

NAVIGATING INCLUSION IN PEACE SETTLEMENTS

HUMAN RIGHTS AND THE CREATION
OF THE COMMON GOOD



BRITISH
ACADEMY

for the humanities and social sciences

The British Academy is the UK's independent national academy representing the humanities and social sciences. For over a century it has supported and celebrated the best in UK and international research and helped connect the expertise of those working in these disciplines with the wider public.

The Academy supports innovative research and outstanding people, informs policy and seeks to raise the level of public engagement with some of the biggest issues of our time, through policy reports, publications and public events.

The Academy represents the UK's research excellence worldwide in a fast changing global environment. It promotes UK research in international arenas, fosters a global approach across UK research, and provides leadership in developing global links and expertise.

www.britishacademy.ac.uk

Navigating Inclusion in Peace Settlements: Human Rights and the Creation of the Common Good

June 2017

THE BRITISH ACADEMY

10–11 Carlton House Terrace

London SW1Y 5AH

www.britishacademy.ac.uk

Registered Charity: Number 233176

© The British Academy 2017

Published June 2017

ISBN 978-0-85672-620-0

Designed by Soapbox, www.soapbox.co.uk

Printed by Pureprint

Contents

Acknowledgements	v
About the authors	vi
Executive summary	1
1. Introduction: Fostering inclusive peace	4
2. Getting to here: Human rights and peace settlements	10
3. Where to go from here: Policy and academic responses	18
4. Inclusion in practice I: Bosnia and Herzegovina	25
5. Inclusion in practice II: Burundi	35
6. Inclusion in practice III: Nepal	43
7. Conclusions to the case studies	51
8. Human rights and the construction of 'the common good'	54
References	64

Acknowledgements

This report has been peer-reviewed to ensure its academic quality. The views expressed in it are those of the authors, and are not necessarily endorsed by the British Academy, but are commended as contributing to public debate.

The authors are grateful to the anonymous reviewers who provided feedback on a draft of this report, and also to those who read and commented on earlier versions, in particular Tobias Kelly, Karin Landgren, Roger Mac Ginty, Ian Martin, Alexander Ramsbotham, Catherine O'Rourke, and Deepak Thapa.

This report draws on research from, and also contributes to, the Political Settlements Research Programme (PSRP), part of the Global Justice Academy at the University of Edinburgh. The PSRP is funded by the UK Department for International Development (DFID). The views expressed in the report, however, do not represent those of DFID.

The content has benefited from a productive roundtable discussion held at the University of Edinburgh on 9th February 2017, which brought together scholars and practitioners across disciplinary backgrounds, from both the UK and overseas, all of whom have a long track record of engaging with, and critiquing the relationship between, human rights and political transitions from conflict.

Following the roundtable, Rachel Anderson, Robert Forster, Max Jaede, Astrid Jamar, Sean Molloy, Jan Pospisil, Asanga Welikala, and Laura Wise produced a series of working papers and case studies which fed directly into the development of this report. These underlying papers are available at www.britac.ac.uk/justice-rights-equality.

About the authors

PROFESSOR CHRISTINE BELL, FBA is the lead author of this report. She is Assistant Principal (Global Justice) and Co-Director of the Global Justice Academy at the University of Edinburgh (www.globaljusticeacademy.ed.ac.uk). She is also Programme Director of the Political Settlements Research Programme of the University of Edinburgh (www.politicalsettlements.org).

Sections of this report were co-authored with [Rachel Anderson](#), [Robert Forster](#), [Max Jaede](#), [Astrid Jamar](#), [Sean Molloy](#), [Jan Pospisil](#), [Asanga Welikala](#), and [Laura Wise](#), all of whom are researchers associated with the Political Settlements Research Programme.

Executive summary

In this report we argue that peace settlements often produce compromises between parties at the heart of conflict, which are difficult to deepen into broader political commitments to govern for all in the interest of ‘the common good’.

Peace agreements are usually successful at resolving the immediate violence of the conflict they address. However, politics as a self-sustaining practice – one that is underwritten by a commitment to exercise public power for the common good – is often more difficult to achieve. Many recent peace processes appear to have produced an uncertain, and sometimes transitory, peace characterised by movements towards and away from conflict and political stalemate. This report points to ways in which peace agreements based on compromise tend to institutionalise ‘formalised political unsettlement’ i.e. a situation where the root causes of a conflict are carried into the new political and legal institutions, rather than being resolved. Instead of wishing this situation away, it is more useful to recognise that formalised political unsettlement is a product of compromise, and to identify any entry points through which subsequent struggles for inclusion can continue to be addressed.

A central requirement of conflict resolution in divided societies is that visions of the state that serve the interests of only one group must be opened up to a more shared concept of the state – one that is capable of serving a broader set of interests and operating for the public good. Conflict resolution requires forging a baseline acceptance of the need for a common political community and a baseline commitment to use public power to serve that community. This implies a political pre-commitment to work in the interests of ‘the common good’.

However, peace settlements are seldom based on a clear pre-commitment to the common good; rather they require this commitment to be constructed in an ongoing way. Human rights assurances made in peace agreements can play a role in enabling this project of ongoing construction. Human rights commitments made by parties involved in the conflict can serve to: limit violence and ongoing practices of exclusion; create mechanisms for challenging those political decisions made for private ends; give non-aligned actors vehicles for addressing any ongoing marginalisation; and, enable marginalised groups to fight back against fresh exclusions generated by the new shared institutions themselves. Human rights commitments can facilitate entry points for ongoing struggles to create a more inclusive political order. These opportunities include:

- Chances for broader social equality claims to ‘piggy back’ on concepts of group equality that drive the central political pact;
- Moments of sudden political change which enable outstanding issues of marginalisation to be addressed;
- The heightened importance of international legal norms, and actors who may provide leverage for inclusion for otherwise marginalised groups; and,
- The fact that the new political order places contestation rather than resolution at its heart, signalling that the nature of the state can continue to be re-worked.

The report, therefore, points to a more political approach to the implementation of human rights measures. In so doing, it responds to recent calls from development and peacebuilding actors for more politically smart tactics with regard to intervention in fragile and conflict-affected states. In support of the political use of human rights as a tool for navigating inclusion in future peace processes, the report suggests that:

1. Joint analysis between international interveners and local actors should be utilised to develop long-term strategies for transformation, and identify likely obstacles to their success.
2. Continuous post-agreement support for both ongoing and ‘one-off’ mediation should be provided, and should be capable of working at the track one level of formal political diplomacy, supporting

bottom-up processes, and identifying and supporting ‘middle-out’ actors that can connect across social layers such as cross-sectoral faith, gender, or business groups.

3. Joint analysis across different international organisations and actors should be carried out, and should be capable of supporting an integrated approach to post-conflict contexts.
4. Ongoing periodic analysis of conflict-dynamics and potential spoilers should be carried out, and intervention strategies re-considered as the context changes, to avoid conflict recurrence.
5. Material support to projects that operate to keep open spaces of civic contest should be provided in situations where political/military elites co-operate to hold power in ways that tend to institutionalise and sustain the conflict between themselves.
6. Models of support should be adopted that enable groups to analyse and respond to key moments of ‘political opportunity’ – those which open up during peace processes and in post-conflict environments. Such models should include funding that targets marginalised groups; funding pots which are fast, flexible and responsive, enabling groups to convene across sectors quickly, whilst also allowing engagement with communities that are stigmatised as ‘problematic’ and potential spoilers.
7. Conflict-sensitive approaches to aid should be adopted in support of the delivery of social goods such as healthcare, education, or sectoral reform.

We also recommend that academics who wish to support the field of practice need to change in response to the shifting opinions and goals of practitioners themselves. They urgently need to grapple with the growing problems of: challenges to expertise; the difficulties of critical friendship; the extreme unpredictability and ‘unknowability’ of states undergoing fast-paced, multiple political transitions; ethical partnership; and, fundamentally, what it means to be an academic in a practitioner-driven field.

1. Introduction: Fostering inclusive peace

This report examines the relationship between political transitions from conflict and human rights. It does so with a view to informing efforts to ‘foster inclusive political settlements and conflict resolution in fragile and conflict-affected states’.¹

Since the end of the Cold War violent intrastate conflict has increasingly been resolved by seeking agreement between the conflict’s protagonists. These peace settlements have typically coupled forms of power-sharing with human rights commitments. However, this practice is currently under pressure to change as many recent attempts at peace processes appear to have failed. While they have often ended the immediate violent conflict, they have been less successful in creating an inclusive political settlement, conflict transformation, or improved development outcomes. Rather, they seem to get stuck in a ‘no war, no peace’ stalemate – one that is vulnerable to institutional break-down and renewed conflict. As a result, a range of international organisations and other actors are expressing profound disillusionment with traditional peace-making and peacebuilding practices, and associated development assistance. Therefore, there is willingness to explore new ways of working.

This report aims to address this current context of doubt, disenchantment, and apparent willingness to experiment. Its focus is primarily to understand the difficulties of creating inclusive political settlements. Here we examine how traditional peace processes have understood the relationship of human rights claims and commitments to political promises of inclusion. This is done with a view to making focused

1 New Deal, Peacebuilding and Statebuilding Goal One, see www.pbsbdialogue.org/en/.

recommendations that respond to the plea for new ideas to address the many apparently stuck peace processes.

The current context also is one in which the international norms and architecture that have developed to support human rights and peace-building appear to be in a period of global re-negotiation. Therefore, the following discussion should be considered in the context of a global order in transition: from one in which common values, norms and institutions, however difficult to achieve, were understood as important to strive for, to one in which their importance is challenged and in some cases even rejected.

The main message of this report

This report's main message is that successful peace negotiations involve compromise and so they establish mechanisms which contain, more than resolve or transform, the conflict. They seldom entail a clear pre-commitment to the common good; rather they require the common good to be constructed in an ongoing way. Often new or revised political and legal institutions are understood as providing a vehicle through which questions of who the state belongs to and who it will serve can continue to be negotiated despite radical disagreement. The common good is therefore best understood as a project of ongoing political construction rather than a pre-commitment to any new political order.

Human rights commitments made during peace processes should be understood as mechanisms which hold open the space in which this process of political construction can take place. These commitments can serve to: limit violence and ongoing practices of exclusion; create mechanisms for challenging those political decisions made for private ends; give non-aligned actors vehicles for addressing any ongoing marginalisation; and enable marginalised communities to fight back against fresh exclusions generated by the new shared institutions themselves.

This report points to the ways in which peace agreements based on compromise tend to institutionalise a 'formalised political unsettlement', through which the conflict fails to be resolved (see further, Bell and Pospisil 2017, drawing on Walker 2014). While peace agreements are often successful at addressing the immediate context of violence, they fail to deliver politics as a self-sustaining practice, underwritten by a commitment to exercise public power. Rather than wishing this situation

away, the report makes suggestions for fostering inclusive peace that are realistic as to the ways in which the formalised political settlement often allows only for a limited project of inclusion, but seeks to identify its unique entry-points for change.

The structure of this report

This report is structured as follows. Chapter 2 maps how the relationship between human rights and peace processes has changed from the 1990s to the present day. It sets a context for understanding contemporary challenges to fostering inclusive settlements in situations of conflict. Chapter 3 briefly examines responses to these challenges from development and peacebuilding policy-makers and academics. Chapters 4, 5, and 6 outline three short case studies, focusing on countries whose peace processes provided for complex power-splitting between ethno-national groups, as well as copious human rights protections. These three countries were the subject of extensive international intervention and support, and produced peace agreements that over time were largely successful in ending the violent conflicts they addressed. However, all three failed to deliver any transformed domestic politics. These chapters examine how human rights are implicated in this failure in terms of broader processes of inclusion. Chapters 7 and 8 draw together what we suggest are the most important elements of a new, more political, approach to human rights as an element of achieving an inclusive political settlement and conflict resolution. In Chapter 8 some modest recommendations are set out for not only the field, but also to academic researchers, who we suggest face new challenges if they are to address, and provide resources to, the contemporary context.

