teams as purely political platforms with little or no skill in conflict analysis. Concerns have also been expressed that the views and opinions of local communities are not being taken into account as part of the reintegration process.

Community reintegration

The introduction of CDCs has sought to add a social development dimension to local *jirgas'* dispute resolution function. CDCs have been established to implement community development projects and help establish links with governance and development actors. CDCs have been a core part of the NSP, which was designed to provide basic public services and development opportunities to rural communities using a decentralised and bottom-up approach. Now in its third phase of implementation, the NSP has covered close to 95 per cent of rural villages across Afghanistan.

The NSP has sought to introduce or clarify certain norms, including democratic principles, the election of community representatives, the inclusion of women and other marginalised groups, and accountability and transparency. The CDCs' elected membership includes a combination of traditional community leaders and younger, more educated community members. A quantitative study undertaken by the NSP's monitoring department in January 2013 indicates that 36 per cent of CDC members are women, or 45 per cent in older and more established councils, which is unique in Afghanistan's history. Rural populations were slow to buy in to the NSP at first, but over 10 years it has become a flagship national programme and has accumulated local legitimacy by coordinating, complementing and working with local traditional decision-making structures.

CDCs have also supported local peacebuilding. Even in the highly insecure Helmand province, local residents have emphasised CDCs' contribution to dispute resolution and linking the community with the government – alongside the Malik (leader) and the elders. In south-western, southern and south-eastern provinces CDCs have found it more difficult to gain traction alongside more established traditional structures, which are seen as having greater legitimacy in these areas. And because the NSP is a government programme, it has been very difficult to establish CDCs in insurgent-controlled or highly conservative areas where the government has a muted presence; here CDCs' role has been reduced to implementing basic development projects and supervising development activities.

> " **Many Afghans see implementation of the Afghanistan Peace and Reintegration Programme as an extension of the counter-insurgency agenda and a condition for continued international funding** "

For the government, CDCs were the logical gateway to community-level administration that could mobilise local support for the APRP. The mechanics of the APRP validation procedure for reintegrees is outside of the remit of CDCs. Instead, CDCs' contribution has been indirect, supporting community recovery in relation to the reintegration process. There are many cases documented of ex-combatants finding or even creating employment in the locality of their reintegration. In several cases, reintegrees have become members of – or have even ended up leading – their local CDC.

The involvement of the NSP in the APRP, however, has come at a cost. The NSP has always gone to great lengths to steer a non-political path, placing more emphasis on demand-driven activities that engender trust, while simultaneously building community capacity to take on responsibility and ownership for their own wellbeing. So it was with great trepidation that the NSP became involved with the reintegration of ex-combatants. In the end, this was managed by ensuring their inclusion was agreed in a consensual manner, and that any financial or other incentive attached to reintegration also benefited the whole community.

The NSP only engaged in the third of the three APRP stages, the Consolidation of Peace, which it supported through its Community Recovery Intensification and Prioritisation activities. It targeted entire communities in line with the "do no harm" principle, and thereby sought to minimise further conflicts over limited development resources between the core community and the reintegrees.

In some areas of higher resistance, the NSP either postponed the process or staggered it in carefully agreed phases. Some elected members of CDCs are also members of the local *shuras* and so can reflect the views of more traditional and culturally bound decision-making mechanisms. In districts with a significant number of reintegrees, the APRP initially asked that the NSP devise a mechanism so that a reintegree would automatically be appointed to the CDC structure, giving them an active voice and role in the CDC's workings. The NSP refused such a procedure on the grounds that one of its core elements must remain the democratic, secret ballot election of CDC members by the wider community. Only a reintegree elected into the CDC can be recognised.

Attention to local sensitivity has helped the NSP avoid becoming too great a target for the Taliban. But this may change as the spectrum of targets broadens in response to the imminent withdrawal of international troops in 2014, which insurgents regard as a retreat, and the presidential election, also in 2014, which is viewed by some Afghans as a skewed and corrupt process and is actively being undermined by insurgents.

Holistic reintegration

Peace or stabilisation approaches often rely too heavily on central state authority and external models, reflecting assumptions that seldom hold when tested in local contexts. Failure to engage in dialogue and consensus building at the local level often results in unachievable targets, overly ambitious objectives and inappropriate peacebuilding strategies.

The APRP has achieved some results, especially at national level, but these have not been matched locally, especially with regard to support for host communities. At the national level the APRP has developed a reintegration strategy, an implementation plan with timelines supported by a Peace and Reintegration Trust Fund, and policies and operational guidelines. But it has failed to extend the programme sufficiently to the grassroots and develop an inclusive design involving the very communities expected to absorb ex-combatants.

Reviews of the APRP processes, and especially feedback from institutions at the local level and from people directly involved in its implementation, found that successful reintegration of ex-combatants occurred as part of a larger development package to enhance community livelihoods. The lesson of collaboration between the APRP and CDCs is that a more developmental approach to reintegration that emphasises the welfare of recipient communities may be more effective – not least by helping to distance local reintegration from the national counter-insurgency agenda that many Afghans do not consider legitimate.

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Brazil

Citizenship, violence and authority in Rio's *favelas*
Joanna Wheeler

Rio de Janeiro has an entrenched problem with urban violence, which raises questions about the relationship between violence and prospects for citizenship and democracy, and the complex relationship between power, authority and legitimacy.

With relatively high levels of violence in parts of Rio over a prolonged period of time, drug trafficking groups and para-state militias have become some of the dominant actors in the city's informal settlements or *favelas*. According to the *Instituto de Segurança Pública*, over 39,000 people have been killed in the war between drug trafficking groups, the military police and para-statal death squads since 2007, with a further 35,000 people disappeared in the same period. As in many cities, Rio's violence is highly concentrated in particular areas.

Residents' perceptions of state power are often contradictory, mirroring the conflicting ways that the state intervenes in the *favelas*. Many residents and community leaders feel the extent of the government's power within the *favelas* is very limited. The state is perceived as either incapable or unwilling to address the major problems facing communities. As a *favela* resident explained, "the government doesn't have power here. Our community is not helped."

The police are perceived as powerful in a negative way and are not seen as part of the state apparatus, operating with legitimacy. A *favela* resident described how "police have one face for the middle class and one face for the *favela*."

Many residents view the police as interchangeable with the militias – and in many people's experience this is the reality. Militias are made up of off-duty civil and military police officers, fire fighters, prison guards and members of the military. In some cases, they use police equipment, maintain constant communication with the police and act as a proxy for them.

In a sense, the militias represent the catastrophic failure of the government to provide accountable and legitimate public security. State power is multi-dimensional and extends into the *favelas* through different actors, including political parties, social programmes, the police and, in a hybrid way, the militias. This means that state power is very fragmented in the *favelas*. In some circumstances, the state is able to directly intervene and make changes, especially when the police invade violently. But in others the state may be completely powerless to act, as demonstrated by abduction and torture of journalists by the militias in 2008.

This article explores how patterns of authority and perceptions of power structure life in the *favelas*, and why these are central to understanding how citizenship functions in a context of violence. How do local people perceive the power of the state and of the armed actors? And how do citizens living in the *favelas* with high levels of violence see their state?

Violence, power and authority in the *favelas*
Patterns of power and authority in the favelas are understood well by residents of a particular area but are largely invisible from the outside. The dominant pattern originates from the relationship between the *favelas* and the state, from the time the *favelas* were first established in the early 1900s, which is best described as malign neglect. It set the parameters for the emergence of drug trafficking factions, whose power was based on violent protection of their trade. The militias then evolved this scenario for their own purposes. The formal contestation of political authority through recognised democratic processes is a thin veneer

that papers over the real struggle for power within the *favelas* – the rules of which are set in large part by armed actors.

Violent sources of power and authority coexist with other, often non-violent sources – including state-based, clientelistic and religious sources. Political and social mobilisation has been of little interest to the drug trafficking factions as their main motivation for controlling the community has been to guarantee an appropriate environment for their trade.

But the militias have adopted multiple strategies specifically to control political and social mobilisation. They have taken control of residents' associations, which are consequently armed, as well as other community-based organisations by forcing them to operate from the residents' association building. The militias also seek to control interventions in the *favelas* by the state and by external NGOs.

All interventions must be via the militia (by way of the residents' association), and should involve militia members where possible, or people of the militia's choosing. The head of the militia in Quitungo and Guaporé municipalities of Rio asserted that: "There are no legitimate community leaders here. They may tell you that they are community leaders, but don't be fooled. We are the only ones who are doing anything to improve the situation here*."*

> **" Patterns of power and authority in the *favelas* are understood well by residents of a particular area but are largely invisible from the outside"**

The militias also control the political space. They only allow selected candidates to campaign, who must make promises to deliver certain benefits, and do not allow rivals to hold campaign events or post campaign materials. Increasingly, militia leaders are looking for channels to extend their control into formal politics.

The system of rules enforced by the militia builds on those established by the drug-trafficking factions, which themselves emerged from the nature of the relationship between the state and the *favelas*. All rules are predicated on violence and fear. Sanctions for violating the rules include expulsions, beating, torture and death. Residents have been expelled for having family members in rival factions, or for interfering in faction business.

The militias also use clientelism (such as relationships with political parties) and their ability to mediate access to the government and infrastructure as a means for perpetuating their control. They deliberately occupy existing governance structures within the *favelas* (eg residents' association buildings) marked by their physical presence through patrols, cameras, barriers and wall murals.

The militias' power and authority is bolstered through the suppression of competing sources, such as drug trafficking factions or non-violent community-based organisations. Essential to this is a degree of legitimacy for what they do, which they have achieved through "enforcing peace". Violence has a role in both setting and shifting sets of rules and patterns of authority that function within a given area. A favela community leader described how: "Here we have the law of the community and the system of the community – and these may change. But they are not the laws of Brazil."

Competing forms of authority are not possible in the *favelas*, as they would be in a democratic arena. The militias attempt to build their legitimacy through taking over the role of the residents' association when they perceive that by doing so they can enhance their position in the community. In one example, the militia would not allow an independent residents' association to determine which areas of the community would receive a water-upgrading project. Deciding which areas received the benefits of the project was a means for establishing greater legitimacy. The militias do not allow others in the community to "bring in projects".

The drug factions had previously been able to exploit the lack of dialogue between the *favelas* and the state, reinforcing this divide to protect their trafficking operations. The militias who have taken over the role as mediator between the state and the community exploit the relationship in a different way, specifically responding to long-standing social exclusion. This is one reason why people do not report extortion to the state, but compromise and make deals with the militias in exchange for a degree of increased security and welfare. For example, residents in Quitungo and Guaporé made less then 10 calls to a government-sponsored hotline to report militia abuse.

This is what fundamentally undermines the participation of citizens from the *favelas*: the deeply ingrained rules about how the state and citizens relate to each other; and the long-standing gaps, silences and absences of the state that allow other actors to establish their violent authority.

Local perceptions of legitimacy
Perceptions of legitimacy, like those of power, are highly contextual and often at odds with formal or legal

legitimacy. Many residents in Quitungo welcomed the presence of the militia because they suppressed the open sale of drugs and ended the uncertainty that frequent wars between the factions brought, particularly from the late 1990s until the militia took control in 2006–07. This view is echoed by residents in many other *favelas* controlled by militias. When the leader of the Guaporé militia was killed invading another *favela* on 6 February 2007, shops and commerce within the *favela* were closed for the day and buildings were hung with black cloth.

In many cases, the militia has greater legitimacy in the eyes of many residents than the police, who have repeatedly fuelled the wars and the drug trade, attacked communities, killed people, and generally abused their power with few repercussions. The legitimacy of some militias is increasing within *favelas* due to the way they use violence strategically to repress the drug trade.

But other uses of violence can detract from the militias' legitimacy. Their attempted monopoly over existing patronage systems, government benefits and community-based organisations is a tactic employed to bolster both their legitimacy and their control, but can have the opposite effect.

Militia leaders employ a discourse of providing social benefits and of non-violence as a means of building legitimacy more broadly. The leader of the militia in Quitungo declared that: "We are the legitimate community leaders here – we are putting the residents' association to rights, we are organising things because before there was a connection between the association and the traffickers."

Despite these claims, the militias have more legitimacy in relation to public security and order and less in political or social terms. Nevertheless, their legitimacy in general grows as they deliver real benefits to communities, such as suppressing open drug trade and violence, especially as residents see improvements in relation to other *favelas* where warring factions are still in control. And this leads to further entrenchment of their social legitimacy in the *favelas*.

In part, the militias' legitimacy is bolstered by their shadow connections to the state, via both the police and particular politicians. The number of politicians openly involved with the militias is growing. In a context where the state has very little local legitimacy, and yet residents believe the state should be responsible for guaranteeing rights, the connections of the militia to the state are not only plausible but also desirable in the eyes of residents.