Definitions

One of the purposes of this report is to understand precisely how issues such as 'human rights', 'the common good', or 'the social contract' have meanings that are not settled, but are continually reshaped by political practices of negotiation. A major contribution of this report is to suggest how many of the terms below require their meaning and application in local contexts to be constructed through ongoing public dialogue over what they entail, as many of these terms are the subject of continual definitional and philosophical debate. Definitions should, therefore, be treated with caution. Nevertheless, some baseline definitions are useful to clarify how terms are used in this report:

Common good: A set of commitments and practices aimed at using public power to deliver public goods (as in goods and services for public benefit) to people, regardless of their personal identity, political affiliation and/or geographic location within a state.

Conflict resolution: The ending of violent conflict by processes of agreement and/or conflict transformation.

Human rights: The civil, political, economic, social, and cultural rights that are given legal definition in international human rights treaties to which most states have signed up, to distinguish them from other political claims.

We should emphasise that while we use agreed lists of rights to talk intelligibly about rights, we do not suggest that human rights claims are driven by commitment to norms, or are not also political claims. In fact, a central objective of the report is to point to the close and complicated relationship between political claims and rights claims. We try to be clear when we are talking about human rights norms, human rights claims (as claims of people to have rights protected), and human rights commitments in peace agreements (by which we mean commitments to bills of rights, human rights institutions, rights-based reform of the security and legal apparatus, and provision for transitional justice and accountability).

Inclusion: Refers to the question of who is included in the formal and informal governance structures of the country.

We talk about two different, and sometimes competing, forms of inclusion. First, horizontal ‘elite’ inclusion between the main political and military groups who contend for power; and second, vertical inclusion between those who hold power and those broader social groups and forces who seek capacity to influence decisions that affect them.

International interveners: Used as a loose collective term for international and regional inter-governmental organisations, donor states, and international NGOs who offer forms of assistance to countries during transition.

Domestic interveners: Used as a loose collective term for civil society actors who aim to intervene with political/military elites, with a view to shaping the political settlement they agree to.

Peacekeeping: Third party intervention by military or other international missions to assist in minimising violent conflict and/or transitioning out of violence.

Peace-making: Diplomatic and political efforts to end violence between combatant parties, aiming to move them towards non-violent dialogue and to achieve a peace agreement.

Peacebuilding: Assisting the achievement of sustainable peace by supporting institutions and practices aimed at building commitments to peace, so that they prevent a recurrence of violence.

Political/military elites: Political and military figures (who may be predominantly political or military or both together) who lead and control political and military activities during the conflict; not all of whom will be 'elite' in terms of their background or social standing, but 'elite' in their position of leadership with respect to members of their own constituency.

Political settlements: A common understanding or agreement, usually among political/military elites, on how power is to be held and exercised.

Political transitions: Moves from one type of political order to another, which attempt to change out the existing nature of the political settlement with normal political processes of incremental development through political and legal institutions.

Social contract: A dynamic (implicit) agreement between states and their societies on their mutual roles and responsibilities in order to produce social benefits. It both implies the willingness of political/military elites to have their power constrained by introducing mechanisms of accountability, and implies the willingness of members of society to both support institutions of government and seek change to state policies through peaceful means. This is done in order to ensure that states meet the expectations of societies as to how public power is exercised and public goods delivered.

Global justice, human rights and equality

The report does not try to use the theme of political transition to engage in a general discussion of where concepts of global justice, human rights and equality 'are at' at present. However, we do set out clearly how human rights and equality have evolved in the context of peace settlements, how competing concepts of human rights have been at play, how different disciplinary approaches have produced new thinking in this area, and how the wider global justice context affects how human rights are understood and used in intrastate peace processes. While we therefore hope to contribute to a more general understanding of these themes, this is very much the background story in a report that centrally asks: how might we reconsider the role of human rights in fostering inclusive transitions in a global context of disillusionment with peace processes, international norms, and traditional ways of doing business?

2. Getting to here: Human rights and peace settlements

Introduction

This chapter examines the complex contemporary relationship between human rights and transitions from conflict. It sets out how this relationship evolved over time, from the end of the Cold War until now. We suggest that the contemporary picture is very messy: both peacebuilding and human rights are concepts whose capacity to assist progressive social change is increasingly being challenged. This current context is one in which development and peacebuilding interveners express a sense of having ‘lost their way’ and are seeking new directions, something which we expand on in Chapter 3.

Human rights and intrastate conflict: The post-Cold War context

Since the end of the Cold War, the United Nations, regional organisations, and indeed a range of states, have attempted to support negotiated ends to intrastate conflict. The end of the Cold War saw a rise in peace processes for several related reasons: first, intrastate conflict appeared to be a major threat to international peace; second, new possibilities arose for ending long-standing conflicts with geopolitical drivers that had now shifted; and third, increased international attention and new possibilities for institutional responses such as peacekeeping had been enabled by the end of the Cold War (see Bell, 2008: 28–31). Support to negotiated ends to conflict focused on enabling a new or revised political settlement at the level of the state, which included the main contenders for power at the centre of revised political and legal institutions.

Three key distinctions made this practice of peace-making different from what had come before. First, unlike previous attempts to end conflict, the post-Cold War approach to intrastate conflict predominantly involved face-to-face negotiations between states and their armed non-state opponents. This approach included the use of formalised negotiations between these groups, and sometimes also other stakeholders such as wider political parties and social movements. These negotiations focused on the need to fundamentally revise the state to make it more inclusive. Second, these peace negotiations aimed to result in a formalised, written, publicly-available peace agreement between the state and its non-state armed opponents, which coupled commitments to ceasefire and demobilisation to new, more inclusive, constitutional frameworks. Finally, unlike earlier periods, states and international actors worked on the basis that human rights law and humanitarian law had a relevance to peace negotiations and provided a regulatory influence over said negotiations and their outcomes. However, there was little clear consensus over how exactly norms constrained negotiations in key areas such as amnesty or power-sharing. We suggest that the relationship between human rights and peacebuilding can usefully be understood in terms of these three key distinctions.

1990–2000: The decade of peace process development

In the early stage of the post-Cold War practice, the relationship of human rights to mediation processes was uncertain, in that it was unclear when and how human rights standards regulated peace mediations. International support to peace mediation often assumed that human rights standards did not, and should not, constrain negotiations. Despite this lack of clarity, human rights issues were often central to peace negotiations, less because of international commitments to rights, and more because local actors framed demands in rights terms, in ways that were closely intertwined to political solutions to the conflict. Human rights issues therefore became central to negotiated ends to conflict because they were important to at least one side in the conflict. The specific relationship of human rights claims to conflict of course varied from conflict to conflict, with some regional patterns.

In Central America, for example, where conflicts focused around authoritarian rule, human rights were often included as part-and-parcel of a process which aimed at democratisation as the ‘solution’ to the conflict. The cases of El Salvador and Guatemala both saw human rights

as central to peace negotiations because they involved conflicts that were rooted in years of authoritarianism, for which liberal democracy was understood to be the cure. Addressing human rights abuses was pushed by local actors, including armed opposition groups, as necessary to ending one of the ways the state had waged the conflict – through disappearances, torture, and detention. However, human rights were also pursued because putting in place a human rights framework and protections was crucial to establishing liberal democracy in place of authoritarianism. Addressing human rights responded to the concerns of key constituencies for change, ensured the representation of significant views and values of a range of marginalised groups, and delivered tangible dividends to them, which helped mobilise support for the peace process (Arnault, 2014).

In identity-conflicts human rights claims were also central to both conflict and peace processes, because allegations of discrimination, domination, and even annihilation, stood at the heart of these conflicts. In Bosnia and Herzegovina, human rights abuses were centrally implicated in the conflict and practices of ethnic cleansing. Therefore, addressing human rights abuses and institutionalising human rights and equality frameworks, as well as mechanisms of redress, were understood both by local populations – crucially Bosniaks – and by international actors, to be important to peace. In the comparatively much less violent and internationalised conflict of Northern Ireland, human rights abuses and claims had been central to the onset of a conflict that quickly became secessionist, and so became important to any peace settlement – particularly one that would involve compromise on the national issue.

From the inception of what became a new peace negotiations era, the relationship between peace processes and human rights was a contested one. Arguments were made that there was a tension between the requirements of political settlement and the requirements of justice. In the early transitions of Central America and South Africa, debate focused on accountability and, more specifically, whether the new regimes should be required to keep pursuing accountability of those responsible for historic human rights violations (Arthur, 2009). Identity-conflicts, meanwhile, focused more on the tension between the types of political power-sharing arrangement reached, and the legitimacy of requiring the inclusion of violent actors in formally democratic institutions (Anon., 1996; Levitt, 2006).

Despite these arguments, in practice human rights provisions were negotiated as a central part of peace settlements across these contexts for three main reasons. First, human rights and equality measures were understood to address the root causes of the conflict. In secessionist conflicts, for example, that centred around perceived deep-seated identity differences; concerns about discrimination and domination that underlaid more radical claims to territorial reconfiguration could be addressed, at least theoretically, by strong human rights and equality protections. Ensuring the protection of human rights could therefore take the sting out of difficult first-order political questions of 'which state' or 'which territory'. In authoritarian conflicts, human rights norms were understood as a limit to the state's use of force and means of conflict, and were held to be the hallmark of any transition from authoritarianism to liberal democracy.

Second, human rights protections were included because the conflicts themselves had generated new layers of violation, which had to be addressed if the conflicts were to be unravelled and halted. Human rights abuses were understood to be a symptom of the conflict that would need to be stopped as part-and-parcel of how conflict was waged. Human rights protections were understood to respond to the large-scale abuses of the immediate past. Here too, peace agreements addressed human rights violations because to do so was to limit conflict, as much as provide redress.

Third, human rights protections were included because conflict actors were strategically smart in understanding a commitment to rights as the price of international support. International actors demanded human rights frameworks as a condition of support, and so they were often accepted by parties who might have opposed such standards as the price of being seen to be 'a compliant peace process partner'. Human rights and equality language was often conceded by parties to the conflict whose central interest was on the division of power between them, because conceding this language required very little action in the moment. Typically, the more 'costly' question of accountability was postponed to later in the process (Bell, 2000).

All of these roles for human rights point to the close relationship between human rights claims and the political dynamics of the conflict and peace process. Human rights were not neutral to the conflict, but often part of a partisan struggle for inclusion and change that typically involved non-state actors and civil society on one side, and the state on the other.

2000–2010: International regulation of human rights approaches

By the subsequent decade, international practices now loosely labelled as ‘liberal peace-making’ emerged and were consolidated. Engagement with intrastate conflict resolution efforts had seen considerable development and adaptation of both international peace-making and peacebuilding tools, and in the human rights legal framework itself. A more clearly established institutional architecture for peacebuilding existed – at both the level of the UN and that of proliferating regional organisations. The UN, for example, established a Peacebuilding Commission and a Peacebuilding Fund, and similar institutional initiatives were put in place in regional organisations (see, for example, Engel and Porto, 2010, regarding the African Union). Specific attempts to apply human rights provisions which regulated peace settlement terms included standards addressing the: inclusion of women (UN Security Council Resolution 1325, 2000); protection of civilians (see, for example, UN Department of Peacekeeping Operations, Department of Field Support, 2008); treatment of children (UNICEF, 2007); return of displaced persons and refugees (UN Commission on Human Rights, 1998); housing issues (Pinheiro, 2005); and, of course, accountability and transitional justice (Joinet, 1997: Annex II; UN Commission on Human Rights, 2005; UN Commission on Human Rights, 2004). New Special Representatives and Rapporteurs were established to deal with issues such as sexual violence in conflict,² and truth, justice, reparation and guarantees of non-recurrence.³

However, with the events of 11th September 2001 and the resultant ‘War on Terror’, this decade of apparent institutionalisation of human rights-based mediation also saw some countervailing dynamics. Human rights norms came under simultaneous attack and co-option in pursuit of the new political agendas of Western liberal states. The US moved to proscribe non-state groups as terrorist and pushed even repressive states to institutionalise extraordinary legal procedures to deal with them (The White House, 2002). This approach militated against the understanding that states and their armed opponents were potential negotiating partners in the effort to end conflict. However, it also gave licence to less democratic states for human rights abuses against their

2 See www.un.org/sexualviolenceinconflict/.

3 See www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/Index.aspx.

opponents more generally (Human Rights Watch, 2003). The War on Terror also saw the US roll back its commitment to key human rights norms, such as the prohibition on torture and detention without trial, and saw its allies in the West and elsewhere co-operate in policies of extraordinary rendition.

In terms of co-option of human rights, the need to defend local populations against human rights abuses was used to justify international military intervention in Kosovo, Iraq, Afghanistan, and later Libya. The ‘Responsibility to Protect’ was articulated as a new norm which drew on human rights frameworks but intended to operate at the sharp end to justify force-based interventions to depose local leaders who hurt their citizens – the ultimate failure to protect.⁴ With these developments, human rights norms became explicitly positioned as justifying international force-based intervention. Over time, this prompted developing country resistance manifested in rejection of the International Criminal Court, or withdrawal from other international human rights bodies.

Despite these pressures, peace processes continued because they are one of the only ways to end protracted social conflict. Human rights issues continued to be addressed, because they spoke to and addressed symptoms and root causes of conflict, but an increasingly complex global backdrop tarnished their shine.

2010 to the present: The current context

The global picture for human rights-based approaches to conflict resolution today is a messy one. It is now clear that the political transition experiments of the last two decades have largely failed to be transformative – neither peace nor democracy has been easily transitioned to in conflict-affected states. In the worst cases, even ‘negative peace’ has failed to be achieved, or has been achieved and has subsequently broken down. Many states – for example Somalia or South Sudan – have simply ‘failed to transition’ (or have transitioned from one violent order to another), despite multiple interventions by different states and international organisations over sustained periods. In other states, negative peace at best has been achieved; but while violent conflict was ended, the ‘post-conflict’ state has remained administratively dysfunctional,

4 See www.responsibilitytoprotect.org/.

and often appears to have frozen the conflict into revised political and legal institutions rather than eliminated it. Erstwhile 'successful' transitions, such as in South Africa, Central America, Bosnia and Herzegovina, Burundi and Northern Ireland, which seemed to deliver forms of inclusive peace, increasingly appear less successful than they once did. They remain susceptible to forms of 'reversal', whether through the rise of organised crime, the stalemating of the political process leaving a vacuum, or outright reversions to violent conflict. The 'liberal peace-making project', as we will see in Chapter 3, is persistently called into question and criticised.

However, it is worth pointing out that in the rush to address and even embrace failure, relative successes should not be overlooked. Peace negotiations, with their emphasis on the inclusion of military opponents, have been astonishingly successful in reducing conflict. From 1990 until 2011, global conflict saw year-on-year decreases with fewer and fewer conflicts, with deaths in conflict one-quarter of what they were in the 1980s (World Bank, 2011: 2), and the practice of peace negotiations showing, in some figures, a 77% success rate (although these figures are contested, see Sukrke and Samset, 2007). As the case studies indicate, many commitments made in peace agreements are implemented with new forms of group accommodation institutionalised. Amidst talk of rising conflict and disillusionment, this relative success is worth noting because it drives the search for peace in other contexts.

Conclusion

Despite the complexity of the current context, attempts to end conflict through negotiations persist and are likely to continue; the only alternative is to wait out or assist in the conflict until one side is victorious. Neither of these alternatives is easy or necessarily more successful. Often these types of conflict are unwinnable and even where winnable, they still require forms of mediation to address both the root causes of the conflict and its legacy (as, for example, in the recent constitution-reform process in Sri Lanka).

Similarly, human rights claims and responses are likely to remain essential to conflict resolution efforts. Questions of exclusion remain central to the onset of conflict, while structural inclusion is a key claim of non-state armed groups and wider social actors pushing for an end to conflict. Despite being a more discredited language than it was two decades

ago, human rights and associated norms continue to have an attraction to local actors seeking to press claims for inclusion and justice. This is because they enable institutional responses to root causes of conflict, because states have often committed to human rights instruments, giving them some traction, and because international actors 'hear' claims to change more easily if they are presented in human rights terms rather than political ones.

So while disillusionment with what peace processes and human rights commitments have achieved is high, both are likely to remain central to addressing violent conflict. How then should we respond to the potential failures of peace processes?

3. Where to go from here: Policy and academic responses

Introduction

The contemporary context outlined in Chapter 2 has led to a reassessment of peacebuilding and development policy, as well as the associated academic approaches. The following chapter considers briefly new ways in which the relationship between peacebuilding and human rights can be understood by both policy-makers and academics.

Reassessments from the field

Recognising the limited success of peacebuilding efforts, and the challenges of escalating conflict, both development and peacebuilding communities have engaged in internal dialogues that, while largely disconnected, have produced similar critiques of existing practice and offered similar proposals for change.

Development actors

Development actors have become concerned that development aid has had little impact in fragile and conflict affected states. Interventions in countries weakened by complex cycles of poverty have failed to break cycles of violence (Cilliers and Sisk, 2013). As a result, development actors have begun to seriously question their existing approaches to projects of state-building (see AusAID, 2011; DFID, 2010; OECD, 2011a; and UNDP, 2012), and subsequently have come to the conclusion that they have often intervened with a set of expectations that failed to account for the power-dynamics of how politics 'really worked' within such states. By the end of the second post-Cold War decade,

these development actors had concluded that ‘politics matter’ and that ‘development is politics’ (see Unsworth, 2009). As regards conflict resolution efforts, and as epitomised by the World Bank’s report on Conflict, Security and Development (2011), this conclusion has led to a rejection of traditional liberal peacebuilding focused on institution-building approaches.

One response to this context has been to affirm the importance of inclusive political settlements – a concept that has been placed centre-stage by a range of development actors (see for example, AusAID, 2011; Brown and Grävingholt, 2011; DFID, 2010; EU, 2016: 31; OECD, 2011a; 2011b; 2012; UNDP, 2012; World Bank, 2011). This quest for inclusive political settlements has been picked up in international development goal-setting (van Veen and Dudouet, 2017); for example, UN Sustainability Goal 16 outlines the aim ‘to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions’.⁵ Additionally, the New Deal for Engagement in Fragile States calls for five peacebuilding and statebuilding goals to be at the forefront of all international efforts in fragile and conflict-affected countries.⁶

Peacebuilding actors

By 2015, the sense of disillusionment with traditional peacebuilding had triggered three major reviews within the UN which focused on how to address the perceived failures of this process: the UN’s Group of Experts on the UN’s Peacebuilding Architecture (United Nations, 2015a), the Women, Peace and Security Global Study and the 15-year Review of UN Security Council Resolution 1325 (2000) (UN Women, 2015), and the High Level Independent Panel on UN Peace Operations (United Nations, 2015b). The recommendations resulting from these reviews also emphasised the need for politically smarter approaches and greater co-ordination between agencies.

A complex new ‘global political marketplace of political change’

Adding to a general climate of uncertainty and disillusionment, a ‘new global political marketplace of political change’ has taken hold in which the primacy of the role of Western states and concepts of liberal democracy are increasingly being challenged. As Carothers and Samet-Marram (2015) convincingly argue, this global political marketplace

5 See <https://sustainabledevelopment.un.org/sdg16>.

6 See www.pbsdialogue.org/en/.

of change is characterised by three key dynamics: first, ongoing flux within 'transitioning' states that lacks any clear pro-democratic, pro-peace direction; second, international intervention involving competition for influence among diverse external actors with complex non-ideological motivations; and third, power asymmetries and a lack of adherence to shared norms, principles or standards regulating permissible forms of action. Since Carothers and Samet-Marram penned this analysis, Western states – most notably the US – appear to be wavering in their articulated commitment to liberal democracy as a global public good, signalling at many different levels an attempt to embrace and enter this marketplace rather than work to moderate and constrain it. The rise of nationalist populisms in Europe points to similar moves being possible in a range of European countries. Collectively, these shifts are coalescing around increasing public and political scepticism, and even hostility, towards the post-World War II norms and institutional architecture which has been used post-Cold War to address intrastate conflict with such effect. Of course, it is too early to tell what the resilience of that architecture, and the ideals and values that drive it, may be.

Reassessments from academia

Academic literature relating to development, peacebuilding and human rights has developed its own analysis of the shortcomings of the practice of promoting human rights in political transitions from conflict. The existing research emanates from a diverse range of disciplines, but produces a similar diagnosis. International approaches to peacebuilding based on promoting norms relating to democracy and human rights are failing because they: roll out blueprinted solutions whilst failing to understand local cultures and contexts; are counter-productive as they interact with local political dynamics in contradictory ways; are undermined by being hypocritical and illiberal in many contexts; and, fail to pay sufficient regard to their own politics and the politics of the local contexts in which they engage. A range of different suggestions follow that could give content to policy-makers who desire new ways of thinking and practice.

Better transition management

Some approaches advocate setting aside principles in favour of better management of transitions. Proponents such as Roland Paris and Mary Kaldor suggest a clear change in tactics that would move from liberal peace-making as a principle-based approach (such as in democracy promotion), to a more sequenced approach of institutionalisation

before democratisation (Ghani and Lockhart, 2009; Kaldor, 2007; Paris, 2009; 2010). In a slightly different direction, but with similar impulse, the World Bank (2011), among others, has sought to move from robust democracy promotion to 'good enough' solutions that try to stabilise elite coalitions before attempting other forms of broad social inclusion, the latter being a task which even functional Western states struggle to deliver effectively. In short, these approaches suggest that a bargain with elites needs to be stabilised and developed before elections and other forms of participation take place. To some extent these approaches can be understood as a push for a degree of modesty with regard to what can be achieved in political transitions. They point to the trade-offs between horizontal inclusion among political/military elites at the heart of the conflict, and vertical inclusion among those elites and broader social forces and interests, all in terms that would signify a more inclusive social contract. The proposed 'solution' is to think more carefully about these trade-offs and how delivery of different forms of inclusion should be staged and sequenced. The idea is to be politically smarter as regards the sequencing of peace processes, rather than pushing for an unthinking roll-out of liberal democratic institutions.

Hybridity and the local turn

A second approach is to place greater emphasis on local peacebuilding needs and capacities, ideas that emanate from a peacebuilding and conflict resolution disciplinary perspective (Mac Ginty and Richmond, 2013). This approach is in line with older ideas brought forward by Lederach (2005) about the necessary subjectivity and interpersonality of any peacebuilding engagement. A key element of this work is to point to the ways in which normative approaches to peacebuilding, including support for human rights, result not in liberal peace, but in more complex 'hybrid political orders' (Boege, et al., 2008; Mac Ginty, 2010; Richmond, 2010). These hybrid orders result from the interaction of international peacebuilding efforts focused on supporting liberal institutions, with local forms of resistance, mimicry and co-option (cf. Barnett and Zürcher, 2009). In a sense, all parties play a game where they speak a language of human rights and democracy, all the while knowing that this masks subtle negotiation in which political objectives are pursued under the cover of that language.

The idea of a 'local turn' is a proposal to work with this dynamic to fashion new approaches which would reflect the 'inter-subjective nature of the relationship between projectors and recipients of the rapidly hybridizing liberal peace' (Richmond, 2009: 55). This approach values

the 'everyday' as the primary focus on peacebuilding, and knowledge of the 'everyday' as its indispensable requirement: 'The everyday is the space in which local individuals and communities live and develop political strategies in their local environment, towards the state and towards international order' (Richmond, 2010: 670). Work such as that of Tim Allen (2006) points to the need to spend much more time understanding the local, the reasons it resorts to universal human rights and equality concepts, and the particular local understandings and politics of human rights which it brings in the process. In summary, these approaches suggest that it is necessary to acknowledge and support local peacebuilding as rooted within its own cultural norms and concerns. In essence, this response calls for a more bottom-up approach to peacebuilding which would support local communities to work out how to create common community, rather than fashion and impose solutions from on-high. Human rights are understood to be given meaning only when they are negotiated into local contexts by local actors, but this process can result in outcomes that are not recognisable to international actors as in-line with their perceptions of human rights norms or values.

Post-liberal approaches?