The state does not officially or formally acknowledge the authority of the militias or the traffickers, but nor does it intervene – except for the *Unidade de Policía Pacificadora* (Police Pacification Units) used to "clean up" *favelas* through highly militarised invasions. The state negotiates with the militias and traffickers on a regular basis and so armed actors mediate the relationship between citizens in the *favela* and the state. This contributes to the legitimacy of armed actors while at the same time further eroding the basis for more recognised legitimate political authority.

It is this dynamic that contributes to a perverse politics, where interventions made by the state to promote democracy and citizenship actually reinforce the position of the armed actors. Violent authority is both the most pervasive and the most damaging to citizenship. From the perspective of community residents, there are two forms of legitimate authority. The first is legal, externally valid, formal, and derived from the state. The second is socially-derived and contextual, and constituted within the boundaries of the community.

> ## " The meaning of citizenship, from the perspective of people living in the favelas, becomes emptied out by violence "

What emerges in the context of the *favelas* is a mix of different sources of power and authority, making it very difficult to distinguish legitimate authority from relationships of coercion and domination. If the militia and the trafficking factions had no social legitimacy whatsoever, then the patterns of authority that they perpetuate would unravel completely. The fact that they continue to have effect is evidence of how patterns of authority can be both coercive and have a certain degree of legitimacy.

Citizenship
Dilemmas of legitimate political authority in the violent context of the *favelas* bear important implications for citizenship. The fractured nature of state power and its complicity in violence produces a paucity of political legitimacy within the *favelas*. Patterns of authority, predicated on violence, order people's daily lives in a way that further restricts the ability of the state to act. Meanwhile, socially constructed legitimacy favours the actors who are perceived to deliver concrete benefits.

The lack of legitimate formal political authority compromises citizenship because it is not clear which institutions are accountable for delivering rights. As a

result, citizens turn to the capable (the armed actors), rather than the responsible (the state). This leads to the rise of armed actors as mediators between citizens and state.

The role of the armed actors is central to how daily life is ordered within the *favela*, with patterns of power, authority and social legitimacy becoming intertwined. These shape how citizens can engage with the state as well as how the state can respond. The landscape of uneven state power, pervasive patterns of authority based on violence that order every day life, and often conflicting forms of social legitimacy for armed actors, limits the scope for acts of citizenship that can shift power relations and adds another significant dimension to the fragmentation of citizenship in general.

The meaning of citizenship, from the perspective of people living in the favelas, becomes emptied out by violence. In particular, the fear and sense of powerlessness that many people experience as a result of violence contributes to a strong belief that full citizenship has neither relevance nor value. Combined with a lack of rights in other areas such as inadequate access to health care, education, or employment opportunities, violence in many ways negates a sense of citizenship at the level of the *favelas* in spite of Brazil's strong national discourse on democratic citizenship. This directly informs how people enact their citizenship.

The potential for social action within the *favelas* becomes a double-edged sword, with many examples of how it has contributed to the dynamics of violence and has fed into perverse politics. However, acts of citizenship that transcend the boundaries of parallel communities and articulate new kinds of relationships do still occur.

The article is based on participatory action research conducted from 2006–09 in two areas with very high levels of violence: Quitungo and Guaporé in the North Zone, controlled by a militia; and Morro dos Prazeres and Fogueteiro in the Centre, controlled by a drug trafficking faction at the time of the research. The article also draws on the 2008 report on militias by the legislative assembly of the State of Rio de Janeiro.

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Transformation of coercive actors

Véronique Dudouet

Peace processes need to include armed actors – state and non-state, political and (increasingly) criminal – as the chief agents of violence. Correspondingly, armed actors engaging in negotiations to end fighting and instigate transition are required to reconsider their reliance on coercion to achieve their objectives. This section of Accord 25 looks at three case study examples of transformation of armed coercive actors as part of a peace or peacebuilding process: regime change in Indonesia since 1998; Hezbollah's political-military organisation; and urban gangs in El Salvador.

All three case studies explore the experiences of apparently illegitimate coercive actors engaging in processes of transition out of violence. It is the trajectories of coercive actors' experiences of transformation, and especially what factors have influenced their progress, that connect the three apparently disparate case studies and provide a basis to draw some practical lessons for peace processes.

Power, authority and legitimacy

The concept of coercive actors covers a range of conflict stakeholders who use force instrumentally for material gain or for political authority – over their own members, their neighbourhood or the wider public. This broad definition includes authoritarian regimes that rule by coercion rather than consent; armed opposition groups who challenge the state's authority and monopoly on the use of force; and other types of armed actor often operating in areas of weak state governance – such as criminal gangs whose use of violence has reached levels of incidence and organisation that threaten peace.

The terminology is complex. Coercion and legitimacy are not categorically incompatible. States are often characterised (according to Max Weber's classic definition) by their authority to use force legitimately. The United Nations is also entitled to use – or authorise the use of – force according to international law, subject to approval by designated member states. By contrast, reference to (il)legality often defines coercive actors in terms of violating international human rights norms and humanitarian principles. But there is tension and ambiguity between legitimacy and legality in relation to force. Political commentator Noam Chomsky has argued that questions over the legitimacy of violent actions cannot be separated from context, circumstances or consequences.

As a diagnostic term, "coercive actor" is crude and needs to recognise the dynamic nature of conflict parties, to include the complexity of their identities, strategies and sources of power. Boundaries between coercive and consensual authority are not clear-cut in practice, but often overlap or coexist. The Hezbollah case study in this section demonstrates how an armed actor can pursue democratic politics while simultaneously refusing to relinquish its autonomous military capacity. And autocratic states like Indonesia in the New Order era up to the late 1990s can also use an array of instruments to establish their authority over society, from inducement and co-option to pressure and outright repression. Moreover, social or political organisations are far from homogeneous, but comprise various agents or sub-units employing distinct forms of power.

Actor legitimacy

Coercive states, armed groups and gangs possess or claim various forms of "actor legitimacy". Coercive actors can represent (or claim to represent) constituencies and interests. Internally, they possess some degree of voluntary authority among their members and supporters. The power of authoritarian regimes is not just coercive but is highly dependent on the loyalty of certain pillars of support within the state apparatus (eg administrative or security sectors). Leaders of non-state armed actors also derive authority from their members' belief in the validity of their authority.

> " **Many armed groups proclaim themselves the rightful representatives of an oppressed constituency, and often develop a vocabulary to legitimise their use of force as "defensive", "protective", or supporting "resistance" or "liberation"** "

In El Salvador, belonging to a criminal gang provides members with a sense of identity and belonging denied them in society. The jailed leaders of the two main gangs in San Salvador – *Mara Salvatrucha* (MS-13) and Barrio 18 – demonstrated through a March 2012 truce that they carried enough authority to ensure high levels of compliance among their members to significantly reduce violent activities. The resilience of the authoritarian regime that ruled Indonesia from 1965–98 can be partly explained by the support it had galvanised among socio-economic sectors that benefited from the status quo.

Many armed groups proclaim themselves the rightful representatives of an oppressed constituency, and often develop a vocabulary to legitimise their use of force as "defensive", "protective", or supporting "resistance" or "liberation". Hezbollah portrays itself as the champion of marginalised Shia communities, and even appealed in its genesis in 1985 to the "downtrodden in Lebanon and the world". The political scientist Zachariah Cherian Mampilly has argued that the social legitimacy of non-state armed actors is proportional to the loss of authority of the state; their *de facto* governance in areas under their control (from the provision of basic social welfare services to the establishment of sophisticated parallel administrative systems) helps to generate civilian compliance and cultivate popular support.

Coercive regimes can present themselves as legitimate by orchestrating elections in search of international recognition. In fact, many autocratic regimes are recognised formally by other states as long as they maintain a facade of democracy: Suharto's New Order regime in the 1980s and 1990s enjoyed much better relations with the West than Burma, partly because it offered an attractive target for foreign investment.

In specific circumstances, gross and systematic violation of human rights by a state may convince the international community to confer legitimacy on non-state challengers – like the Kosovo Liberation Army, selected Syrian and Libyan opposition groups, and to some extent the Sudan People's Liberation Movement. But in general armed opposition movements are rarely recognised as valid interlocutors on the international stage, even when they have demonstrated the extent of their political support through democratic elections: the isolation of Hamas after its 2006 electoral victory in Palestine is a case in point.

Transformation trajectories of coercive actors

Engaging an armed actor in dialogue can help support the transformation of its power base from coercion to consensual authority. However, such shifts are neither uniform nor linear, not least in relation to the respective experiences of state and non-state actors.

Regime change in Indonesia began with a state that had comparatively strong international legitimacy but weak local legitimacy – a recognised sovereign entity whose domestic political authority was hotly disputed. Suharto's demise, provoked by massive popular pressure for change, led to the opening up of the political system. By contrast, armed opposition groups' struggle for recognition often refers to internal and social legitimacy for their justification, and many armed groups actively seek international recognition as a strategic objective.

But the trajectories of both state and non-state actors involved in transitions out of violence commonly imply engagement in some form of structural or political reform. For states, this often involves constitutional or military reform, the introduction of power-sharing mechanisms or human rights guarantees, as well as elections. Non-state groups are often required to dismantle their arsenals (unless struggle leads to independence, such as in South Sudan or East Timor) and participate in formal governance through democratic politics and reintegration into the security sector – hence some of the problems with peace in Lebanon due to Hezbollah's continued existence as an autonomous militia within the state apparatus.

The transformation of non-state armed actors is challenging as it implies a significant change in mindset to join a political order or security system (albeit reformed) that they had previously fought as illegitimate – and to gamble on being able to mobilise future support for their political project as a guarantee for retaining some level of power or political authority. Hezbollah seems stuck somewhere in the middle of a transition process as the prospect of decommissioning equates to a loss of relevance in terms of defending Lebanese sovereignty against Israel and, more recently, Salafist jihadist groups in Syria.

The trajectory out of violence takes a different path for urban gangs. The El Salvador case study describes how gang members, while pursuing a path to social reintegration as a core condition of the truce, have also sought to maintain their distinct identity. The social legitimisation of the truce is understood as a necessary condition for breaking the cycle of criminal violence, including by the gangs themselves, and the implementation of the truce has paid increasing attention to efforts to enhance its local legitimacy.

Coercive actors and peacebuilding

How does the transformation of coercive actors influence the course of a peace process – and vice versa? The Indonesian example suggests that, by strengthening its social and political legitimacy, democratic transition can provide a coercive state with a stronger mandate to engage in peace processes. The greater press freedom and more intrusive human rights monitoring that accompanied the transition in Indonesia exposed abusive state power in Aceh and East Timor, and undermined public support for military responses to conflict in Indonesia's periphery in favour of dialogue. The peace processes that emerged in East Timor and Aceh soon after Suharto's demise in turn encouraged national reform processes, including the professionalisation of the military and the decentralisation of political power – including the direct election of governors and the right to form provincial political parties (Jakarta, though, has so far failed to find a formula for self-determination to end conflict in West Papua.)

Engaging non-state armed actors can help to increase both the "input" and "output" legitimacy of peace processes by widening participation and contributing to the restoration of stability and the rule of law. But the equation does not always balance neatly. In El Salvador, 20 years before the gang truce, the 1992 peace accord between the government and Farabundo Martí National Liberation Front guerrillas increased state legitimacy in terms of participation by integrating the former armed opposition into political and security systems. But it was less successful in either enhancing representation or improving

performance: society is still highly unequal with a number of marginalised social groups, and many government institutions are still very inefficient.

Negotiating with actors branded as criminals or terrorists can contravene domestic and extra-territorial legislation, as with the gangs in San Salvador, or with Hezbollah, currently blacklisted by both the United States and the European Union. In both cases, prohibition applies not only to membership of the group (as opposed to involvement in a specific activity), but also to third parties' engagement with it through support activities.

Many non-state armed actors resort to violent acts precisely because they believe that they cannot pursue their objectives through legal avenues. The legitimacy of the use of force by any state against their challengers is subjective and divisive. And hard-line responses to the gang problem in El Salvador were counterproductive in terms of reducing violence and improving state governance and legitimacy in deprived social areas. By contrast, engagement through dialogue aims to enable actors to find ways to transform their structures so that they conduct their activities peacefully – be it through social reintegration or political transformation.

> " **Community-based or civil society mediators engaging armed groups or criminal actors offer valuable entry points for peacebuilding** "

Lessons for policy and practice

The three cases presented in this section offer important insights for international policymakers. They show that international actors should use their influence and attractive power to incentivise change. Engagement with governments and armed actors labelled as illegal or illegitimate can facilitate their transformation away from reliance on coercion. Transformation is difficult and does not follow a smooth trajectory. In dialogue terms, no actors are off limits: it is important to maintain communication channels with the perpetrators of all types of violence, and unconditional dialogue is imperative. It is also vital to remove obstacles to engagement, including poorly conceived coercive measures such as blunt and clumsy sanction regimes, or indiscriminate legislation that punishes whole communities and further isolates and radicalises targeted groups.

Community-based or civil society mediators engaging armed groups or criminal actors offer valuable entry points for peacebuilding. But they often intervene without any official recognition, security guarantees or protection. And in some cases they can face charges of associating with criminal or terrorist actors. This is especially difficult in the early stages of a dialogue process. Appropriate international support, such as funding and discreet lobbying, public awards and recognition, might help to legitimise and protect their engagement.

Mediators and peacebuilding agencies need differentiated strategies for engaging non-state armed actors. This requires accurate analysis of their sources of authority and legitimacy, their representation (who do they speak for?), their performance capacity (can they enforce agreements or "spoil" peace?), the nature of their governance claims and expectations, and the most appropriate avenues for influencing or incentivising their behaviour. There are various support tools to facilitate transition and reintegration paths. These include, for instance, local social integration through civilian rehabilitation programmes benefiting not only individuals but also the wider community, leadership training for actors with political ambitions, or security sector integration for ex-combatants wishing to capitalise on their combat experience.

Of course, the transformation of coercive actors does not happen in isolation but must account for wider political dynamics – including regional or geopolitical. The Israel–Palestine conflict or relations with Iran remain key justifications for Hezbollah's armed wing. How international partners are seen to deal with relevant external issues has a bearing on the legitimacy of their support internally. The international community cannot enforce the social and political legitimation of national or sub-state institutions – this can only be a home-grown process. However, peacebuilding and development assistance can help broader structural reform, which plays a vital role in laying the foundations for the transformation of coercive states and armed actors.

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El Salvador

Negotiating with gangs

Isabel Aguilar Umaña, Bernardo Arévalo de León and Ana Glenda Táger

Between 2001 and 2011, El Salvador saw levels of violence comparable only to war zones. With a rate of 66 homicides per 100,000 in 2011, this small nation of 6 million inhabitants became notorious for being one of the most violent places on earth.

A combination of internal conditions – social inequality and marginalisation, violent political cultures and poor governance – and transnational phenomena – the globalisation of criminal activities through international illicit flows of drugs, people, arms and money, and international "securitised" responses to these problems – contributed to the entrenchment of criminal activity in El Salvador's emerging democracy. Guatemala and Honduras faced similar problems. One particular factor would have an enormous effect: the repatriation of thousands of young illegal immigrants who had been involved in street gangs in Los Angeles.

Gangs encroached on the livelihoods of already impoverished communities, extorting money from big business and local businesspeople – the grocer, the taxi driver, the food-stall owner – with murder as a credible threat. Media coverage projected grisly footage to a society terrorised by seemingly unstoppable carnage.

Government authorities responded to public uproar with an iron fist. *Mano dura* ("firm hand") policies used harsh legislation that criminalised gang membership as well as specific criminal activities, dismissing the social roots of the gang problem. Implemented by a weak and ineffectual justice and security system, repressive measures failed to address the problem. One *mano dura* policy followed another, making things worse: not only failing to stop violence but even compounding it.

The scale of the associated social disruption and violence undermined the consolidation of fledgling institutions in El Salvador, reinforcing authoritarian enclaves in the security apparatus and breeding mistrust in public services. The predicament required the eradication of violence and coercion from social and political relations, and consolidation of the social and political institutions that could enable this goal. In other words, it was a clear peacebuilding challenge.

Negotiating with gangs: the truce process

On 8 March 2012, leaders of the two main gangs operating in El Salvador – *Mara Salvatrucha* (MS-13) and Barrio 18 – agreed a truce. They agreed to cease hostilities and pledged to reduce criminal activity, particularly murder, although there was no commitment to stop extortion. Estimates shared with the authors by the truce mediators suggest that 10,000 gang members were in jail, 60,000 were on the streets, and the networks of family and friends numbered about 400,000 – so gangs and the people associated with them accounted for as much as eight per cent of the Salvadorian population.

In exchange for agreeing the truce, MS-13 and Barrio 18 demanded respect for the basic rights of gang members and improvement in their shocking conditions of imprisonment – the Organisation of American States (OAS) recorded overcrowding levels of 299 per cent in prisons in El Salvador in 2012 – as well as an end to the harassment of visiting relatives. The gangs' motivation was explicit in their first joint declaration of March 2012: to end the cycles of violence that had caused so much suffering, and to reintegrate into Salvadoran society. According to the gang leaders, 50,000 gang members have died since the confrontation between them began, and the relatives of the thousands of jailed gang members are subject to abuse and stigmatisation.

Truce facilitators Monsignor Fabio Colindres and ex-congressman Raul Mijango wash the feet of *Mara Salvatrucha* (MS-13) gang leaders as part of a Catholic rite during Easter week. © Paolo Luers

There were no demands for amnesty or a reduction in prison sentences of jailed gang members, nor for a freeze of judicial investigation or prosecution of criminal activities. The truce, negotiated from jail by the leaders of both gangs, went beyond a mere ceasefire to include a search for a way out of the cycle of violence. Acknowledging the pain and sorrow their activities had caused to fellow Salvadorians and asking forgiveness from society, the gangs expressed their intention to extricate themselves from violence and criminal activity, asking for assistance to peacefully and gainfully reintegrate into society while keeping their distinct social identity.

News about this agreement soon attracted national and international attention. Initial reports of negotiations between the government and the gangs were dispelled by the announcement that this was an agreement reached between the two main gangs, facilitated by two civil society figures: Raul Mijango, an ex-guerrilla commander and former congressman, and Fabio Colindres, a Catholic Bishop and military chaplain.

But the extent of the government's involvement remained unclear: although President Mauricio Funes publicly distanced his government from the truce, the fact that the agreement was negotiated in prisons and resulted in the transfer of the gang leadership to jails with better living conditions showed some degree of official involvement.

In June 2012, the president requested the support of the international community for a new *National Agreement for Security and Employment,* which, without making explicit reference to the truce process, was understood to be an expression of government support for it. The Minister for Justice and Security David Munguía subsequently revealed in an interview that the truce had been planned and designed in his office. In September 2012 the Technical Coordinating Committee for the Reduction of Crime and Violence in El Salvador (CTC) was established as the body responsible for the implementation of the violence reduction process resulting from the truce, coordinating the different actors engaged in the process and including governmental representation through the Ministry for Justice and Security. The CTC also involved the two mediators and representation from the OAS.

The reduction in homicides was immediate: 156 murders were registered in April 2012 compared to 402 in February.

Finally, in April 2013, after the reduction in homicides had been sustained at an average of 59.6 per cent for a full year, President Funes acknowledged that he had personally supported the initiative from the beginning, alongside new policy measures designed to sustain its impact.

Resistance to the truce

The prudence of government authorities establishing "plausible deniability" from the initiative was understandable. The decision to engage criminal actors in a political process was highly controversial. Public opinion – reflected and fed by a sensationalist media – had little sympathy for groups that were seen as cruel predators with no redeeming features.

The gangs had developed a self-marginalising mentality and did not aspire to any social legitimacy: anomic anger and despair directed their aggression not only against representatives of the state – first and foremost security officers – but also against society in general. The impoverished communities where they established their turfs lived in constant fear.

Mano dura policies were implemented and expanded not because they were effective – in fact, they made violence worse – but because they were popular: a terrorised population demanded that force be met with force.

As well as being unpopular and politically risky, the truce process was also legally dubious. The *mano dura* judicial framework left little room for any measures but strict criminal investigation and prosecution. The Law Outlawing Maras, Gangs, Groups, Associations and Organisations of a Criminal Nature – Decree 458 (2010) – not only mandated investigation and prosecution of anybody suspected of belonging to any such organisation, but criminalised anybody engaging in "support" activities, a definition ambiguous enough to include those working towards social reintegration of gang members.

Law and order hardliners abhorred the idea of "negotiating with criminals" and opposed any concessions to jailed or free gang members. For them, support for the truce would erode the rule of law by establishing a precedent that judicial prosecution was negotiable, and would further entrench criminal gang activity by promoting tolerance of their crimes.

The opposition parties attacked the government's support to the mediators, stressing the danger of politically legitimating the *maras* (gangs), of strengthening their organisational structures, and of sanctioning their territorial control. And even civil society groups that had traditionally opposed the *mano dura* approach to social

violence became critical as the lack of transparency around the truce made them suspicious of its origins and intentions.

Legitimising the truce

The truce was born as a socially illegitimate child. But evidence of its dramatic and sustained impact on levels of violence, and a better understanding of its nature, gradually stimulated its popular legitimisation within Salvadoran society. Public perceptions started to change, giving way to some degree of re-positioning even among its most fervent opponents.

The government, first of all, was able to acknowledge its involvement, committing full institutional support to implementation of the truce – although actual delivery of support proved to be less forthcoming. Civil society organisations regained trust in the process as they started to understand its goals and intentions, and the role they would need to play in implementation, which was conceived along the principles of social integration and prevention that many of them had long been advocating.

Law and order hardliners found their *mano dura* arguments were beginning to lose traction given the evidence of less violent streets and – for those within government – the now explicit presidential support. The opposition parties, even in the context of the campaign for general elections in February 2014, were forced to tone down their criticism and develop ambiguous doublespeak in order not to alienate voters who had already begun to feel the positive effect of the truce.

This process of social legitimisation was gradual but sustained. The presidential nod to the international community in June 2012 enabled the OAS to publicly support the mediation effort as early as July 2012, engaging as a guarantor of the pacification process. In September – the month the CTC was established – three smaller gangs (*La Máquina*, *Mirada Locos* and *Mao-Mao*) and two prisoners' associations (*Raza* and MD) – also adhered to the truce. El Salvador's famously unruly and violent jails became more stable and in October the International Committee of the Red Cross (ICRC) established a special mission in El Salvador to monitor human rights conditions in prisons.

Interpeace, a peacebuilding organisation operating on youth violence prevention in El Salvador, engaged in the process from August 2012 providing strategic advice and technical assistance to the mediators. In November, the Pastoral Initiative for Life and Peace – an ecumenical initiative of Catholic and Protestant priests – publicly expressed its support to the truce and the pacification process associated with it. A group of businesspeople

established the Humanitarian Foundation to generate opportunities for gainful employment and social reintegration for youths at risk and for "pacified" gang members.

The truce process has been able to progress and accrue legitimacy despite considerable challenges. The government's initial tactical distance had led to an atmosphere of confusion and uncertainty that affected even the capacity of its own agencies to support the effort. Salvadorian public institutions are weak in terms of technical capacity, resources and internal coordination. The relative autonomy of some public institutions – *de jure* autonomy as with the Public Prosecutor's Office, or *de facto* autonomy as with some security sector officials who choose to ignore instructions – added to incoherent and contradictory actions. In May 2013 a Supreme Court ruling led to Minister Munguía being replaced by Ricardo Perdomo, whose support for the truce process can be described as timid at best. And electoral calculations might be behind the less enthusiastic tone of President Funes in the latter part of 2013.

The fact that the truce has held for over 18 months shows that the jailed gang leaders carry sufficient legitimacy to speak on behalf of their affiliates and sufficient authority to ensure a level of compliance to its terms. Homicide rates, though, have been rising at the time of writing in late 2013, with many pointing fingers to the gangs. Gang leaders' authority can only be sustained if their decisions deliver answers to the needs and aspirations of their brethren in the streets: freedom from aggression and alternative livelihoods. To ensure such deliverables there is a need to enrol collaboration and support from not only governmental institutions – whose capacity to engender the necessary conditions for peaceful and gainful reintegration is limited – but from society at large.

Reaching out to civil society has always been a clear goal of the process, both to legitimise the effort in the face of criticism, as well as to enrol actors whose collaboration is needed to develop the conditions for gainful and peaceful reintegration. The support of the Pastoral Initiative for Life and Peace and of the Humanitarian Foundation were important achievements in this respect, but hardly sufficient. More broadly, the attitudes of the Catholic Church and the private sector have remained either critical or suspicious of the process, which is a big impediment to legitimisation. Civil society support would need to be much stronger to really embed the process socially.

By the end of 2012 the mediators realised that the truce process was in danger of stalling due to unresolved internal contradictions in government, a problem that would only become more acute as political campaigning for the general elections started in 2013. The precarious legitimacy achieved so far was at risk.

Truce and reconciliation?

Socialising the gang pacification process requires shifting the focus from the national to the local level, enabling those who have suffered most from gang violence to feel the "truce dividend". In January 2013 the second phase of the truce started: territorialisation. Months of conversations between the mediators and local authorities followed, and by July eleven municipalities highly affected by gang violence had been declared "violence free" territories by municipal authorities interested in seizing the opportunity to effectively address the problem (*see map* p.99). This number was expected to grow by the end of 2013 as conversations between the mediators and municipal authorities in other towns continue.