A third approach to the current context is rooted in a 'post-liberal' rejection of liberalism's binaries of international/local, universalist/relativist and agent/structure. The core of what this approach would propose to change is sometimes hard to identify, but it seems to suggest the need to let go of liberal interventions altogether. Concepts are instead suggested to be useful: 'resilience' – helping local populations weather turbulence, such as that produced by conflict and political transitions; 'complexity' – seeking to understand system interactions that make outcomes unpredictable; 'expertise' – something which sustains the political economies of regimes in unproductive ways (see Chandler, 2015; Kennedy, 2009). These approaches are primarily critical but point to the need to understand international systems, the role of experts within them, and the ways in which these interact to replicate and reproduce ineffective and counter-productive interventions, that are unhelpful to, and even disruptive of, local political struggles for emancipation and inclusion.

Human rights as a political practice

Coming from legal and practitioner backgrounds, the existing human rights and conflict resolution literature has tended to understand human rights claims during conflict as highly political – claims intended to re-allocate the power at the state's centre (see Bell, 2000; 2006; O'Rourke, 2013; Parlevliet, 2009; 2015). Human rights protections are understood

not as liberal ends in themselves, but as mechanisms for addressing the key drivers of conflict, such as inequality and insecurity. This approach seeks to understand both when and how local justice claims draw on human rights as a resource, and how this furthers progressive political claims to inclusion, fair treatment, and access to more tangible resources such as food, water, and security. It favours understanding 'rights talk' that happens 'outside of rights-based approaches' (Miller, 2017). Human rights are understood as a tool of struggle and a language through which political claims are refracted. They have a particular conflict resolution function because framing political matters in rights terms can enable a broad range of social and political actors to come together, often with 'openly contradictory' political claims in joint projects of rights deliberation (cf. Wilson, 2006: 77). In short, human rights can enable a common conversation over key drivers of conflict such as exclusion, inequality and insecurity. Framing political grievances in human rights terms can shift conversations beyond irreconcilable differences over 'which state' or 'which people', towards interests that can be mutually accommodated, such as the desire not to be discriminated against.

While rights are used strategically, they do not lose all normative content. Making and refuting political claims in human rights terms can be understood as having a moderating or even 'civilising' impact on the political conversation, because demanding rights in universal language involves acknowledging the similar rights of others (cf. Kelly and Thiranagama, 2017). The normative pull of human rights is understood in part to derive from the way in which pressing claims requires recognising those of the other party. It finds theoretical support in the work of scholars who understand the content of human rights to be fashioned through the deliberative process of what they require in practice (cf. McCrudden, 2015; Walker, 2012). This is a view of human rights which is relational, and views the content of human rights as always somewhat open and having to be instantiated through discussion and negotiation over what is universal, and what is merely a matter of particular political preference. In conflict resolution settings, this negotiation pays dividends because it enables some sort of conversation over common values and the wider common good.

Conclusion

The policy world is showing strong indications that it is seeking new solutions for political transitions; ones focused on ‘acting more politically’ – or at least in politically smarter ways. Understanding what this means for support for the human rights commitments of peace agreements is an important part of this picture. The academic literature taken as a whole appears to underwrite and support the push for a more political approach to peace agreement implementation. Indeed, if there is a common thread across the interrelated policy and academic worlds, it is that practice needs to be more self-critical of the politics of international intervention in support of inclusive settlements, and more attuned to the local political struggles and dynamics that they seek to affect.

However, the somewhat fragmented suggestions for new approaches to human rights that emanate from the multidisciplinary academic field, track only a loose direction of travel, and are contradictory and under-developed in what they understand the ideal role for international intervention on human rights to be. To address these issues and to situate our discussion, Chapters 4, 5, and 6 consider what has happened in practice in three floundering real-world peace processes.

4. Inclusion in practice I: Bosnia and Herzegovina

Introduction

In Chapters 4, 5, and 6, three case studies are briefly explored, examining how and why claims for inclusion were framed in human rights terms, and the ways in which they were navigated through peace agreements and subsequent processes. The purpose of this is to ground a discussion which so far has been fairly abstract. Our case studies are drawn from across the post-Cold War phases set out in Chapter 2, and all appear to have got stuck or unravelled in more recent times. These case studies were also chosen because they involved extensive international support and intervention, as well as relative success in ending their associated conflicts whilst concurrently establishing those political and legal institutions agreed to during the peace process. However, they also all: failed to produce stable political institutions; failed to deliver on the ambitious commitments to inclusion and human rights that were set out in peace agreements; and left key root causes of the conflicts unaddressed. As a result, all three cases have now backtracked into ever more exclusionary politics, and this has contributed to the global feeling of disillusionment with traditional peacebuilding. In Chapters 4, 5, and 6, the reasons for these failures are posited, along with an evaluation of the potential role that human rights claims, commitments and mechanisms played. In terms of how inclusion was addressed, we also try to identify 'critical moments' or junctures which affected the decisions made, and consider what different options could have been taken.

Bosnia and Herzegovina

The Bosnian peace process took place throughout the course of the Bosnian War that raged from 1992 to 1995, with different international mediators having primacy at different points. The conflict was itself in part a product of the end of the Cold War and was seen as a major challenge for the new post-war era. Its regional dimensions for Europe, and its nexus to Cold War geopolitical realignments, meant that it was viewed even at the time as a key test for international organisations, in much the way that the Syrian conflict dominates in the present day. Many different international actors intervened with very different analyses of the causes, and therefore the solutions, of the conflict, with the dominant analysis changing over time. The Bosnian conflict and peace mediation patterns also quietly put in motion many practices, which set little-heralded precedents for international intervention in conflicts in Afghanistan, Iraq, Kosovo, Libya and Syria – from no-fly zones to international administration.

Exclusion and conflict

As with most political violence, interpretations of the causes of the conflict in Bosnia and Herzegovina are highly contested. To what extent exclusion and the precariousness of certain groups drove secession and conflict is debatable (cf. Baker, 2015; Bieber, et al., 2016). However, both domestic elites and international commentators have manipulated or subscribed to historical narratives of fear and grievance between intractable national communities. Understanding the war in Bosnia and Herzegovina through this ethno-national lens has led to solutions becoming institutionalised, and ethno-national identities being prioritised in the resulting peace processes.

Negotiating inclusive peace

Between 1992 and 1995, internationally mediated peace plans drew from Yugoslavia's constitutions – which from 1946 onwards established a federal system between titular constituent nations and rights for national minorities (Trbovich, 2008: 153–170), by proposing a power-sharing settlement between the Bosniak,⁷ Croat, and Serb communities. These plans increasingly subscribed to the belief that multi-ethnic democracy in Bosnia and Herzegovina was impossible without institutionalised guarantees for these three main ethnic groups. The European

7 In 1993, the Second Bosniak Congress agreed to move from the use of the term 'Muslim' to 'Bosniak'; therefore, throughout this section 'Bosniak' will be used, unless a peace agreement has used the term 'Muslim'.

Community Conference on Yugoslavia was succeeded by the International Conference on the Former Yugoslavia, which was tasked with negotiating a political settlement guaranteeing the rights of all national communities and minorities in an independent and internationally recognised state.

As the conflict in Bosnia and Herzegovina was a consequence of Yugoslavia's wider dissolution, and because the Serbian and Croatian governments were supporting ethnic political parties and armed actors, representatives of these governments were included in the key negotiations of the peace process. The core aim of this was to maintain the existence of a central Bosnian state. However, as conflict escalated and ethnic cleansing dramatically altered territorial demographics, this aim became less acceptable to parties unwilling to rescind territorial gains and military victories on the one hand, or to sign up to plans deemed as rewarding ethnic cleansing on the other (Silber and Little, 1995: 306–322; 336–342). In part as a result, the notion of a central state divided between three constituent peoples became the principle around which constitutional proposals were designed.

Structural group (horizontal) inclusion. The first proposal to divide Bosnia and Herzegovina into a two-tier state of central institutions and sub-state units along ethnic lines was the Carrington–Cutileiro Plan of 18th March 1992. It proposed 'a state composed of three constituent units, based on national principles', with 'citizens of the Muslim, Serb and Croat nations and other nationalities' retaining sovereignty (A. Independence, 1 and 3., Statement of Principles for New Constitutional Arrangements for Bosnia and Herzegovina, 18th March 1992).

This notion of a Bosnian state divided both politically and territorially between Bosniaks, Serbs and Croats, became a common feature of the major international plans throughout the peace process. From that time on, more detailed ethnic allocations of positions and constitutional units were provided by each subsequent agreement. The 1993 Vance–Owen Peace Plan provided for power-sharing at the state and sub-state levels, but for an interim period only, to include: a nine-member Presidency divided equally between each group; a rotating President of the Presidency; Interim Provincial Governments formed proportionally on the basis of the 1991 census; and group veto rights on matters of vital concern to constituent peoples. These arrangements were envisaged as transitional towards a new negotiated constitution 'under which the role of the Presidency and the Government chosen from a democratically

elected Parliament is expected to be different and will reflect more accurately the will of the people' (A. Interim Presidency and Interim Central Government, 1. Agreement on Interim Arrangements, Vance–Owen Plan, 2nd May 1993). The decentralisation of the Vance–Owen Plan formed the backbone of future agreements, and as each peace plan was agreed and then rescinded by one or more parties, these power-sharing provisions became more complex, multi-layered, and of indefinite duration.

In July 1993, the Constitutional Agreement of the Owen–Stoltenberg Peace Plan proposal drew on the Croat-Serb Constitutional Principles for Bosnia and Herzegovina, and moved from territorial power-sharing by province to a union of three constituent republics, with internationally governed interim districts for Sarajevo and Mostar. Positions in central institutions would be allocated proportionally and rotated between Bosniaks, Serbs and Croats. The number of proposed constituent republics dropped from three to two in March 1994, when the Washington Agreement (or Contact-Group Plan) established a joint Bosniak-Croat federation following a series of ceasefire agreements between the Army of Bosnia and Herzegovina (ABiH) and the Croatian Defence Council (HVO) throughout 1993 and 1994. This federation included a Bosniak-Croat shared central government and legislature, as well as cantonal and municipal governments.

The question of Serb-majority territories remained unresolved until the Agreed Basic Principles were developed at Geneva in September 1995, which established that Bosnia and Herzegovina would consist of proportionally divided central institutions and two federal entities: the Bosniak-Croat constituent Federation of Bosnia and Herzegovina (FBiH) and the Serb constituent Republika Srpska (RS). This 51–49% principle formed the basis of the territorial power-sharing agreed on by parties to the General Framework Agreement for Peace in Bosnia and Herzegovina in 1995 (also known as the Washington and Dayton Peace Agreement (DPA)) – the comprehensive agreement which finally ended the war.

Comprised of an initial agreement and eleven substantive annexes, including Bosnia and Herzegovina's current constitution (Annex 4), the DPA provided extensively for the inclusion and protection of rights for three constituent peoples: Bosniaks, Serbs and Croats. Those citizens who did not identify as such were excluded from many of the power-sharing mechanisms, whilst simultaneously guaranteed rights of equality, political participation, and non-discrimination. Many of the

complex power-sharing mechanisms in the DPA were adapted from constitutional proposals in earlier peace plans. Key features included a three-member rotating Presidency; an executive coalition; group veto rights on matters of national interests; proportionality throughout most public institutions, including legislatures at central and entity levels; international involvement and oversight; and, territory divided into majority entities, cantons (in the FBiH) and municipalities and the self-governing multi-ethnic district of Brčko.

Broad social (vertical) inclusion and human rights. Individual rights were one of the main ways that a wider social contract was provided for. The constitution found in Annex 4 of the DPA provided for human rights and fundamental freedoms to be enjoyed by all citizens of Bosnia and Herzegovina (Article II.3), and for the application of international human rights treaties, including conventions on the rights of national minorities. These instruments were previously incorporated and withdrawn from earlier peace plans, depending on different rationales of parties and negotiators, including the importance for citizens to have rights explicitly listed, and the time constraints on writing and re-writing constitutional proposals during peace talks (Szasz, 1996: 306–307). Article II.4 of the constitution affirmed equal enjoyment of these rights without discrimination. Crucially, Article II.2 stipulated that the European Convention for the Protection of Human Rights and Fundamental Freedoms ‘shall have priority over all other law’.