With the express and concerted support of local civil society – local associations, local businesspeople, Catholic parishes and Protestant churches, and so on – Covenants for Peace have been signed by city majors, representatives of the national government and local gang leaders. These create frameworks for a collaborative and participatory efforts in which local level security and development policies are negotiated in multi-stakeholder processes facilitated by the mediators, and implemented with the support of central government and the Humanitarian Foundation that fosters the development of business and employment initiatives.

It is at this point that, paraphrasing Munguía, the truce becomes a peace process. The truce by itself was insufficient to address the gang problem. Stopping the killing would not transform the social and economic conditions that sustained the cycle of violence, but it created the political space in which alternatives to the failed securitised approach could be explored through a concerted effort with the participation of different stakeholders from state and society, including the gangs themselves.

The drive for the process has been home-grown. It has come fundamentally from Salvadoran actors: the mediators, government officials and gang leaders who were prepared to risk thinking "outside the box". But international engagement has also been essential. The umbrella of international political support provided by the OAS; the monitoring of conditions of detention by the ICRC; and the strategic and methodological assistance provided by Interpeace: all are important examples of responsive assistance to local actors that align to local needs and wishes instead of being the product of external agendas and priorities.

El Salvador: map of violence-free municipalities

El Salvador

- - - International borders
- - - Departmental boundaries
★ National capital
◉ Departmental capital
⬤ Violence-free municipalities
 1. Ilopango
 2. Santa Tecla
 3. Quetzaltepeque
 4. Sonsonate
 5. Puerto de la Libertad
 6. Apopa
 7. San Vicente
 8. Nueva Concepción
 9. Puerto El Triunfo
 10. Ciudad Delgado
 11. Zacatecoluca

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The final outcome of the truce is not yet clear. A significant part of Salvadorian public opinion remains unsure or opposed to it. Recent increases in violence, the origins of which are still to be understood, are worrying both for the effect they have on public opinion and what they say about the process itself. Progress hinges on the level of support the truce gets from across society – in other words, its perceived legitimacy – in the months leading up to the national elections in February 2014. Unfortunately, the electoral atmosphere is hardly conducive to a rational discussion on the merits and possibilities of the truce as a pacification process. The international community should take note and enhance its efforts in support of those working towards the consolidation of a social peace.

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Lebanon

Where next for Hezbollah: resistance or reform?
Bassel F. Salloukh

Hezbollah has been haunted by questions of legitimacy since its arrival on the Lebanese scene on 16 February 1985 with its "Open Letter to the Downtrodden in Lebanon and the World". Viewed by many domestic Lebanese actors, and also by the United States, Israel and Saudi Arabia, as nothing more than a proxy of Iran's Islamic Revolutionary Guard Corps (IRGC), the party has struggled to prove its Lebanese credentials. Unlike most other wartime militias demobilised and disarmed after the 1989 Taif Agreement, the party retained its weapons arsenal in the name of liberating Lebanese territory under Israeli occupation.

This article examines the evolution of Hezbollah's role as a Lebanese political and social actor that maintains significant independent military capability, exploring its legitimacy as it has evolved and responded to internal and external events. It reviews Hezbollah's origins and stance toward the Lebanese confessional political system, and surveys its domestic and geopolitical mutations as it transformed itself from a fiery revolutionary party to one of Lebanon's principal domestic actors. The article closes by discussing the internal and external conundrums for Hezbollah after the 2006 war with Israel and its 2013 intervention in the Syrian conflict.

Hezbollah and the Lebanese confessional system
Hezbollah emerged in the aftermath of Israel's 1982 invasion of Lebanon. Party members alienated from Nabih Berri's Shia Amal Movement joined cadres from other Islamist Shia groups to form Hezbollah under the IRGC's direct ideological and military supervision. The party embraced the doctrine of *wilayat al-faqih* (guardianship of the jurists), which meant, theoretically at least, that its ultimate allegiance was to Iran's Supreme Leader. Moreover, the 1985 Open Letter pledged the creation of an Islamic state in Lebanon, a provision that contradicted the country's confessional political system based on a consociational power-sharing arrangement.

Hezbollah spent the civil war years resisting Israel's occupation of south Lebanon and battling Iran's enemies. The party's relentless attacks against Israeli troops in the south played an instrumental role in forcing Israel's partial withdrawal south of the Litani River in 1985. Hezbollah was also accused of a number of alleged terrorist operations against Western targets carried out by the shadowy Islamic Jihad Organisation.

> " **Damascus granted Hezbollah monopoly over the armed resistance to Israel, and the party accommodated Syria's use of the resistance to serve its own geopolitical calculations and diplomacy in any prospective Arab-Israeli peace negotiations** "

The end of the war in Lebanon in 1989 coincided with the victory of the moderate camp in Iran and then Hezbollah's associated leadership change in Beirut, as the pragmatic Abbas al-Musawi replaced the dogmatic Soubhi al-Tufaili

KEY

———	International boundary
- - - -	Province boundary
★	National capital
——	Main roads

as Hezbollah Secretary-General. Hezbollah acquiesced to Syria's control of post-war Lebanon. Damascus granted Hezbollah monopoly over the armed resistance to Israel, and the party accommodated Syria's use of the resistance to serve its own geopolitical calculations and diplomacy in any prospective Arab-Israeli peace negotiations.

Hezbollah initially rejected the 1989 Taif Agreement, claiming that it simply consecrated the very confessional state that the party had condemned as unjust and sought to replace with an Islamic order. But it later decided to enter

Lebanese politics by contesting the 1992 parliamentary elections. In fact the party demonstrated a high level of political pragmatism in the post-war era, negotiating a number of apparently counterintuitive cross-ideological and cross-sectarian electoral alliances to secure its share of parliamentary seats.

In tandem with its efforts to bolster its domestic political legitimacy, Hezbollah worked assiduously to cultivate its social legitimacy, primarily among its core Shia constituency. The party deployed a complex corporatist

institutional structure that penetrated and mobilised Shia communities in the south, the Ba'albak-Hermel region in the Beqaa, and Beirut's southern suburbs. These institutions offered an array of social welfare provisions that included health care, education, financial assistance, extracurricular activities, the rebuilding of houses destroyed in multiple wars with Israel, and special care to the families of the party's martyrs. They also served to disseminate and consolidate Hezbollah's ideological hegemony among its followers as it cultivated a loyal "resistance society" (*mujtama' al-muqawama*).

Israeli withdrawal from Lebanon

Israel's withdrawal from Lebanon on 24 May 2000 created a number of domestic and strategic conundrums for Hezbollah. How could it continue to justify the utility of its sophisticated weapons arsenal to the Lebanese public? But equally, how was it supposed to protect itself from Israeli reprisals and continue to serve Syria and Iran's geopolitical interests unarmed?

Hezbollah, supported by then pro-Syrian Lebanese President Emile Lahoud, insisted that Israel had not withdrawn from a strip of occupied land including the Kfar-Shouba Heights and the contested Shebaa Farms – a contention that is not without merit nor documentation. Moreover, Hezbollah now added new provisos to justify its weapons: the release of Lebanese prisoners in Israeli jails, as well as the return of the remains of all dead fighters. Hezbollah could now keep its weapons under the umbrella of the Lebanese government, and its operations in the Shebaa Farms were a convenient reminder of Syria's indispensable role in any negotiated settlement of the Arab-Israeli conflict.

The assassination of former Prime Minister Rafiq Hariri on 14 February 2005 was a watershed event for Hezbollah. It unleashed an overlapping domestic and external contest over the post-Syrian Lebanese state between two camps: on the one hand, the anti-Syrian 14 March coalition led by Saad Hariri and his mainly Sunni Future Movement, supported by the US and Saudi Arabia; and, on the other, the 8 March coalition composed principally of Hezbollah, Berri's Amal Movement, and Michel Aoun's Maronite Free Patriotic Movement, supported by Syria and Iran.

Enjoying substantial domestic and regional popularity after Israel's withdrawal, Hezbollah had hitherto maintained a solid parliamentary bloc but had opted to stay outside executive power. After Hariri's assassination it assumed a leadership role in the battle over post-Syria Lebanon. It participated in Fouad Siniora's cabinet formed on 19 July 2005, and was soon engrossed in the quagmire of Lebanon's sectarian politics.

Hezbollah swiftly found itself on a collision course with Siniora's 14 March-dominated government, especially over the implementation of United Nations Security Council Resolution (UNSCR) 1559 of 2 September 2004, which mandated the "disbanding and disarmament of all Lebanese and non-Lebanese militias", primarily in reference to Hezbollah's weapons arsenal. The party also resisted all efforts by 14 March to move Lebanon away from the Iranian-Syrian camp toward the US-Saudi one.

The Memorandum of Understanding signed by Hezbollah and Aoun's Free Patriotic Movement on 6 February 2006 sought to break Hezbollah's growing political isolation and shore up its domestic legitimacy outside its core Shia constituency. The party's alliance with Syria's erstwhile nemesis, an uncompromising advocate of Lebanese independence, was aimed at bolstering its national credentials and counterbalancing the Saudi-backed and Sunni-dominated 14 March coalition.

Similar calculations convinced Hezbollah to participate in the National Dialogue sessions inaugurated on 2 March 2006 between Lebanon's principal political factions and aimed primarily at devising a national defence strategy. The participants acknowledged that the Shebaa Farms were Lebanese territory under Israeli occupation, thus sanctioning Hezbollah's continued role as a legitimate armed resistance. However they failed to reach agreement on how best to disarm Hezbollah in the context of a viable national defence strategy. While Hezbollah's opponents argued for bringing the party's military structure under the command of the Lebanese Armed Forces (LAF), Hezbollah reasoned that not only would this invite the destruction of the LAF in any war with Israel, it would also deny the resistance the autonomy to protect its cadres and the agility to engage Israel in asymmetric warfare.

The 2006 war

The July-August 2006 war with Israel proved the validity of Hezbollah's contention about the LAF, but raised new questions about the party's monopoly over decisions pertaining to war and peace in Lebanon. The party had miscalculated Israel's response to the abduction of soldiers along the Lebanese-Israeli border, leading to much death and destruction, especially for its own core Shia constituency. Hezbollah's military capabilities to resist Israel's attacks stunned its domestic supporters and opponents alike, and its swift mobilisation of a Herculean reconstruction effort demonstrated its commitment to its "resistance society".

Nevertheless the resulting sense of invincibility unleashed some unruly practices inside and outside the southern

Hezbollah supporters work at the group's electoral office in the southern town of Nabatiyah on 5 June 2009. © Mahmud Zayat/AFP/Getty Images

suburbs that sullied the party's hitherto untarnished image. Similarly, growing consumerism and clientelism among some middle-level party cadres exposed Hezbollah to serious criticism even from within the Shia community.

The party would not compromise on its weapons arsenal, however, and snubbed all attempts to limit its operational autonomy after the 2006 war. The 14 March Alliance insisted that UNSCR 1701, adopted in August 2006 to call for an end to hostilities between Hezbollah and Israel, banned Hezbollah's military presence south of the Litani River. However, the party interpreted the resolution as referring only to visible military installations and movements. In fact, Hezbollah went on to replenish and expand its weapons arsenal after the war, further rebranding its strategic utility for Lebanon's defence.

The stand-off between Hezbollah and 14 March peaked when all five Shia ministers resigned from the Siniora government on 11 November 2006, protesting against his unilateral decision to table draft by-laws for a proposed international court to investigate the Hariri assassination. When the Siniora government passed the by-laws on 13 November 2006 despite the absence of all Shia ministers, Hezbollah responded by organising a massive sit-in in Beirut's central district that began on 1 December 2006 and lasted uninterrupted for 18 months. Hezbollah was determined to paralyse the Siniora government and deny it any semblance of domestic legitimacy.

The political deadlock that predated the 2006 war, overlapping with a grander geopolitical regional contest between Tehran and Riyadh, climaxed in May 2008 when Hezbollah, supported by the Amal Movement and other pro-Syrian militias, undertook a lightning military operation to occupy West Beirut and decimate the Future Movement's skeletal military structure.

The trigger for this astonishing offensive was the Siniora government's 5 May 2008 decision to consider Hezbollah's clandestine telecommunications network illegal, a charge akin to declaring the party an outlawed militia. It was the first time in post-war Lebanon that Hezbollah turned its firepower and military expertise inwards, against fellow Lebanese, despite frequent promises by the party's leadership that its weapons were aimed solely at Israel.

The Qatari-negotiated 21 May 2008 Doha Accord temporarily resolved the political stand-off between the 8 and 14 March coalitions, but it was unable to heal the sectarian scar created by Hezbollah's military takeover of West Beirut. For at least half of Lebanon and a substantial cross-section of the country's Sunni community, Hezbollah's weapons were now nothing more than the firepower of an illegitimate militia. In contrast, the other half of the country, and especially most Shia Lebanese, saw Hezbollah's military operation in West Beirut was a tactical pre-emptive strike aimed at eliminating potential military threats in the party's own security environment.

Hezbollah later unfolded its Political Document of 30 November 2009 in part to restore a measure of domestic legitimacy and consent around its military capability. It now formally accepted the confessional political system it had condemned in the 1985 Open Letter, underscoring the post-Taif veto power enjoyed by the three main sectarian communities in government formation and cabinet decision-making. Moreover, Hezbollah insisted that its arms were part of a trinity responsible for deterring any future Israeli attacks that also included the LAF and the Lebanese population – a doctrine labelled *al-jaysh, al-sha'b, al-moqawama* (the army, the people, the resistance). Combined, the consociational proviso and deterrence posture guaranteed the party veto power on future deliberations pertaining to a national defence strategy, Hezbollah's role in it, and the modalities of any prospective demobilisation and disarmament.

Crossing the Syrian Rubicon

Hezbollah had just engineered the resignation of Saad Hariri's cabinet and formed the 8 March-dominated government of Prime Minister Najib Mikati in 2011 when the popular uprising began in Syria. The uprising's mutation into an overlapping domestic and regional struggle has since jeopardised the party's geopolitical environment.

Hezbollah's military intervention in Syria, most notably in the Qusayr battle in April 2013, damaged the party's domestic legitimacy and reopened the debate over its weapons. The party leadership invested much time and effort explaining the strategic significance of its Syrian intervention, namely pre-empting a Salafi-jihadi attack against its strongholds in the Beqaa and securing its logistic and supply lines through the Syrian hinterland. It also branded the battle as one against the US, Israel and Salafi-jihadi fighters rather than the Syrian people and their democratic aspirations.

Ignoring their own proxy roles in the service of Riyadh's regional objectives in Syria and Lebanon, Hezbollah's domestic opponents – especially the Future Movement – argued that the party's military intervention in Syria proved that the main utility of its weapons was to protect Iran's external agenda rather than Lebanon's safety from Israeli aggression. In their efforts to demonise the party, 14 March and Riyadh labelled Hezbollah's intervention in Syria a Shia "invasion" orchestrated by Iran to shore up the beleaguered 'Alawi regime in Damascus and protect Tehran's strategic interests.

The Future Movement, at Saudi Arabia's behest, publicly voiced its opposition to the once magic formula of *al-jaysh, al-sha'b, al-moqawama*. Even some elements from within the Shia community raised concerns over the party's Syrian

adventure, fearing that it would strain sectarian relations in Lebanon and adversely affect the economic fortunes of Lebanese Shia diaspora communities. Riyadh expressed its anger at Hezbollah's Syrian involvement by placing a veto over the party's participation in a future Lebanese government. This has left the country in a state of executive paralysis as Hezbollah has blocked any attempt to form a new cabinet in which it is not represented.

> **" Hezbollah's military intervention in Syria, most notably in the Qusayr battle in April 2013, damaged the party's domestic legitimacy and reopened the debate over its weapons "**

Hezbollah's intervention in Syria underscored the extent to which the conundrum of its weapons arsenal goes beyond the contours of a domestic political and coercive actor searching for legitimacy in a post-war order. It is also part of a larger geopolitical battle between Saudi Arabia and Iran over regional supremacy unleashed in the aftermath of the US-led invasion and occupation of Iraq. From this perspective, Lebanon is simply a site, and Lebanese actors proxy players, in this grand regional confrontation.

Nor is Hezbollah perturbed by the decision of the European Union (and before it the US) to designate the party's military wing a terrorist organisation. In fact, such impositions carry little weight in Hezbollah's calculations, except to harden the party's and its supporters' perception of the international community's double standards and injustice.

The debate over the legitimacy and future of Hezbollah as an independent armed actor is tied to both domestic and exogenous factors. Only a grand bargain involving the main regional and international actors – especially Iran, Saudi Arabia, the US, Russia and Israel – can allow for Hezbollah's consensual disarmament, the integration of its military wing into the LAF and the party's transformation into a non-coercive Lebanese political actor, and thus pave the way for a durable post-war peace in Lebanon.

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Indonesia

Asia's perestroika: regime change and transition from within
Aguswandi and Nezar Patria

Transition is a long, hard journey with many opportunities to get lost along the way. Fifteen years after the fall of President Suharto's authoritarian New Order in 1998, Indonesia is still trying to consolidate its *reformasi* ("reformation") process of political transition.

New Order
A regime that begins and maintains its legitimacy with blood may end with blood. The violent end of Sukarno's "Old Order" in 1965 and 1966 marked the beginning of a new era of intense state control by a small elite headed by Suharto and backed by the military. The military dominated the political sphere and used carefully orchestrated elections to ensure the dominance of the pro-regime Golkar party, with voters co-opted with guarantees of development assistance, career advancement and special privileges.

The military justified its political authority with a historical narrative of its role as national redeemer set against a latent threat of communist resurgence and separatism. The regime introduced the dual function doctrine (*dwi fungsi*) of the army as both political and security guarantor, which it sold to the public as the best way to ensure political and economic stability. In practice, the military was omnipresent in all aspects of political and economic life in Indonesia and held key positions at every level of government.

The military's parallel structures mirrored the civilian administration from national down to village levels. The military was paramount and maintained veto power over all civilian decisions. Dissenters faced quick and punitive action, as experienced by numerous opposition movements since the 1950s. By the 1990s Indonesia had very high numbers of political prisoners.

Power was dispensed locally among loyal central government appointees. Labour unions, teachers, civil society and opposition parties were largely co-opted into the system. The New Order mantra of *gotong royong* and *musyawarah* (collectivism and consensus) was used to manufacture public consent.

Mobilising for reform
Opposition groups and movements began to challenge the legitimacy of the New Order, despite the risks of opposing the authoritarian regime. Democratic, Islamist and progressive groups and parties led the resistance nationally. The student movement, trade unions and non-government organisations were the staunchest advocates for reform in Java. In Timor Leste, Aceh and Papua, opposition took the form of armed struggle led by local nationalist leaders fighting for autonomy or independence.

Early mobilisation for reform of the New Order came from inside the system. Some within the regime began to look for ways to advance gradual change as it became increasingly apparent that the New Order was becoming more and more authoritarian. In 1980 some prominent Indonesians, including former prime ministers and military generals, issued the "petition of fifty". They objected to Suharto's abusive co-option of Indonesia's *Pancasila* national ideology of faith, humanity, national unity, democracy and social justice, which he had personlised to the extent that any to challenge his person was a challenge to Indonesia itself.

However, the pace of reform was too slow for Indonesia's youth and student movements who were agitating for much more rapid and radical change. Momentum for reform gathered speed in the mid-1990s as various groups mobilised to demand the end of military interference in politics and reform of the state. Dissenting groups

took various forms, including national movements for reform and social change led by students and progressive intellectuals, political and human rights movements led by NGOs, and nationalist groups in the peripheries challenging their relationships with the centre. In the early 1990s the labour movement also became a key force for change, and it grew through the decade, gathering, expanding and consolidating public support.

Relative economic success mitigated the political frustration of many middle class Indonesians, who might otherwise have reacted more strongly to political oppression. For some, economic gain seemed more important than liberal democracy or political freedom. Indonesia was an emerging economy and the epitome of an autocratic state with strong growth and a liberal economic system.

But things changed dramatically when the Asian economic crisis struck Indonesia in 1997. Indonesia was the hardest-hit Asian country. The Rupiah fell by 83 per cent in one year (July 1997–June 1998). Many businesses collapsed and millions of Indonesians were plunged beneath the poverty line. The legitimacy of the state disintegrated along with the currency. The rapidity of economic decline provoked middle class Indonesians to become some of the most vociferous advocates of reform.

Protests gathered pace, especially in urban areas, as students and intellectuals swelled the ranks of demonstrators. The regime responded by dramatically scaling up its efforts to suppress dissent. The killing of students by security officers in May 1998 proved a pivotal moment. The eyes of the public were on the military – would it side with the protesters or the regime?

The overwhelming unpopularity of Suharto, the depth of the economic crisis and the breadth of demonstrations across the country convinced the military to back the reform movement, if only to ensure its own survival. Faced with no option but to resign or risk a bloodbath, Suharto conceded office on 21 May.

From the outside, the collapse of the New Order regime looked like the explosive result of economic collapse. In reality it was the culmination of a long evolutionary process of pressure for reform – although the economic crisis was a decisive trigger. The end of Suharto sparked an Indonesian perestroika led by the transition government of acting President Habibie who began to lay the foundations for press freedom, free elections, military reform and political decentralisation.

The success of the reform movement spurred existing armed resistance movements in Indonesia's periphery:

in Timor Leste, where people were demanding an end to illegal annexation; and in Papua and Aceh, where people were challenging not only the brutal and exploitative policies of central government, but also its legitimacy to rule per se.

Military reform

The hardest but most important challenge for the post-Suharto *reformasi* process of political transition has been to reform the military – to extract it from the political sphere and to enact civilian rule. Driven by popular demand, the process began quickly after the end of the New Order with the dismantling of the *dwi fungsi* doctrine and the end of military privilege in the legislative and executive branches of government.

In 1999 the Indonesian National Police (POLRI) was officially separated from the Republic of Indonesia Armed Forces (ABRI), which was renamed the Indonesian National Defence Forces (TNI). POLRI had had a military structure, including military ranks and salaries, and a 1997 Police Law had embedded the police formally within the ABRI's integral command structure.

> " **The hardest but most important challenge for the post-Suharto *reformasi* process of political transition has been to reform the military – to extract it from the political sphere and to enact civilian rule** "

In an attempt to assert civilian control, oversight of the military was transferred from the presidency, where it had sat under Suharto, and brought under the control of the civilian leadership. The defence budget was increased in an attempt to halt the military's illegal economic activities. Military reform was navigated through tactics of divide and rule with prominent reform-minded military officers being promoted and hardliners marginalised, allowing reformist officers to articulate their agenda and doctrine. Civil society groups, meanwhile, strengthened by the success of the reform movement, used the opportunity to initiate dialogue on the professionalism of the armed forces. Finally, the law was reviewed to clarify civilian oversight of the military, with the defence and police acts revised in 2004.

By 2002 the pace of the reform process had slowed significantly. Efforts to remove military business interests had stagnated. A major setback was the failure to reform

the territorial command structure of the TNI through which the military was able to shadow civilian government in provincial and local politics. The close involvement of senior military leaders in the post-Suharto transfer of power undermined the ability of the civilian leadership to scrutinise the military and several generals were included in Habibie's transitional government. The old military wine managed to transfer itself into the new civilian bottle.

Political elites, weakened by politicking, made concessions to military leaders who had hung on to considerable influence and power. Today the military still maintains a significant political role all the way down to local levels, although no longer with veto power. Politicians disagreed vehemently about almost everything during the presidencies of both Abudrrahman Wahid (1999–2001) and Megawati (2001–04), who had been the symbol of reform in 1998 but who chose to surround herself with conservative military advisers during her tenure. Indeed, Megawati's military advisers were instrumental in the policy to terminate peace talks with the Free Aceh Movement (GAM) and impose Martial Law in Aceh 2003.

But despite the problems and setbacks, by and large Indonesia's post-New Order civilian leadership has been able to assert control over the army. The military has been forced to accept the civilian primacy in decisions on many affairs of the state, demonstrated emphatically when President Yudhoyono secured the military's acceptance of peace process and accord with GAM in 2005. Overall, military reform has opened possibilities for different peacebuilding approaches and responses to conflict in Indonesia's periphery, and has gone some way to repairing the legitimacy of the state.

Political and constitutional reform

Prior to 1998 the role of political parties was largely symbolic – a stamp of legitimacy for the regime. The two political parties allowed to contest elections alongside Suharto's Golkar party – the Islamist United Development Party and the Indonesian Democratic Party – provided no meaningful opposition. Dissent was either discouraged, as the regime glorified homogeneity of opinion through an ideology of "Asian Values" of unity and harmony, or suppressed it, as when the state brutally cracked down on the leftist youth group the People's Democratic Party and other student activists accused of fomenting riots in Jakarta in July 1997.

The post-New Order reformasi process of political transition, with its regular and direct elections, has provided Indonesian people with the opportunity to participate in a more meaningful political process. While the concept of opposition has still to be fully comprehended

Indonesian students on their way to occupy the parliament building in Jakarta, 18 May 1998. © Patrick Aventurier/Gamma-Rapho via Getty Images

in Indonesia, the reform process and the emergence of many political parties has made the country one of the most prominent democracies in Asia. It is seen by many as the second biggest democracy after India, and the most democratic country with a Muslim majority.

Constitutional reform was a major demand of protestors during the fall of Suharto and in 1999 the People's Consultative Assembly, the Indonesian legislature, began a review of the country's 1945 constitution. One of the first things on the agenda was to transfer power from the executive to the legislature, undoing the presidency's hold on supreme political power. Amendments to the constitution limited the presidency to two terms and ruled that the president be directly elected. A key change was establishing the role of parliament in controlling the national budget, creating legislation and representing constituencies.