Beyond the constitution, the Agreement on Human Rights (Annex 6) contained further mechanisms for the protection of rights, establishing a Human Rights Commission consisting of an Office of the Ombudsman and a Human Rights Chamber. The Chamber is staffed using a combination of proportionality and international involvement, with the initial Ombudsman appointed by the Organisation for Security and Co-operation in Europe. The Agreement on Refugees and Displaced Persons (Annex 7) provided extensively for the right to return and reclaim property.

In essence, the peace process for Bosnia and Herzegovina centrally focused on the demands of three dominant parties to the conflict. Each round of negotiations and peace plans addressed the interests of Bosniak, Croat and Serb armed actors or political parties, to the exclusion of ‘others’ or non-aligned minorities. This reflects the fact that representatives of other interest groups – displaced persons, women, Roma, Jews, and other non-aligned minorities – were structurally absent from peace talks, and that agreements were signed only by representatives

of Bosniaks, Croats, Serbs, heads of neighbouring republics, and international actors. These 'others' are mentioned infrequently in several peace agreements prior to the DPA, sometimes receiving guaranteed representation in institutions, such as one of the four Ombudsmen proposed by the 1993 Owen–Stoltenberg agreement, or the 16 reserved seats of the Mostar City Council in the DPA on Implementing the FBiH. However, these allocations only survived in the federation level legislature – other institutional arrangements, such as the rotating Presidency or the tripartite body of Ombudspersons, in the end required all candidates to identify as one of the three constituent peoples. Therefore, 'others' do not enjoy the same access to political institutions as those who identify as Bosniak, Croat, or Serb. This exclusion has proved problematic in the two decades since the agreement was signed, and, as we will see, has led to several legal challenges using the DPA's constitutional commitments to individual equality and non-discrimination as leverage.

Women were almost invisible in both the peace process and the agreement texts. Of the 113 or so peace agreements signed regarding Bosnia and Herzegovina, none of them were signed by anyone explicitly acting on behalf of women's groups or interests. A female representative of a party to the conflict signed only one agreement,⁸ and only four other agreements list women as observers, chairpersons, or representatives of humanitarian organisations and neighbouring states.⁹ Regarding content, approximately 10% of the agreements refer to women, girls, or gender issues. These are predominantly references to humanitarian protection or inclusion of the international conventions such as the Convention on the Elimination of all Forms of Discrimination Against Women in the appendices of human rights instruments that were to be incorporated into the domestic legal system.

Those who became de facto local minorities due to the creation of ethno-national entities, cantons or municipalities were mainly provided for in Annex 7 of the DPA. This annex aimed to reverse the territorial results of ethnic cleansing by guaranteeing to refugees the right to return, to reclaim property, and to receive protection – all of which

8 Biljana Plavšić signed the Agreement on a ceasefire in Bosnia and Herzegovina on 18th May 1992 'for the Serbian side'. At the time Plavšić was part of the three-member Presidency of self-declared Serbian Republic in Bosnia and Herzegovina.

9 Ms Olga Lazić-Derd, for the Federal Republic of Yugoslavia, 1st October 1992; Mrs A. M. Demmer, Director, Regional Office for Europe and America, United Nations High Commission for Refugees, 6th June 1992, 1st October 1992; Iris Wittwer, Head of Delegation, ICRC Zenica, 30th January 1993; and Mrs Ogata, United Nations High Commissioner for Refugees, 18th November 1993 (all titled as signed).

it was hoped would encourage the ‘re-mixing of peoples’ (Brubaker, 2013). If successful, the mechanisms for return would result in some sub-state entities becoming more heterogeneous, directly challenging ethno-territorial federalism and complex local government systems within the Bosniak–Croat entity. Under the current constitution, however, a Bosniak or Croat returnee to the RS cannot run to be the entity’s member of the state Presidency – likewise for Serb returnees to the FBiH – as citizens must identify as the titular nationality of the entity in which they reside in order to stand for such an office (Article V Presidency, Annex 4: Constitution, General Framework Agreement for Peace in Bosnia and Herzegovina, 21st November 1995).

Critical moments

In the early days of mediation there were some attempts to resolve the conflict without entrenching the group identities at the heart of the conflict.

The Carrington–Cutileiro Plan (1992). As the first agreement to produce a vision of the new constitutional arrangements, this plan attempted to avoid over-reliance on the use of nationality to define territorial units and the composition of institutions. However, the ‘negotiators accepted the political realities on the ground’ (Greenberg and McGuinness, 2000), that the three main ethnic parties in Bosnia and Herzegovina were bargaining to control territory, and so responded to the dominance of the ‘ethnic conflict’ narrative. The plan also proposed a directly elected chamber of citizens, and mechanisms to protect human rights and the rights of minorities; however, it was the concept of constituent peoples and majorities that became entrenched in the peace process. Whilst initially accepted by all three parties, it was later rejected by the Bosnian Presidency.

The Vance–Owen Plan (1993). Although this plan institutionalised ethnicity in a weak, decentralised state, the plan explicitly stated the transitional nature of the ethnic state structures before democratic elections would lead to a more majoritarian system of governance. Belligerents agreed to different parts of the plan over several months of international mediation; however, the Bosnian-Serb signature was conditional on the approval of the Assembly of the RS, who ultimately rejected it.

The Washington and Dayton Peace Agreement (1995). Ethno-national identities were firmly entrenched in the ultimate peace agreements that ended the Bosnian War. Unlike later agreements – for example in Nepal and Burundi – there was no attempt within the frame of the agreement

to include provision for the proportional representation of women or non-aligned minorities, as the rights of these groups were intended to be addressed through individual rights protections such as those set out in Constitutional Annex 4, rather than through structural inclusion in political institutions.

Transformation or business as usual?

The DPA successfully and decisively ended the raging war in Bosnia and Herzegovina, however imperfect the deal. As the current war in Syria reminds us, the achievement of even a very imperfect peace in a violent conflict should never be dismissed. However, the inclusion and protection of different groups in Bosnia and Herzegovina – be they constituent peoples, ‘others’, non-ethnic citizens, or de facto minorities – is still contentious. In this sense, the conflict continues through the new political and legal institutions. Multiple attempts to reconfigure exclusive structures at different levels of state governance have proved either impossible or otherwise difficult to implement once reformed (Bieber, et al., 2016: 108–143). The most prominent example has been the case of *Sejdić and Finci v. Bosnia and Herzegovina* at the European Court of Human Rights (ECtHR), which in 2009 ruled that their ineligibility to stand for election to the House of Peoples and the Presidency – as members of the Roma and Jewish communities respectively – violates their right to freedom from discrimination.¹⁰

Other such successful cases have followed: *Zornić v. Bosnia and Herzegovina* (2014) on the right to political participation as a non-ethnically affiliated citizen; and *Pilav v. Bosnia and Herzegovina* (2016) on the right to stand for election to the Presidency as a representative of an entity where one is a de facto minority. These judgements remain unenforced, as constituent politicians are reluctant to pass de-ethnic reforms which would reduce their consolidation of power and benefits from the status quo (Gordy, 2015). Following the decision of the Bosnia and Herzegovina’s Constitutional Court regarding the ‘Constituent Peoples’ case in 2000, the Court has repeatedly made rulings in line with the ECtHR judgements, to little effect.

A key problem with this peace settlement is that the DPA proves difficult to move on from, as it is challenging to design another arrangement

10 European Court of Human Rights, *Case of Sejdić and Finci v. Bosnia and Herzegovina*, 22nd December 2009, see <http://hudoc.echr.coe.int/webservices/content/pdf/001-96491?TID=igauxmghdq>.

which maintains the commitment of all three ethnic blocks to the central state. As Duffield notes, the DPA provided for a state comprised of ‘multiple, overlapping and autonomous areas of sovereignty side by side with weak central competence’ (Duffield, 1998: 88). A central paradox remains: that the central state was set up to enable a more inclusive and transformative political space than would have been possible if all power, and even statehood, had been conceded to those ethno-national entities formed by ethnic cleansing. However, the central state can only be maintained if power is split between the three main ethno-national groups in ways that prevent a broader, more inclusive, political settlement to emerge.

While renewal of outright war in Bosnia and Herzegovina appears unlikely, its traces endure in the stalemating of political development processes. The recent Constitutional Court ruling on equality and electoral reform quickly led to ethno-national mobilisation and revived calls for a third, Croat-majority entity, in part because Croats, as the smallest of the three groups, would lose out in any reduction of their representation at the centre (Rose, 2016). Anticipated reform resulting from Bosnia and Herzegovina’s beleaguered accession process to the European Union (EU) has failed to materialise: the EU has essentially had to concede and accession remains slowly on track despite failure to implement the *Sejdić–Finci* and other ECtHR judgements. Calls for greater inclusion of women have mainly come from civil society activists, with limited gains, although Bosnia and Herzegovina’s National Action Plan to implement UN Security Council Resolution 1325 was launched in 2013.¹¹

The human rights provisions listed in the DPA constitution can be critiqued for simply tacking on international human rights standards to a deal whose fundamental aim was to institutionalise sub-state entities created using conflict and practices of ethnic cleansing. While the inclusion of the European Convention on Human Rights in the constitution can also be viewed as a ‘tool that gives a concrete language to human rights in the domestic sphere’ (Ní Aoláin, 2001: 75), it was always going to require more detailed attention to modalities of domestic implementation than the DPA provided for.

The difficulties in creating a more inclusive political settlement, based on human rights and capable of transforming the conflict, is not a matter

11 See www.peacewomen.org/assets/file/bosniaherzegovina_nationalactionplan_2010.pdf.

of lack of domestic implementation per se, but a result of the complex political ethno-national bargain that was reached. The project of building the central state involves navigating a fundamental contradiction between a power-sharing constitution enshrining institutional quotas based on ethno-national identity on the one hand, and human rights mechanisms which guarantee rights of non-discrimination and equality for individuals on the other. A state configuration has been created that is at once unstable because it fails to resolve the key issues which drove the conflict, and at the same time is made resilient by the very difficulty of moving to any other state configuration in the absence of such a resolution.

5. Inclusion in practice II: Burundi

The main peace agreement of the Burundi Civil War – the Arusha Peace and Reconciliation Agreement (APRA) – was signed in 2000. As with Bosnia and Herzegovina, it had considerable provision both for group accommodation and political equality, and institutionalised extensive human rights and equality protections. As with the other case studies outlined in this report, the Burundi peace process also received substantial international support, with Julius Nyerere and Nelson Mandela as key mediators and a brief UN Operation (United Nations Operations in Burundi (ONUB), 2004–2007) to ensure the success of the agreement; the UN operation was continued in two other iterations until its closure in 2014 (United Nations Integrated Office in Burundi from 2007 to 2010, and United Nations Office in Burundi from 2011 to 2014). The APRA was eventually supplemented by later agreements to bring all actors on board. However, it and the Interim and Final Constitutions which it spawned, on a lot of fronts appeared to be transformative, notably and perhaps surprisingly, of the very concept of ethnic identity. However, in 2015 peace broke down leading to renewed violence, which at the time of writing, is subject to ongoing mediation.

Exclusion and conflict

Since independence in 1961, the Burundian political landscape has been polarised, and marked by political assassinations and large-scale violence. For the following two decades, military dictatorships led by three Tutsi military regimes associated with the UPRONA (Union pour le Progrès National (Union for National Progress))¹² ruled the country. This period encountered numerous waves of mass violence, resulting

12 UPRONA was created by Prince Louis Rwagasore in 1958, who was assassinated in 1961. The party is predominantly Tutsi but it initially also had strong support from the Hutu until its radicalisation in the following years.

from the attempts of various opposition rebel groups to destabilise these regimes, and from the regimes' use of violence to repress these attempts. Particularly notable were the widespread human rights violations and genocides in 1972 and 1988, both of which involved wholesale loss of life and displacement (Lemarchand, 2011).