The growing strength of parliament was categorically demonstrated with the impeachment and removal from office of President Wahid by parliament in July 2001 (previously unimaginable), although at the time some Indonesians opposed this as unconstitutional. Corruption remains rife among Indonesian parliamentarians and political parties, but voters can now eject them, as they have done regularly through elections over the last ten years. While democracy is still messy in Indonesia, the election process remains the best vehicle for the public to participate and to control its politicians.

Political transition further introduced the "big bang" of decentralisation. This began in 1999 with the introduction of *otonomi daerah* (regional autonomy) for both administrative and financial authorities in provinces and districts in Indonesia. Taking Suharto's highly centralised state apart was a major challenge. Regions were provided with district heads and elected parliaments and local governments were empowered to manage their budgets and decide development priorities. In some places, the process has led to the decentralisation of corruption and mismanagement, and the rise of local oligarchs. Overall, though, it has been positive as local people have exercised their political right to remove incompetent local politicians.

Significantly, the reformist government started to engage with rebel groups in the periphery – albeit a stuttering process with very mixed results. In Aceh, after an unsuccessful attempt at a settlement in 2000, a Memorandum of Understanding between the GAM and the government was agreed in 2005 through which Aceh secured self-government. The bravest decision by Habibie's transition government in Jakarta was made in 1999 with regard to Timor Leste, where a UN-supervised referendum was offered to decide its status. On 20 May 2002 the Timorese seceded from Indonesia to become the first new nation of the millennium.

In the case of Papua, decentralisation has been highly inadequate. The ongoing conflict has distinct historical roots with many Papuans rejecting their incorporation into Indonesia through the 1969 "act of free choice". Indonesia is accused of seizing the province through an orchestrated referendum process which entailed no choice at all, free or otherwise. The current military operation against Papuan nationalist groups, including human rights violations against local people and exploitation of natural resources, has seen the tragic toll of the conflict in Papua continue today.

Reformasi, national legitimacy and peacebuilding

Reformasi in Indonesia is incomplete and ongoing. But despite its problems, it has gone a long way to rectify the social contract between the state and its citizens and has laid the foundation for a more legitimate government. Decentralisation, feared by some as the start of the "Balkanisation" of the country, has in fact strengthened state legitimacy. Timor Leste's referendum and Aceh's peace process are the two biggest examples of reform, as post-New Order press freedom exposed Indonesians to the abusive power of the military and central government against people in the provinces.

The legitimacy of elected leaders has put them in a stronger position to negotiate political settlements. Jakarta's concession to peace talks with the GAM came in response to public demand. Despite objections to Timor Leste being given a referendum on independence, many Indonesians came to feel that this was the right decision, especially after human rights groups had uncovered the brutality of military repression there. Indonesia now needs to acknowledge the urgency of building peace in Papua too.

> ## " The legitimacy of elected leaders has put them in a stronger position to negotiate political settlements"

Peace processes have not only broken the cycle of war and violence in some parts of the country, but they have also promoted the cycle of national reform. This is the case both at the local level – as in Aceh, where governors and political parties are now elected locally as a result of the peace process – and at the national level – as in the case of military reforms that resulted from Timor Leste's political settlement, which triggered public demands for wider military and state reforms.

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Measuring peacebuilding performance: why we need a "data revolution"

Andrew Mack

Research and policymaking on peacebuilding in war-affected states are severely hampered by the lack of the most basic data on the most relevant issues. States emerging from what are often long periods of warfare tend to have grossly inadequate administrative data, very weak statistical capacity and long outdated census data. For both donors and "fragile" state governments this means that creating peacebuilding policies and monitoring their impact based on evidence is currently extraordinarily difficult, if not impossible.

Today there is a growing push by donors, international agencies and by fragile state governments to address the huge knowledge gaps in this area and to create peacebuilding policies that are truly evidence-based. But without appropriate data, there is no real way to measure peacebuilding performance.

Data and the global security governance architecture

Over the last two decades, the number of high-intensity armed conflicts being waged around the world – those with more than 1,000 battle deaths a year – has declined by more than 50 per cent. Successive studies appear to leave little doubt that the upsurge of international activism – peacemaking, humanitarian assistance, peacekeeping and peacebuilding – has played a major role in this decline. But more precise understanding has been extraordinarily challenging, not least because of the lack of relevant data. Much more robust, timely and quantitative data is needed to measure progress towards agreed security and development goals and their associated targets and indicators.

The Millennium Development Goals (MDGs) process was an important step towards more evidence-based policy – helped by the fact that reliable survey-derived quantitative data on health, education and some other development goals were already being collected in many countries.

The launch of the International Dialogue on Peacebuilding and Statebuilding (IDPS) in 2008 was also significant and even potentially revolutionary in three ways. First, the fragile state members of the IDPS – who make up almost half the membership – have the lead role in driving the dialogue process. Second, the IDPS is the first multilateral development initiative in which security, governance and

justice issues in war-affected states have been central to the main policy agenda – in the MDG process these were deemed too politically sensitive to even discuss. And third, the IDPS starts from the assumption that peacebuilding and statebuilding are quintessentially political – not technical – processes, again in contrast to the MDGs.

An important milestone in the short history of the IDPS was the New Deal for Engagement in Fragile States, endorsed by 41 countries and multilateral organisations in November 2011. Central to the New Deal was the commitment to pursue five Peacebuilding and Statebuilding Goals (PSGs). These are enhancing the legitimacy of political processes, improving security, increasing citizens' access to justice, promoting good economic governance, and managing revenue and building the capacity to deliver services.

The PSGs are not simply aspirational. From the beginning there was a commitment by all parties to use indicators to track progress towards meeting each goal, using quantitative data where possible. This is broadly the approach used to monitor progress towards achieving the MDGs. The indicator data would also provide an evidence base that would both track and inform the dialogue process between fragile states and their Northern partners.

Throughout 2012 and into 2013 there were a series of international meetings to determine the most appropriate indicators for each of the PSG targets and how the necessary data might be collated or generated. But while the IDPS partners now had a list of agreed (preliminary) indicators for the PSGs, there were few reliable sources of data available to populate them. And some of the datasets that have been proposed – on homicides and deaths from armed conflict, for example – are not reliable enough to provide a useful guide to progress.

The data challenge: context versus commonality

As early as 2011, the question of what data sources to use to monitor progress towards the PSGs was a growing source of tension behind the scenes between the g7+ Group of Fragile and Conflict-affected States and their Northern partners. Discussions on how to monitor PSG policies led to the creation of two separate sets of indicators: country-level indicators and common indicators.

Country-level indicators are intended to track PSG goals in the security, economic and political contexts in which g7+ countries find themselves. So some country-level indicators will be unique to particular countries. Country-level indicators will be used to create national fragility assessments that will locate the assessed countries on a 5-level fragility spectrum from "crisis" to "resilience". States' initial location on the fragility spectrum could in principle serve as an approximate baseline against which to measure or estimate their progress towards achieving resilience.

Common indicators are common to all fragile states – like the under-five mortality rate, which was a key MDG indicator on child health. Fragile state governments have resisted common indicators claiming they primarily reflect the interests of donors. These North/South differences have been an ongoing source of tension and have slowed the IDPS's momentum. Part of the reason for the slow-down is political. In fragile states without robust statistical systems – the large majority – nationwide household surveys are the *only* means of generating the reliable data needed to populate peacebuilding and statebuilding indicators. But the transparency that especially perceptions surveys generate can be politically embarrassing and even damaging to governments.

Moreover, for many fragile state governments the Northern emphasis on common indicators and cross-national surveys misses the critical point that the development and security challenges that confront fragile states are determined by their unique historical, cultural and political circumstances – a concern shared by many development researchers who rely on qualitative methods. Country-level indicators of progress can be designed to take the unique circumstances of fragile states into account; common indicators – by definition – cannot.

Suggested IDPS common indicators are similar in concept to MDG indicators. But many fragile state governments, along with aid critics in the North, are sceptical about the MDG model – and not without reason. First, the MDG monitoring process, which has relied heavily on cross-national survey data, has failed to reveal the very real developmental successes that have been achieved by sub-Saharan African states since 2000. The MDGs' architects chose indicators that few African states could hope to achieve, while ignoring those in which they were making important gains.

Second, fragile states worry that common indicators may stigmatise them as "failures" and identify them as "poor performers" – assessments that can lead to reduced aid allocations or the imposition of harsh conditionality measures.

Third, the UN has asserted that the campaign to boost achievement of the MDGs is the "most successful global anti-poverty push in history", a claim that appeared persuasive. Economic assistance to the MDG process has doubled in value since 2000, and as aid flows increased, development outcomes improved. But correlation is not the same as cause. In 2013 a major econometric study by UN economist Howard Friedman cast major doubts on the claim. Friedman did not question the fact that, on average, MDG development outcomes across the developing world had improved since 2000, but he pointed out that these indicators were mostly improving before 2000. The pre-2000 improvements cannot logically be attributed to aid flows that increased after 2000. This raised an obvious question: if the MDG process has not had the positive impact that its supporters claim, then why assume that the very similar IDPS process would be any more successful?

Finally, there is the question of trust. Developing countries' scepticism arises from the repeated failures of donors to honour aid pledges. In 2005, for example, the G7 – the rich countries' club – pledged to increase aid levels to sub-Saharan Africa by $25 billion within five years. But by 2010, less than half the promised amount had actually been delivered. Donors also have concerns. They can – and do – point to rent-seeking, inappropriate aid disbursements and pervasive corruption as part of the reason why aid has had so little measurable positive impact, particularly in fragile states.

The long history of failed aid policies is well understood in both donor and recipient countries – though accounts of who is responsible for the failures, not surprisingly, differ considerably. The failures have been a major driver of the two decade-long push by the Organisation for Economic Cooperation and Development (OECD) to improve the effectiveness of aid disbursements in both donor and recipient countries.

The need for a data revolution

The IDPS seeks to provide more effective support to peacebuilding and statebuilding policies. But this ambition

confronts the disconcerting fact that even after decades of research and debate there is still no broad expert consensus about the efficacy of aid in reducing poverty, building states or preventing conflict. And with respect to peacebuilding or statebuilding programmes, evidence-based policy remains more aspiration than reality. The increasingly insistent Northern mantra that development policies should be evidence-based has not been matched by donor support for enhancing statistical capacity in fragile states. This remains far less than needed: $419 million globally between 2010 and 2012. Without robust statistical data, evidence-based policy is impossible.

Distribution of the limited donor support for building national statistical capacity is also hugely unequal between "aid darlings" and "aid orphans": between 2010 and 2012, Afghanistan and the Central African Republic received $80 and $60 million respectively; over the same period more than half of the g7+ states received less than $5 million a year each on average – many of them much less.

The case for improving poor country statistical capacity is widely accepted. In 2013 the Secretary-General's High-Level Panel on the post-MDG development agenda called for "a new data revolution", noting that, "too often, development efforts have been hampered by a lack of the most basic data". Not surprisingly the worst data deficits have been in fragile and war-affected countries.

> " **The increasingly insistent Northern mantra that development policies should be evidence-based has not been matched by donor support for enhancing statistical capacity in fragile states** "

A data revolution is not, of course, a sufficient condition for overcoming poverty or preventing war, but it *is* a necessary condition for evidence-based policies that pursue such goals. Robust nationwide data – particularly when disaggregated by age, gender, income and geography – can provide critically important information for both aid donors and fragile state governments that seek to assess developmental needs and to target assistance more effectively and equitably.

Without reliable data, it is too easy for governments to disguise programme failures and claim progress where none exists – which can be convenient for both donors

and recipients. With appropriate indicators, and robust data to populate them, developmental successes that might otherwise remain unknown – like those missed by the MDG process in sub-Saharan Africa – can be revealed and celebrated.

Data availability and transparency can uncover corruption, rights abuses and governmental incompetence and malfeasance, and track progress in combating them. Reliable data on abuses of state power can help citizens hold governments accountable and mobilise pressure for change.

Robust quantitative data can also provide important – and sometimes surprising – insights into regime legitimacy. In 2002, for example, one of East Asia Barometer's authoritative surveys on legitimacy revealed that in China no less than 94 per cent of respondents believed that Beijing's authoritarian form of government was "best for them". In democratic Japan, by contrast, just 24 per cent felt the same way about the government in Tokyo.

For those who assume that democracy and respect for human rights should be major determinants of regime legitimacy such findings may well be disconcerting. But they do not represent a rejection of democracy, which is supported by two thirds of the China's population; rather they signal the greater importance that Chinese citizens attach to "performance legitimacy" – the ability of their government to "deliver the goods" in terms of jobs, educational opportunities and rising living standards. In a country where political instability, civil war and mass starvation are living memories for many citizens, this is perhaps not surprising.

How to generate the data needed for evidence-based peacebuilding policy

The IDPS has agreed on an initial list of indicators that will be used to track progress towards the PSGs, but it is still unclear how the data needed to populate the indicators will be created. Many sources of indicator data rely on citizens reporting various events to authorities, from sexual assaults to solicitation of bribes. Unfortunately this data-gathering practice is notoriously unreliable.

The UN claimed that some 13,000 women and girls had been raped in the Democratic Republic of the Congo (DRC) between June 2006 and May 2007. The estimate came from cases of rape reported to the authorities and to NGO clinics. But massive under-reporting of sexual violence is the norm in DRC, as in many developing countries. The actual rape toll was more than 30 times higher. Data from a nationwide Demographic and Health Survey (DHS) carried out in DRC in 2007 revealed that more than 400,000 women and girls

were raped that year. The widely-cited UN estimate was worse than useless since it grossly under-estimated the extent of sexual violence, sending a message to policy-makers that was profoundly misleading. Only sensitively undertaken nationwide surveys can provide reasonably robust estimates of rape numbers, though even here some under-reporting is likely.

The most basic metrics of citizen security from deadly violence are UN national homicide statistics. However, as the World Development Report 2011 points out, UN data are provided by national governments and suffer from similar reporting biases to the DRC example above – ie far fewer cases being reported than occur. And there are no data at all provided to the UN in more than 75 per cent of fragile states in sub-Saharan Africa. Meanwhile most World Health Organisation estimates on violent deaths in fragile states are "modelled" – which essentially makes them "guestimates". Determining citizen security – and knowing whether or not government security policies are working – is simply impossible in such cases.

Because national statistical offices are both weak and greatly under-resourced, the *only* sources of robust data for most PSG indicators in war-affected states are nationwide population and perception surveys, both of which involve interviewing a representative sample of the national population. These surveys can provide data on security, justice, governance and other indicators for the PSGs.

The MDG model is relevant for PSG data gathering. In fact much of the data for the key MDG country-level indicators were generated by cross-national population surveys that use common methodologies, definitions and questionnaires. In other words key country-level indicators were actually being populated by the very common indicator data that the g7+ members are so wary of. This suggests that in practice the distinction between common and country-level data is not particularly helpful and risks causing confusion.

The gold standard DHS population surveys that have been used to collect data on child health and education outcomes for the MDGs can be adopted to collect data to track progress towards *any* goals, including the PSGs. DHS surveys not only generate robust country-level data, they also help build fragile states' statistical capacity. The surveys are actually carried out by host country nationals, with technical assistance from DHS. Host governments have ownership of the data.

Tensions between the Northern and Southern IDPS partners have slowed the momentum of the IDPS process. This is not surprising given similar tensions in the much broader process to create a successor regime to the MDGs after 2015. Furthermore, IDPS not only deals with more politically sensitive indicators, it also has a much narrower base of international political support.

But there are grounds for optimism in the longer term, not least because of the growing momentum for a data revolution for the developing world. And notwithstanding the lack of statistical support to many fragile states, *overall* financial support for improving statistical capacity in the developing world has increased by 125 per cent since 2008. New data collection methods using cell phones and other technology promise lower costs and more timely release of data.

A data revolution would enhance peacebuilding activism. It would provide the evidence base needed to track progress, determine the impact of policy, and challenge governments – donors as well as fragile states – that renege on their commitments. Such a revolution could also play a critical role in providing the hard evidence that peacebuilding and post-conflict development policies are succeeding – or not. In fragile states, successes in these areas are key determinants of state legitimacy, and hence of reduced risks of conflict recurrence.

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Somaliland: measuring local peacebuilding progress

Abdifatah Tahir

The Observatory of Conflict and Violence Prevention is an independent non-profit organisation that tracks peacebuilding progress in Somaliland, Puntland and South Central Somalia. Based at the University of Hargeisa, Somaliland, the Observatory measures the degree to which peace is durable at the local level and how peacebuilding policies can be embedded in statebuilding processes. This article discusses primarily the activities of the Observatory in Somaliland.

Gathering local perceptions of peacebuilding progress

The work of the Observatory to track peacebuilding progress falls into two basic strands: documenting violent conflict; and gathering people's perceptions of the effectiveness of public service provision, specifically as it relates to peacebuilding.

Public perceptions are particularly important for the legitimacy of peacebuilding processes as they help measure the level of local confidence in public services that many peacebuilding programmes are trying to improve. Information is gathered according to four progress indicators relating to service providers: conflict, governance, security and justice. By using providers as the indicator the data can capture people's perceptions of not only state agencies but also key non-state actors, such as elders, religious leaders and the business community.

The research helps strengthen peace and statebuilding processes as the data inform state and non-state actors' efforts to respond to existing or potential tensions before they reach crisis. Local perceptions of performance are important to inform government policy at both local and national levels. Non-governmental development agencies can also use the data to help design more conflict-sensitive programming, as well as to identify and collaborate with local innovation and expertise to maximise impact for beneficiaries.

The Observatory uses combined research methods, namely key informant interviews, focus group discussions and questionnaire-based interviews. The aim is to capture issues and problems in a given area from a range of perspectives. First, selected participants such as elders, religious leaders and government officials are identified and interviewed. Focus group discussions then involve representative groups such as women, youth and businesses. Finally, personal interviews are gathered

using questionnaires from a minimum of 80 representative households selected according to relevant criteria such as clan, age and geography.

Challenges to local data collection: the subjectivity conundrum

Tracking progress in peacebuilding and statebuilding poses a number of difficulties in Somaliland. Security is a problem in some areas. A pervasive challenge relates to local sensitivities, and more specifically to perceptions of partiality among the data collectors who may be seen as advocating particular political entities or favouring particular political orientations. This can compromise the quality of the research and analysis.

In post-conflict contexts where state and non-state institutions are fragile, the Observatory, like many other similar organisations, must walk a delicate path and be highly conscious of sensitive ways to engage in issues that are potentially politically volatile and could have serious negative implications for the research. In such environments what is said is less important than who is saying it. Policymakers can dismiss or ignore important issues simply because they dislike who is raising them.

In Somaliland this mentality has been incrementally built into the institutional culture over the past twenty years. And because the Observatory deals explicitly with subjectivity – focusing on people's *perceptions* – data-gathering on key issues like governance, justice, security and conflict must be acutely sensitive to issues of clan identity or political orientation. Affiliation (or perception of it) can skew people's views towards the performance of service delivery. Information provided may be biased through opposition to the government or support for it. To mitigate this, the Observatory uses guidelines by which data collectors take great care to gather data from all quarters or divides in a given area.

Survey fatigue is a major challenge for data collection in Somaliland as people tire of frequent and repetitive non-governmental organisation (NGO) assessment visits. This is a big problem – for public perception surveys especially – as local public attitudes towards NGOs conducting the surveys affect both the quality and quantity of data. People might not be interested in giving information, or they might tell you what they think you want to hear. The Observatory tries to moderate this by mixing staff from the centre with local employees in order to collect reliable data.

Over time, focus groups also tend to attract the same people or groups and the same faces appear at discussions on every field visit, resulting in information that does not necessarily reflect the broader views of residents. Again, using local staff with detailed local knowledge helps to widen participation.

Lessons learned from the Observatory

Several positive lessons can be learned from the Observatory. First is the importance of local ownership and involvement in data collection. How data is used is the priority for the Observatory, and we work hard to ensure community ownership of data gathering, analysis and dissemination, and that outputs of research are fed back to the community to inform local planning.

Second, conflict sensitivity and neutrality are central to our work. This is so important that recommendations are often generalised in order to minimise unintended negative consequences of the information we provide. For instance, recommending the installation of wells to prevent communities from fighting over scarce water could lead to renewed fighting over environmental degradation. This could lead to the Observatory being accused of partiality. Decision-makers can use the Observatory's generic recommendations to resolve problems through further consultation on the available information. The Observatory's involvement is limited to a more abstract level of problem identification – such as the need to resolve certain issues and the potential repercussions of ignoring them – without publicly identifying specific places or actors.

Third, context specificity in relation to political issues is key. The Observatory weighs options carefully. We consider whether it is viable to engage policymakers formally on specific issues, or whether it is best to warn them informally about pending problems. The line between formal and informal is delicate but crucial, and often underestimated, when working in politically sensitive post-conflict contexts where institutions have to be nurtured through a subtle blend of carefully calculated measures, formal enquiries and informal suggestions.

The Observatory identifies problems that could negatively affect peacebuilding and provides information relevant for planning conflict-sensitive development. Our work to collect and analyse local data helps to anticipate problems and identify and engage relevant political and communal actors to resolve problems. Locally-led research is key to delivering the right information at the right time and for the right reasons.

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Conclusion

Conclusion

From coercion to consent

Achim Wennmann and Alexander Ramsbotham

At the start of this publication, Kevin Clements explains how legitimacy "matters for peace [and can] transform coercive capacity and personal influence into durable political authority". Legitimacy is specific to contexts – there is no such thing as universal legitimacy. It refers to the consensual acceptance of political authority and describes the formal and informal social and political agreements that facilitate functioning relationships between states and citizens, and local leaders and communities.

Legitimacy is fiercely contested in situations of violent conflict, where perceptions of the acceptability of political authority and the use of coercion are likely to be radically opposed. A peace process can provide a framework to accommodate diverse or competing sources of legitimacy, and cultivate broad consent on a satisfactory way forward for peace.

The extent of popular consent for a peace process (its legitimacy) relates to the sustainability of peace. The relationship between process (the means of building peace) and outcome (such as a peace deal or political settlement) is significant: a process that is broadly acceptable can help to facilitate broadly acceptable outcomes.

A legitimacy perspective on peace processes emphasises public perceptions of their acceptability in a particular conflict environment. It further stresses that peace initiatives are best seen as contributing to historical and ongoing processes of political transition out of violent conflict and coercive forms of governance.

> ❝ **The extent of popular consent for a peace process (its legitimacy) relates to the sustainability of peace**❞

Peace through a legitimacy lens: context, consent and change

The experiences discussed in this publication suggest that efforts to build peace and transform governance can usefully apply a "legitimacy lens" in their design and implementation. This can enhance prospects for sustainable peace by paying attention to three priorities in approach:

» **Context**: recognising that legitimacy is specific to the circumstances and constituencies of a given conflict. Context-sensitive peacebuilding stresses domestic ownership of the peace agenda and architecture.
» **Consent**: acknowledging that legitimacy is contested in situations of violent conflict. A consensual peace process that can accommodate representation of multiple sources of legitimacy is more likely to lead to a consensual outcome that people will commit to.
» **Change**: understanding that peace initiatives are best seen as key components in ongoing processes of transition, rather than as ends in themselves. In states and societies affected by violent conflict, peace processes can help facilitate progress towards more consensual systems of governance as the basis for promoting sustainable peace.

Context

Legitimacy is context-specific. Peace processes and initiatives need to work with the grain of local cultures, traditions and sources of authority. Context-sensitive peacebuilding stresses domestic ownership of the peace agenda and architecture, so that peace processes are responsive to conflict dynamics and locally defined priorities for peace.

Enable parties affected by conflict to determine the peace agenda

People living amid violent conflict often have the greatest insights into its causes and drivers and appropriate

peacebuilding responses. Darfurians who were consulted as part of an African Union peace initiative in 2009 agreed on a precise analysis of their conflict – the local realisation of national problem of bad governance, which manifested as a proliferation of belligerents using violence to raise their respective value in a "political marketplace" built on patronage. Darfurians rejected the idea of conventional, bilateral negotiations between the Khartoum government and rebels as irrelevant to the fragmented nature of the conflict. Instead, they suggested a negotiating roundtable at which all stakeholders, armed and unarmed, represented themselves.

Affected parties often work actively to create their own impetus for peace. For example the informal process to develop the foundations for peace in the Basque Country: a citizens' network and Social Forum has developed a peace agenda based around priorities identified by Basque society. As Paul Rios explains, "the Spanish government should modify its prison policies, not because [*Euskadi Ta Askatasuna*] ETA is asking for it, but because Basque society is calling for it. And ETA should take steps towards disarmament, not because the Spanish government is demanding it, but because Basque society needs it to eliminate any kind of threat".

However, communities affected by a conflict are often excluded from efforts to resolve it. The Darfurian negotiating roundtable has not been supported despite the fact that conventional peace talks have repeatedly failed to deliver peace over many years. Basque society has struggled to gain traction on its recommendations for progress. Acknowledging the contribution of affected parties and enabling their inclusion can enhance the legitimacy and viability of a peace process. As discussed in more detail below, exploring multiple paths to peace can provide alternative entry points to peace processes for a range of peace actors, including affected parties.