Whilst conflict in Burundi has been long described as resulting from ethnic violence between the Hutu majority and the Tutsi elite minority, many other causes of mass violence are entangled with political and social identities. Formation of rebel groups has been motivated by the exclusion of ethnic, social or political groups from the political space and its attached benefits.

The origin and nature of ethnicity in Burundi is still widely debated (Daley, 2006; Vandeginste, 2014), however, ethnically-based exclusion from state structures was institutionalised under Belgian colonial rule by granting socio-economic and political privileges to the Tutsi (such as exclusive access to education and administration positions). A series of subsequent events contributed to the polarisation of Burundi's political landscape along ethnic lines after the colonial rule ended (Lemarchand, 1996). Throughout this, the state operated through clientelism and rent-seeking (Curtis, 2012: 79). During subsequent military dictatorships, large-scale violence resulted from numerous attempts of excluded political actors to destabilise the authoritarian regimes, in addition to counter-violence to repress these attempts.

The phase of the conflict which the Arusha Accords addressed can be traced back to the victory of Melchior Ndadaye, who was from the prominently Hutu party FRODEBU (Front Pour la Démocratie au Burundi (Front for Democracy in Burundi)), created in 1992. In 1993, Ndadaye became the first president democratically elected against the expectations of former President Buyoya, an UPRONA Tutsi Military Chief of Staff. Ndadaye was assassinated three months after taking his post by the most extreme Tutsi military members who feared the inclusion of Hutus into political affairs, and thus civil war broke out. After peace talks gradually integrated various parties into political structures between 1994 and 2009, the country enjoyed a period of relative peace (or at least less violence) until recently. In 2015, a new wave of political violence erupted after President Nkurunziza, from the CNDD-FDD (Conseil National pour la Défense de la Démocratie – Forces de Défense de la Démocratie (National Council for the Defence of

Democracy – Forces for the Defence of Democracy))¹³ which had been in power since 2005, won a contested third mandate. The current political landscape clearly excludes political actors who opposed the third term of the President, as explained further below.

Negotiating inclusive peace

When Buyoya (the leader of UPRONA at the time) deposed the president in July 1996 – his second successful coup d'état – regional neighbours put an embargo on Burundi (Grauvogel, 2015). Eventually this pressure led to peace negotiations which resulted in the signing of the APRA for Burundi in August 2000. The Agreement was signed reluctantly by the 19 signatories representing the Government of Burundi, the National Assembly, and 17 political parties divided into two interest groups based on ethnic ideology but with varying degrees of ethnic allegiance: the G-7 with Hutu-dominated parties and the G-10 with Tutsi-dominated parties (Daley, 2007: 341). However, it was not signed by the CNDD-FDD and the PALIPEHUTU-FNL.¹⁴ While the peace agreement did not end hostilities at the point of its signing, it provided for major institutional reforms which were modified, rather than replaced, as agreement was later reached with those groups.

As the key comprehensive agreement, the APRA addressed four key matters. First, it provided an in-depth historical analysis of the 'nature of the conflict', problems of genocide and guarantees of non-repetition. Second, it provided for transitional arrangements and the commitment of the post-transition constitution to promote democracy and good governance. Third, it called for peace and security for all through the adoption of a ceasefire and a reform of the security sector. Fourth, it defined how the reconstruction and development of the state should be achieved through the rehabilitation and resettlement of refugees and victims, in addition to economic and social development.

Agreement with the remaining two parties continued to be sought and was eventually achieved. The CNDD-FDD and the Burundian authorities

13 The party was created out of the jointure of the CNDD, the political wing and the FDD, the military wing of the group founded in reaction to Ndadaye's assassination. CNDD-FDD was registered as a national party in 2005. It won the election in the same year and had been the ruling party then with Pierre Nkurunziza as the President. The political crisis of 2015 was caused by debates and violence related to the third mandate of Nkurunziza.

14 The Party for the Liberation of the Hutu People – National Forces of Liberation (PALIPEHUTU-FNL from its French acronym, Parti pour la libération du Peuple Hutu – Forces Nationales de Liberation), which turned into the FNL due to interdiction of strict ethnic affiliation for political parties.

signed six agreements from 2002 to 2003 that included a ceasefire, the transformation of the CNDD-FDD into a political party, power-sharing arrangements, and the integration into the security forces of their members. The CNDD-FDD won the presidential election in 2005 and became the main political party in Burundi from that point on. Similarly, the PALIPEHUTU-FNL and Burundian authorities signed five agreements (2006 to 2009), which provided for a ceasefire, the integration of PALIPEHUTU-FNL into the security forces, and the transformation of PALIPEHUTU-FNL into a political party. These two sets of agreements also included provisional immunity for the members of the two armed groups, provisions related to the return of refugees, and the demobilisation, disarmament and reintegration of rebels.

Structural group (horizontal) inclusion. Overall, these various peace agreements introduced complex institutional engineering aimed at accommodating both Hutu and Tutsi identities reducing their political salience (Reyntjens, 2016). Both the APRA and the subsequent 2005 constitution define ‘ethnicity’ as a major cause of the conflict. These texts outline three principles to redress the issue: minority political parties should be included into the general system of governance; the protection and inclusion of ethnic, cultural and religious minority groups should be integrated into the general system of governance; and the restructuring of the national systems of security and justice to guarantee the security of all Burundians, including ethnic minorities (see the Preamble of the 2005 constitution). Throughout the constitution, these principles are translated into the political and legal structures by requiring the composition of reformed public institutions, notably the government, the legislature, the army, and the police, to represent the ethnic diversity of Burundian society.

Developed into a fully-fledged form of consociationalism in the constitution (Titles V and VI), these arrangements establish quotas, minority over-representation and minority veto through a set of rules for the composition of the government, the National Assembly, the Senate and the security forces. For instance, the constitution stipulates that government must include ‘at most’ 60% of Hutu Ministers and Vice-Ministers; ‘at most’ 40% of Tutsi Ministers and Vice-Ministers; and a minimum of 30% women. The National Assembly is to be composed of ‘at least one hundred Deputies on the basis of 60% of Hutu and 40% of Tutsi, including a minimum of 30% women, and of three co-opted Twa’ (another smaller minority). The defence and security forces ‘may not include more than 50% of the members belonging to a particular ethnic group’.

It is specified that the 'Minister given the charge of the Force of National Defence should not be of the same ethnicity as the Minister responsible for the National Police'.

There are some provisions which aim to provide for a more integrative approach to identity. All parties and electoral lists must be multi-ethnic. More specifically, a political party cannot be based on ethnic affiliation (Article 78, Constitution) and legislative electoral lists must have a multi-ethnic character and reflect gender equality (of any three candidates registered together on a list, only two may belong to the same ethnic group, and at least one in four must be a woman – Article 168, Constitution).

As with Bosnia and Herzegovina, the consociational power-sharing provisions were controversial for unfairly bolstering (Tutsi) groups or rewarding those at the heart of the conflict. Those who reached the agreement are accused of responding to pressure from foreign mediators over-accommodating Tutsi elite fears of losing power through democratisation and their fears of resulting domination by the Hutu majority (Reyntjens, 2016: 67). Daley (2006: 671) denounces the arrangements as having forced the winning FRODEBU government to share power with the actors behind the murder of Ndadaye in 1994. It has also been suggested that power-sharing incentivised proliferation of parties (from 4 parties in 1996 to 17 in 2000), and contributed to 'factionalism within the rebel movements' (Lemarchand, 2006; Daley, 2007: 341–342). Despite these limitations, Lemarchand (2006: 11) still considers power-sharing arrangements to have supported Burundi's successful transition to a multi-party democracy, depolarising the political arena by making ethnic identity less salient.

Broad social (vertical) inclusion and human rights. However, as with Bosnia and Herzegovina, the achievement of inclusion of the dominant groups in revised political institutions came at the price of a more value-driven social contract. Daley argues that the APRA reforms corrected the 'ethnic imbalance among the elite', but left intact the fundamental contradictions within Burundian society. She contends that 'the continued instrumental and often violent use of ethnicity by the political elite and the failure of the peace process to move beyond ethnic categorisation' did not provide the basis for 'a more inclusive democratic participatory politics that see the ordinary Burundian as part of a broader political community with equal allegiance and rights to the state [...], essential pre-conditions for the sort of societal transformation that is vital for lasting peace and stability' (Daley, 2006: 658–659).

In fact, the APRA is striking for the way in which it extensively provided for women and non-aligned minorities. The Agreement also has extensive provision for human rights institutions and protections, which include: a Charter of Fundamental Rights (Protocol II, Chapter I, Article 3); specific provisions against genocide and war crimes (Protocol II, Chapter II, Article 6); a Truth and Reconciliation Commission (TRC; Protocol I); and national, regional, and international observatories on 'genocide, ethnic hegemony and domination, oppression and exclusion, coups d'état, political assassinations, arms trafficking and human rights violations in the Great Lakes region' (Protocol III, Chapter II, Article 23). It furthermore provides for post-Agreement peace support processes involving civil society and religious leaders (for example, Protocol III, Chapter II, Article 23).

However, individual rights protections or accountability for past abuses have proved difficult to implement. For example, despite the Agreement's refusal to amnesty serious international crimes (Article 26 of Protocol III), impunity was in practice enabled by the combination of limitations imposed on the jurisdiction of the national criminal justice system, and its tying of temporary immunity to the establishment of the TRC, which meant that its delayed establishment in effect made these immunities permanent (Vandeginste, 2011b). A law was eventually passed establishing the TRC in May 2014 (replacing an earlier attempt in 2004), and commissioners were appointed in December 2014, but the appointments were strongly criticised by both local media and civil society organisations based on their political affiliation with the regime responsible for the abuses (Jamar, 2016).

The wider human rights protections of the Arusha Agreement have also suffered from under-implementation. While the Interim and Final Constitutions institutionalised human rights provisions of the Arusha Agreement, notably its commitment to fundamental rights, monitoring indicates that human rights abuses such as torture and disappearances have continued post-Arusha and despite subsequent agreements (see, for example, Human Rights Watch, 2010). Political violence, in particular at the hands of the CNDD-FDD, rose in the lead-up to the 2010 elections (Human Rights Watch, 2010), and was in part responsible for an electoral boycott of the other main parties (see further below). Failure to adequately protect human rights therefore directly fed into the current crisis, which has seen much more widespread human rights violations and patterns of conflict (UN Independent Investigation on Burundi, 2015).

Critical moments

The boycott of most opposition parties in the 2010 elections is crucial to understanding the exclusive nature of the current regime and the return to larger-scale violence. During the 2010 electoral process most opposition parties – later gathered under the ADC-Ikibiri coalition (l'Alliance des Démocrates pour le Changement au Burundi (Alliance for Democrats for Change in Burundi)) – withdrew from the elections. They thought that elections were rigged by the ruling party, the CNDD-FDD, and assumed that if they boycotted, the international community would support them to reorganise free and fair elections. The international community, however, continued to support the electoral process and accepted its results. Consequently, the CNDD-FDD retained the presidency and most ministerial seats (ICG, 2011; Vandeginste, 2011a) and obtained 76% of parliamentary seats (Reyntjens, 2016: 72). The electoral boycott thereby negated the power-sharing arrangements of the constitution, thus backfiring on the ADC-Ikibiri coalition by leading to the de facto 'establishment' of a single-party state ruled by the CNDD-FDD (Vandeginste, 2015). Over the years from 2010 until today, the CNDD-FDD has consolidated its power, and high-level political actors with strong military backgrounds have become prominent. The consequences of the coalition's withdrawal from elections continues to affect the composition of institutions and respect for human rights values.

The unravelling of the APRA arrangements was not just a failure of election management, but a failure of human rights. The degradation of security, democracy and development was perceptible for a long time prior to the recent outbreak of violence (Hirschy and Lafont, 2015). As Curtis argues, 'international peacebuilders largely turned a blind eye to governance abuses, human rights violations, and militarism, when confronted with the messy and contested politics of transition' (Curtis, 2012: 74–75). At a societal level, many other issues have been exacerbated by the conflict and the current deteriorating context. The justice system is considered to not operate as an impartial institution (More, 2010); corruption is a common occurrence (ICG, 2011); land disputes are considered to be a major social issue, exacerbated by the economic crisis, land grabbing, and the return of at least 200,000 refugees since 2000 (ICG, 2014).

Since 2015, the violence has been further exacerbated by the election of current President Pierre Nkurunziza (CNDD-FDD) to a third mandate – against a backdrop of contested interpretations of the constitution which produced another election boycott. This latest boycott further threatened the political equilibrium, with the CNDD-FDD gaining an even stronger majority in both the executive and legislative state structures.

Transformative or business as usual?

Over the last two decades, institutional reforms led to a reduction in violent conflict and a major reconfiguration of power. Previous rebel groups have become key political players. The military and police forces have successfully adopted ethnic quotas and the consociational state organisation has been somewhat successful in promoting a political transformation which 'diminished ethnicity as an electoral issue [...] but failed to produce better governance' (Reyntjens, 2016: 66). The political scene is still fragmented but frictions now mainly arise within and in between 'Hutu parties' (Reyntjens, 2016: 72); the UPRONA – the predominantly Tutsi party that ruled the almost one-party state from 1961 to 1993 – is now a minor political player.

Yet, despite an apparent political accommodation, recent years have seen the paradoxical situation in which the CNDD-FDD rules in a de facto single-party state, despite its formal commitment to the extensive power-sharing arrangements outlined in the constitution. This ruling party has retained popularity with its rural constituents 'by providing social services, such as free primary education and healthcare for the most vulnerable' (Reyntjens, 2016: 72).

Institutionalised power-sharing has also concealed back-room political negotiations amongst political elites along ethnic lines which leave other social sectors excluded – particularly those opposed to the President's third mandate. A National Council for the Respect of the Arusha Agreement and the Rule of Law (CNARED) has brought together a platform of the opposition in exile and part of the internal opposition representing some of these interests. Whilst the APRA and consequent constitutional reforms were put in place, political violence and human rights violations continued to be a crucial tool for accessing, maintaining or contesting political power. Future peace talks need to readdress the issue of broader inclusion and encourage actual political coalition in place of the current coalition based on allied parties that not only accept the President's third mandate but also align to his political agenda.

As Vandeginste (2016) argues, the power-sharing arrangements of the APRA have over time come adrift from political realities, and have created a context where support or opposition for the Agreement is in itself now a central part of the contestation over how the political system provides for group accommodation.

6. Inclusion in practice III: Nepal

The resolution of the Nepalese Civil War in 2006 centred around a conflict and peace process typified by issues of inclusion, human rights and equality.¹⁵ Nepal was the recipient of sustained international intervention during the conflict period, with support to the peace process given by the United Nations. The Office of the UN Commissioner for Human Rights established a Nepalese office in 2005, headed by Ian Martin (former Secretary-General of Amnesty International) who subsequently became the Personal Representative of the UN Secretary-General in support of Nepal's peace process, and head of the UN Mission in Nepal (UNMIN).¹⁶ Nepal was also the target of a range of initiatives from various development actors and bilateral donors. These all focused on supporting an inclusive peace process to produce a more inclusive society, as they understood this outcome to be necessary in addressing the major root causes of the conflict: poverty, injustice, and discrimination. The figures from the period 2010–2011 illustrate the scale of international intervention: Nepal received foreign aid of USD 1.08 billion, corresponding to approximately 21% of the total national budget. This aid was contributed by the African Development Bank, the EU, the Global Fund, the UN, and the World Bank; with Nepal's major donors including India, Japan, Switzerland, the UK, and the US (Swiss Federal Department of International Affairs, 2013: 5). In addition, both China and India played key roles in the peace process as regional neighbours who had close historic, geographic, and ethnic ties to the conflict through the transnational nature of some key marginalised groups (see further, Chaturvedy and Malone, 2012). However, the peace process was also very much locally driven, and indeed Whitfield

15 See generally, Ramsbotham and Thapa, 2017, on which this section draws.

16 See further, Martin, 2012, for an account of the UNMIN's role.

(2012) has described the curious mix of multiple mediation efforts as a unique kind of ‘masala peace-making’.

Exclusion and conflict

Exclusion was a major driver of poverty and unrest in Nepal due to the close relationship of personal identity and socio-economic marginalisation. Therefore, improving the inclusion of marginalised groups has been central to efforts to build peace (see further, Lawoti, 2012). From its unification in the 1760s, Nepal was largely ruled by a series of autocracies and oligarchies until the recent abolition of the monarchy in 2008. The Nepalese Civil War (1996–2006) and resulting peace process formed an intense part of a much longer process of political settlement, wherein advocacy and resistance to inclusion amongst different social and political groups – both elite and non-elite – has taken place over many decades and in multiple fora. The fight for multi-party democracy was a defining feature of the three ‘people’s movements’ (in 1950, 1990 and 2006) and their associated conflicts. Issues relating to the socio-economic, civil and political exclusion of, and discrimination against, women; Madhesi (caste-based Hindus and Muslims in the Tarai region of southern Nepal); Janajati (ethnic nationalities outside the Hindu caste system); Tharu (indigenous peoples of the Tarai); and Dalits (Hindu caste ‘untouchables’) have been key ignition points for conflicts in Nepal since the 1950s.

The civil war, while ostensibly a conflict between Maoists and the state (and in particular the monarchy), saw Maoists use ethno-national inclusion as a tool of strategic mobilisation, stemming from their analysis of multiple forms of discrimination in Nepal as feeding into inequality and class resentment. These grievances were successfully mobilised into collective grievances against the current regime, thereby recruiting marginalised groups to the Maoist cause and, critically, their fighting forces (Khatiwada, 2014; Lawoti, 2012; Mabuhang, 2015; Neelakantan, et al., 2016).

Negotiating inclusive peace

As a result of the role played by feelings of inequality and class resentment in triggering the civil war, the peace process centrally addressed and resolved issues of inclusion, equality and human rights. A Comprehensive Peace Agreement (CPA) in 2006 emphasised the need to restructure the state on a basis of inclusion. In its words (CPA Article 3.1), the central aim of the peace process was:

To carry out an inclusive, democratic and progressive restructuring of the state by ending the current centralised and unitary form

of the state in order to address the problems related to women, Dalit, indigenous people, Janajatis, Madhesis, oppressed, neglected and minority communities and backward regions by ending discrimination based on class, caste, language, gender, culture, religion, and region.

In the following year, this project was carried into a negotiated 2007 Interim Constitution (IC). However, the process of producing a new political settlement and Final Constitution (FC) was difficult, with the accommodation of inclusion claims a key and contentious issue. Timetables were not adhered to, and it was not until the aftermath of the 2015 earthquake that a consensus on the FC was finally reached. However, this constitution stands charged with leaving key elements of an inclusive political settlement unresolved, and with establishing a form of business-as-usual by the political forces. Pressure to revise the FC therefore remains. As Lord and Moktan write (Ramsbotham and Thapa, 2017: 131):

In the last decade following the dissolution of the monarchy [2006–16], there has been a kind of tunnel vision on the constitutional process, which is seen as a panacea for all kinds of systemic political ills. However, the new constitution seems to have established little more than a revised holding pattern – as always, the political leadership seems to be ‘comfortable in transition’.

Structural group (horizontal) inclusion. The CPA and IC addressed inclusion of marginalised groups at the structural level, including new groups in the political and legal institutions of the country, both with varying degrees of effectiveness. Key reforms included the transformation of the Kingdom of Nepal into the secular Federal Democratic Republic of Nepal in 2008; the introduction of proportional representation for elections to the Constituent Assembly (CA); inclusion reforms for the civil service and the Nepalese Army; and, a formal constitution-making process.

Under the negotiated IC, a complex system was designed for the 2008 CA election: 240 members were elected from single-member constituencies using the first-past-the-post system (FPTP); 335 members were elected by the proportional representation system (PR) according to a popular party vote; and, 26 ‘distinguished citizens’ were appointed by the ‘Council of Ministers’. To improve the inclusion of the marginalised groups mentioned above and so-called ‘backward regions’, quotas were introduced for the PR lists. As a result of the PR allocation,

many excluded social groups gained access to political power for the first time in 2008. Their inclusion was, however, short-lived. Levels of representation for marginalised groups fell following the 2013 election for the second CA, and the proportion of seats allocated by PR (the system under which the marginalised groups perform better electorally) was further reduced for Nepal's Legislature-Parliament (formerly the CA) under the 16-point Agreement and 2015 constitution. The proportions were approximately 60% PR and 40% FPTP for the 2013 CA elections, however this has been inverted to approximately 40% PR and 60% FPTP for future Legislature-Parliament elections (ICG, 2016; Khatiwada, 2014; Mabuhang, 2015).

Inclusion quotas were also introduced for civil service and armed forces positions in Nepal. Since 2007, under an amendment to Nepal's 1993 Civil Service Act, 45% of civil service positions are supposed to be reserved for disadvantaged groups. Within this 45%, 33% are reserved for women, 27% for Janajati, 22% for Madhesi, 9% for Dalits, 5% for the 'physically challenged', and 4% for the 'backward regions' (Civil Service Act 1993; see also OneWorld South Asia, 2017). An amendment to the Armed Forces Act in 2006 saw 45% of posts reserved for disadvantaged groups, again with specific group reservations within this 45% (20% women, 32% Janajati, 28% Madhesi, 15% Dalit, and 5% 'backward regions'). The inclusion of excluded groups in the Nepalese Armed Forces has increased marginally since the introduction of this policy, but is nowhere near the reserved levels stipulated. Of further concern is the extremely low level of Maoist ex-combatant integration into the armed forces following the CPA. Despite numerous detailed agreements on this issue, less than 1,500 of the 19,000 registered Maoist combatants were integrated into the Nepalese Armed Forces by the end of 2010. One key obstacle to their integration in the Nepalese Armed Forces was the requirement for the Maoist combatants to meet the existing education prerequisites for armed forces recruitment. As the Maoist forces were largely composed of fighters from marginalised social groups, many of the combatants did not possess the educational qualifications required for entry into the national armed forces (see Bogati, 2014; Dhakal, 2015; Mabuhang, 2015).

Broad social (vertical) inclusion and human rights. In both the CPA and the IC, an entire section of the agreement is dedicated to detailing the human rights provisions for the Nepalese people. In addition to civil and political rights, the agreements also provide specific protection for the rights of women and children, and a range of socio-economic rights,

such as those pertaining to labour and healthcare. Many of the rights in the IC also include a caveat ensuring that the provision of said right shall not prevent the making of special provisions in law for the protection or empowerment of marginalised groups (such as those groups noted previously). Both agreements also detail monitoring mechanisms for the implementation of human rights provisions. These provisions were to be monitored by the UN Office of the High Commissioner for Human Rights in the CPA, and the National Human Rights Commission (which is created as a constitutional body) in the IC (ICG, 2016).

Some of the human rights provisions were somewhat rolled-back in the FC. While this constitution has been widely celebrated as progressive for its codification of equal rights for the LGBTI community; equal property rights for men and women; and the prohibition of the death penalty, it is highly regressive in other areas. For example, it has removed or restricted freedoms previously provided to the Nepalese under the IC – the 2015 constitutional FC provisions relating to freedom of expression (for individuals and the media), freedom of movement, freedom of association, freedom to form a political party, and freedom of occupation, are all accompanied by a clause which provides a series of conditions under which the government can legislate to ‘impose reasonable restrictions’ on citizens’ use of these rights – which is fairly broad wording. In addition, the FC denies women the right to pass on their citizenship rights to their children, independent of the father’s national citizenship (Part 2, Article 11, Points 5 and 7 of the FC; see further, Acharya, 2017; Desouza, 2015; ICG, 2016).