Prioritise domestic ownership of the peace architecture
Domestic ownership of the means of building peace (the peace architecture) is another important aspect of a context-sensitive peacebuilding approach. Examples in this publication have shown how national dialogue processes offer domestic frameworks for negotiating political settlements and facilitating constitutional reform, which external partners can support. Domestic actors lead the process, decision-making and means of implementation, and national dialogues bring together major policymakers and social stakeholders.

The emerging national dialogue process in Burma has been domestically driven, rather than resulting from international pressure. It has so far proved capable of responding to evolving domestic priorities as it has progressed. The process has rapidly expanded from a national ceasefire to a much broader political dialogue on the future of the country as ethnic armed groups have seized the opportunity after 50 years of struggle to push for fundamental change. A small circle of reformers within government has worked with ethnic armed groups and civil society to press for transition and concrete reform. Momentum for the dialogue to begin in earnest has been gathering throughout Burma as the process has moved forward.

> " **Exploring multiple paths to peace can provide alternative entry points to peace processes for a range of peace actors, including affected parties**"

National dialogues need political, financial and technical assistance, which can come from both internal and external sources. The relationship between domestic ownership and international engagement is complicated, but is invariably delicate and requires sensitive management. The National Dialogue Conference in Yemen, for example, grew out of an agreement brokered in Riyadh under the aegis of the Gulf Cooperation Council. External support has been essential to the operation of the conference, but international eagerness to demonstrate progress has at times risked papering over tough issues such as decentralisation and self-determination for the south. Failure to resolve these challenges satisfactorily may in the end dissuade many Yemenis from endorsing the outcomes of the process.

Consent
The fact that legitimacy is fiercely contested in situations of violent conflict is a key challenge to efforts to build peace. One way to understand a peace process is to see it as a framework to accommodate representation of diverse and competing sources of legitimacy, and to cultivate broad consent on a satisfactory way forward for peace. A consensual process is more likely to lead to a consensual political settlement or other types of outcome that enjoy popular approval and can provide a viable basis for transition.

Explore multiple paths to peace
Exploring multiple paths to peace can help to manage diverse (and divergent) perceptions of legitimacy. These can look beyond official negotiations to find other ways for key sources of political authority and interests to be

represented. Elites, minority and marginalised groups, conflict parties and communities affected by conflict: all have an interest in peace and need to be represented in the peace process. Constituencies can be included in official talks, or can take part in other types of peace initiative such as national dialogue, constitutional processes or public consultation.

The Civil Society Assembly that was established as part of the peace process in Guatemala in the mid-1990s incorporated representation of a range of social, economic and religious actors, including indigenous organisations, trade unions, churches, women's organisations, journalists and others. Under the leadership of the Catholic Church, it was tasked with developing consensus papers on substantive issues on the negotiating agenda and had the power to veto various outcomes of the talks. The assembly helped to consolidate the national credentials of official negotiations between the government and the rebels, and provided a public connection to the peace process.

Complementary peace efforts often develop organically. Many Colombians, while welcoming official negotiations in Havana between the *Fuerzas Armadas Revolucionarias de Colombia* and the government as a vital step to end the violence, also see these talks as remote and feel that neither of the negotiating parties represent many of their key interests or priorities for peace. Instead, parts of Colombian civil society have been looking for alternative channels for representation through different types of peace initiative, such as the peace summit and march organised by Colombian women in late 2013, and the "Ethical Pact for a Country in Peace".

Engage local governance
Authentic representation is a precious but scarce resource in peace processes. Increasingly, peace initiatives are looking to local (sub-state) governance and leadership to provide channels for representing the interests of various communities. De facto governance structures are complex and bring risks. In the *favelas* of Rio de Janeiro, for example, militias provide contradictory governance functions: they protect communities in the *favelas* from violent intrusion by predatory and corrupt state police; but they also use violence and other forms of coercion themselves in order to dominate communities politically and socially.

The complexity of contextual realities is not a reason to exclude local leadership from processes of transition. There are many examples of sub-state governance structures (formal and informal) providing political organisation, basic protection and key services to communities in even the most violent and insecure environments.

Many Syrians have increasingly rejected both the Assad regime and the "official" opposition due to their unremitting resort to extreme violence. Particularly in northern Syria, local civil society, including Local Coordination Committees, has increasingly been taking on local government responsibilities and setting up ad hoc administrative structures to provide leadership in communities threatened by disintegration. Grassroots civilian networks have connected people in villages and towns, provided support for victims, and organised alternative hospitals and water distribution. Doreen Khoury stresses that "including civilian-led grassroots structures in future peace negotiations and the proposed transition process is a strategic necessity – not only to give negotiations credibility and legitimacy inside Syria, but also to convey an accurate representation of the Syrian 'street'".

Change
As we know, legitimacy is context-specific and contested. However, there is a broad understanding that legitimacy is greater where there are high levels of political inclusion, participation, representation and achievement. Equally, diminishing legitimacy is often a key inducement for political leaders to shift from persuasive to more coercive forms of governance. A legitimacy lens views peacebuilding efforts not as discrete initiatives, but as important elements in processes of positive change towards more legitimate political systems. This understanding can provide a better basis for peace processes to contribute to promoting sustainable peace.

Enhance constitutional legitimacy
Constitutional processes provide opportunities to renegotiate social and political relations between state and society and among different social groups (the "social contract"). In the context of a peace process, a renewed constitution can safeguard the foundations for peace, helping elites and constituencies to develop understanding and ownership of a shared system of government. The process through which a constitution is revised and the substance of what it says (the outcome) are both important to its legitimacy. Greater constitutional legitimacy can increase the chances of future conflict being managed through peaceful politics. Agreement on a revised constitution does not mark the end of transition, but lays foundations for ongoing non-violent change.

Important parts of the Somali constitutional process have been manipulated to respond to political priorities. For example, the process to allocate membership of the National Constituent Assembly was "streamlined" to meet political benchmarks, which in reality enabled the selection of political appointees. But the very fact that negotiations to agree the new Provisional Constitution in 2012 have

not only progressed but have been able to include clan leaderships and regional administrations demonstrates a new level of political maturity and motivation to tackle the challenges to peace and transition in Somalia.

A defective constitution-making process does not have to be terminal if the constitution endures and can be seen to be delivering better governance. There is growing global experience of "transitional constitutionalism", by which a faulty constitution or constitutional process can accrue legitimacy over time through incremental revision. For example, many Nepalese have been disillusioned by the failure of the first Constituent Assembly to agree a constitution after four years of deliberation. But most conflict parties have not reverted to violence and remain engaged in constitutional and other reform processes. The second Constituent Assembly needs to find ways to engage political leaders, to work with civil society to promote national reconciliation, and to tackle core constitutional challenges relating to the nature of federalism.

Protect "peacebuilding space"
Peacebuilding space to facilitate transition in states and societies affected by violent conflict needs to be protected from competing agendas. For instance, counter-terrorism policies or hard-line criminal legislation can squeeze the space for peacebuilding and mediation by prioritising the exclusion of certain coercive actors. Engaging actors who use force instrumentally is an important part of a peace process, helping to reduce their reliance on coercion to achieve their objectives. An example is supporting non-state armed actors' transformation through their engagement in transitional processes of mutual confidence building and political reform.

Protecting peacebuilding space is complicated in conflict situations where distinctions between actors' roles are blurred and the legitimacy of certain parties is contested and difficult to define. Hezbollah in Lebanon has pursued democratic politics while refusing to relinquish its autonomous military capacity. Its transformation has got stuck as it has resisted decommissioning since the signing of the 1989 Taif Peace Accord. Its legitimacy or illegitimacy is variously perceived in terms of its roles as a domestic political actor and champion of marginalised Lebanese Shia, as the spearhead of resistance to Israeli occupation, and as a proxy of radical regimes in Tehran and Damascus. Hezbollah's violent involvement in the Syrian war has further complicated its identity.

Ambiguities extend to the blurring of lines between political and criminal violence. Nevertheless, peace processes often need to safeguard channels of communication or discreet engagement with actors who are proscribed. The 2012

gang truce in El Salvador, for example, had to overcome significant social, political and legal obstacles, as gangs were initially outlawed across-the-board as criminals. Dialogue between jailed gang leaders was later facilitated through secret negotiations that included tacit government support. These enabled the truce process to progress.

Legitimacy and peace in practice: enhancing peacebuilding performance
In order to have real impact in practice, a legitimacy lens needs to be translated into specific priorities and actions. This requires effective monitoring to assess progress, which in turn needs to be supported by rigorous and relevant data.

> ❝ **Protecting peacebuilding space is complicated in conflict situations where distinctions between actors' roles are blurred and the legitimacy of certain parties is contested and difficult to define** ❞

A legitimacy approach to assessing the effectiveness of peace processes emphasises gathering public perceptions of their impact. However, as Andrew Mack argues, there is currently a lack of "even the most basic data on the most relevant issues". Despite an increasing push to create peacebuilding policies that are "evidence-based", the lack of appropriate data means that there is no real way to measure peacebuilding performance.

Implementing a "data revolution" to support the development of better policy is not easy. Donors and recipients especially find it hard to agree on data sources and indicators to measure progress. Recipient state governments have opposed common indicators, perceiving them as primarily reflecting donor interests. For example, there have been tensions between donors and the g7+ group of "fragile and conflict-affected states" on the Peace and Security Goals in the *New Deal*, specifically over the development of country-level versus common indicators.

Nevertheless, there are viable ways forward. Nationwide population and perception surveys offer potentially useful sources of data for peacebuilding indicators, based on interviews with representative samples of national populations. Andrew Mack stresses the transferability of survey tools for health and education sectors, which can be applied to collect data to track progress towards

peacebuilding goals. Abdifatah Tahir further describes encouraging and innovative examples of local efforts to collect data, explaining how the Observatory of Conflict and Violence Prevention in Somaliland has been gathering people's perceptions of the effectiveness of public service provision, specifically as it relates to peacebuilding.

From coercion to consent

A legitimacy approach to peace processes and peacebuilding puts people first. It emphasises public engagement in *how* peace is achieved, and approval of *what* peace should look like. This can help to identify precisely the real drivers and dynamics of violence and conflict, to match peace initiatives to the grain of local cultures, traditions and sources of legitimacy, and to promote broad consent for a peace process and its outcomes.

The peacebuilding experiences described in this publication show that processes of national dialogue and constitutional review can provide concrete initiatives to promote political legitimacy and consensual governance in situations of violent conflict and transitions from military rule. Local governance and leadership can offer potential sources of legitimate authority and representation in peace processes, and engaging actors that use violence in processes of political reform can contribute to the transformation of coercive political systems.

Paying attention to priorities of context, consent and change in peace initiatives can help to ensure that people in the midst of conflict remain central to the full cycle of peacebuilding responses, and that peace efforts find a place in broader processes of transition. Applying a legitimacy lens in approaches to peace processes may help to make peace more sustainable by facilitating positive change from coercion to consent.

Key texts,
Further
reading,
Key websites

Key texts

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Social Forum (Basque Peace Process)
www.forosocialpaz.org

Euskobarometro
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Brazil

Instituto de Segurança Pública
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Burma

Euro–Burma Office
www.euro-burma.eu

Myanmar Peace Monitor
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Yemen

National Dialogue Conference
www.ndc.ye

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www.saferworld.org.uk/where/yemen

Other

Kenya National Dialogue and Reconciliation
www.dialoguekenya.org

Presidency of the Republic of Lebanon, National Dialogue
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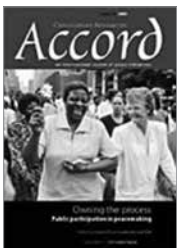
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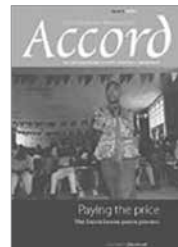
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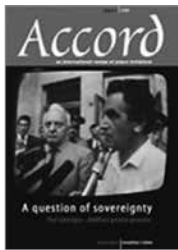
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This is the 25th publication in Conciliation Resources' Accord series. It explores the relationship between peace processes and legitimacy, using first-hand case studies and expert analyses to map perspectives and experiences of a range of actors engaged in processes of transition out of violent conflict – *from coercion to consent.* In the spirit of the Accord series, the various insights presented in the publication hope to inform and inspire better peacebuilding policy and practice by sharing real experiences of endeavour and innovation.

Legitimacy matters for peace. It distinguishes coercive power and personal influence from consensual and sustainable political authority. But legitimacy is specific to contexts – there is no such thing as universal legitimacy. It is also fiercely contested in situations of violent conflict, in which people's perceptions of the acceptability of authority and the use of force are often radically opposed.

Peace processes can provide frameworks to accommodate diverse or competing sources of legitimacy, and to cultivate broad agreement on a satisfactory way forward for positive change. Peacebuilding experiences presented in this publication suggest that efforts to build peace and transform governance can usefully apply a "legitimacy lens" in their design and implementation. This can enhance prospects for sustainable peace by paying attention to priorities of *context, consent* and *change.*

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