Critical moments

Post-IC. Key inclusion successes have tended to be incited by large-scale civic mobilisations. Immediately after the implementation of the IC, mass civil unrest took place as some Madhesi and Janajati groups took to the streets. This led to the first amendment of the IC in April 2007 in an attempt to meet their concurrent concerns. For Madhesis, the constitutional commitment to end ‘the centralised and unity structure’ of the state was not enough, and so the amendment was changed to explicitly refer to a federal structure (something which the traditional political elite were reluctant to include – see Khatiwada, 2014; Neelakantan, et al., 2016). It further promised access for excluded groups to state institutions on the basis of proportional inclusion. After July 2007, the government started a process of signing agreements with various agitating groups, and by the end of the first CA in May 2012, 43 different accords had been reached with a range of groups

(Ramsbotham and Thapa, 2017). The overriding theme of these accords was the inclusion of minorities.

Three major issues are outstanding. The first is full proportionality of representation in state institutions – a goal that is likely to take years to achieve, if ever. The second is the intractable challenge of recognising identity as the major principle behind federal boundary delineation. The third is the delivery of social justice, particularly to local communities.

Considering the first of these issues, proportionality at the centre of state institutions is not likely to deliver social equality to all groups (Lawoti, 2012). Federalism and the decentralisation of political power are seen as key paths to inclusion and political participation by excluded groups in Nepal. As no party won a majority in the 2008 CA elections, national politics was conducted through the formation of alliances which were either pro- or anti-federalism. While the Communist Party of Nepal (Maoist) (CPN (M)) and a series of new group identity-based political parties were pro-federalism, the parties of the established political order – the Nepalese Congress (NC), the Communist Party of Nepal (Unified Marxist-Leninists) (CPN (UML)), and some other smaller parties, were anti-federalism. Disagreement over the character of federalism, inclusion, and representation in Nepal paralysed the CA, and prevented the promulgation of the FC before the end of the CA's term in 2012. The electorate's disillusionment with the new political parties due to their perceived inability to deliver on their promises and promulgate a constitution within the CA's term, resulted in a reduced number of votes for these parties in the 2013 CA elections. This enabled a return of the old order (as the NC and CPN (UML) gained enough seats in the CA to form a coalition government) and left the CPN (M) and the new identity-based parties on the side-lines of the constitution making process (ICG, 2016; Khatiwada, 2014; Mabuhang, 2015; Neelakantan, et al., 2016).

Earthquake. A key inclusion failure for Nepal's peace process was sparked by the major earthquake on 25th April 2015. Arguing that agreement on the FC would enable a more effective disaster response to the aftermath of the earthquake, the major political parties signed a 16-point Agreement resolving some of the core contested issues and 'fast-tracking' the constitution-drafting process. However, fast-tracking the process meant that the major party leaders ended up making back-room deals on contested issues, and ignoring dissent even from within their own parties. As the NC and CPN (UML) could garner sufficient support to reach the required two-thirds majority in

the CA without CPN (M) votes, the CPN (M) leaders, fearing that the NC and CPN (UML) would pass the FC without them, began making concessions on previously contentious issues. Furthermore, although the CPN (M) had previously been the principal advocates for 'inclusion', their leaders stopped pressing for greater inclusion provisions in the FC as they feared that the NC and CPN (UML) would respond by retracting their support for those provisions already agreed on and included in drafts (ICG, 2016).

In addition, under the fast-track process the public consultation time on the new constitution was reduced to 10 days. Some of the consultation sessions were not open to the general public and were restricted to political party members only, whilst others had a high Nepalese security force presence which discouraged members of certain dissenting groups from attending. The CA deliberations were also reduced from a point-by-point plenary discussion to one wherein three minutes each for ordinary members, and five minutes each for senior members was allocated for the entire draft. As a result of this fast-track process, many rights and protections afforded to excluded groups in the IC have been restricted, reduced, or removed from the FC. Additionally, the federal boundaries delineated in the FC tend to favour the economic interests of senior political figures, rather than the representation needs of Nepal's marginalised populations (ICG, 2016).

Inclusion in Nepal has only really been extended beyond the traditional political elite to a small number of power contenders, who are able to represent a progressive political agenda and mobilise political will to either contest elections or organise mass protest movements (ICG, 2016; Khatiwada, 2014; Mabuhang, 2015; Neelakantan, et al., 2016). Other broader human rights issues, such as transitional justice, have been difficult to address.

Transformation or business as usual?

The legal and policy provisions outlined above reflect the spirit of all commitments to inclusion made by the state and political parties. Progress towards an inclusive state is quite definite. However, a recurring pattern has permeated both the civil war and the ensuing peace process. Political actors proclaim their intention to create a more inclusive state through various accords and pronouncements, with the objective of defusing a given situation of unrest – either in relation to the Maoist insurgency, or to the post-war identity movements. Concessions to inclusive language in various agreements are then made to secure

progress for stability, rather than necessarily representing sincere commitments to inclusive change. While inclusion has been central in the text of agreements, the provisions have subsequently been only partially respected or fulfilled (Ramsbotham and Thapa, 2017). At both the national and local levels, politics continues to be conducted through the use of patronage networks and back-room deals, and the traditional political elite continue to subvert attempts at greater political, social, and economic inclusion for marginalised groups (see generally, Ramsbotham and Thapa, 2017). The difficulties of furthering inclusion agendas have been exacerbated by limitations in how the Maoists have navigated pluralist politics, and by a lack of co-ordination by social movements around a common agenda of inclusive change.

Despite the development of inclusion policies and legislation, since the CA elections in 2013, the inclusion of excluded and marginalised groups has reduced both in the Legislature-Parliament and in the Nepalese civil service. The 2015 earthquake provided the requisite conditions for the old political order to manipulate the constitution-making process in their favour and remove many of the inclusion measures which were codified in the IC and previous peace agreements. This 'settlement' was immediately under pressure to be revised: amendments to the FC to address the concerns of marginalised groups have been pressed and tabled, with the dominant political elite pledging to block them. Ultimately, whether greater inclusion will be achieved through constitutional amendments is yet to be seen (Acharya, 2017; Al Jazeera, 2017; Baral, 2016; Dahal, 2017; ICG, 2016; Jha, 2016; Khatiwada, 2014; Mabuhang, 2015; Neelakantan, et al., 2016).

In a very different way from Bosnia and Herzegovina or Burundi, the attempt to forge a deal at the centre between traditional political parties and Maoists in Nepal created agreement horizontally between these groups, but failed to create the more vertical inclusion promised to a broad range of marginalised groups in the form of a fundamental restructuring of the state.

7. Conclusions to the case studies

Success and failure

The peace processes in all three cases were relatively successful in ending (either immediately or over time) the physically violent conflict they addressed, which was an important contribution. All three also resulted in the implementation of peace agreements to establish new political and legal institutions. Interestingly, according to the Kroc Institute's 'Peace Agreement Matrix' (which assesses whether specific commitments to action made in peace agreements were carried out), progress on implementing all three agreements has been significant. Ten years after each of the main peace agreements was signed (nine in the case of Nepal), 93% of commitments had been implemented in Bosnia and Herzegovina, 78% in Burundi, and 72% in Nepal. However, these statistics in a sense show the complete disjuncture between the technical implementation of the peace agreement, the delivery of a transformed political culture based on the inclusion of former opposition groups, and the wider agendas for social change that the agreements promised.

Formalised political unsettlement

The political orders that resulted from all three cases had some similar features, which we have characterised as 'formal political unsettlement' (Bell and Pospisil, 2017), namely:

1. Political and legal institutions that 'contained' as much as resolved the conflict, including fundamental issues as to the nature of the state, its territorial boundaries, its legitimacy across ethnic divisions, and its capacity to deliver public goods to all.

2. A prioritisation of horizontal inter-elite pacts on inclusion over processes of vertical social inclusion, that has proved resistant to change over time. This prioritisation was understood in and of itself to deliver political equality to marginalised groups as a human rights principle, but has often operated in practice to stifle, rather than further, promises of a broader social transformation.
3. Political institutions that are inherently unstable and require both ongoing and international intervention in order to be sustained. Both local and international actors often charge each other with a lack of legitimacy with regard to ongoing projects of state-craft.
4. Domestic institutions which had fluid and transnational dimensions, and are almost continuously under ongoing local and international pressure to revise and reform. This common feature results in the feeling of 'permanent transition' that emanates from all three case studies.

Two sides of the same coin

The case studies suggest that the successes and failures of peace agreement implementation are linked in curious ways. The institutionalisation of power-sharing arrangements and 'horizontal inclusion' between those at the heart of the conflict is often understood as a response to human rights demands for political inclusion. Human rights measures are often intended to support horizontal inclusion, while ensuring that no-one is treated unfairly under the new political arrangements. In practice, power-sharing has proved easier to implement than straightforward human rights protections or broader forms of inclusion. Human rights commitments either remained under-enforced or were implemented in technocratic ways that proved ineffective. However, crucially it was often the central power-sharing pact which made broader commitments to inclusion and human rights difficult to implement. Over time these pacts have been difficult to develop or stabilise, and individual human rights violations have often been critical to undoing them.

Long-term non-linear processes

While all three peace processes showed some progressive implementation of peace agreement commitments, none of these were simple or linear. The possibility of a return to armed conflict and forms of political violence remained ever-present and shaped political developments. The conflict, its root causes, and who would be the ‘winners’ and ‘losers’ of the peace deal, continued to be negotiated over years and even decades post-agreement. An air of ‘permanent transition’ has continued to characterise all three cases, as described previously.

The importance of critical moments

Finally, the peace processes all indicated critical moments that were often key in advancing or retrenching projects of inclusion. Moments of crisis sometimes linked to the peace process – occasionally in the form of unrelated or random events, often were moments which enabled a shift in power. At times, crisis and the response to it resulted in forward movement as new forms of inclusion were pressed and accommodated (consider Nepal in 2007). At other times, it resulted in backwards movement as one group was able to use the event to evade commitments to inclusion and take back relative control of state institutions (consider the Nepal earthquake or the Burundi election boycott). There was perhaps little that international interveners could have done in these moments, but the case studies presented here suggest that moments of crisis are crucial to enabling opportunities for the advance or retreat of inclusion agendas. Preparation to recognise these moments and respond to their opportunities is, therefore, important.

With those observations in mind, Chapter 8 discusses what could be done differently in future peace settlements.

8. Human rights and the construction of 'the common good'

It is a central requirement of conflict resolution in divided societies that visions of the state that serve the interests of only one group must be opened up to a more shared concept of the state – one that is capable of serving a broader set of interests and operating for the public good. Conflict resolution requires forging a baseline acceptance of the need for common political community, as well as a baseline commitment to use public power to serve that community.

It is difficult to find exactly the right language in which to express this project. For some, it is a project of constructing public authority or public power (Hoffman and Kirk, 2013). For others, it is the search for an inclusive political settlement (EU, 2016) or a social contract (UNDP, 2012), and for yet others, it is a search for a shared future, or the common good. The right language is difficult to find because all of these terms carry their own historical baggage; they each have an association with a particular form of state-building project (see, for example, Jaede, 2017). The problem with these associations is that they point towards a state-building end-point, when in fact this is the very matter on which the opposing parties are trying to come to agreement. Yet, we need a name for the project, and so here we opt for the language of 'the common good'.

Centrally, we suggest that the common good is best pursued as a process of ongoing political construction, rather than a required pre-commitment to any new political order. Human rights assurances made during peace processes should be understood as mechanisms for setting aside the space in which this process of political construction can take place. These assurances can serve to: limit violence and ongoing

practices of exclusion; create mechanisms for challenging those political decisions made for private ends; give non-aligned actors vehicles for addressing any ongoing marginalisation; and fight back against fresh exclusions generated by the new shared institutions themselves.

Peace processes are ultimately constructed to produce compromises between political/military elites. They are often seen by international actors as 'dirty deals' which the human rights institutions in the agreement should undo over time by asserting a normative force. However, the inclusion of formerly excluded political and military non-state actors at the heart of the new political institutions is often understood differently locally. This inclusion is understood by formerly excluded actors not just as a crude conflict resolution device, but as an initial response to a lack of democratic space, characterised by human rights abuses, and ethno-national marginalisation and exclusion. From this perspective, human rights commitments offer safeguards to the parties and their constituencies that the new power-sharing government will not enable discrimination and domination by one side. However, they also provide safeguards to non-aligned groups, ensuring that their political equality and rights will not be negated by a culture of deal-making. Human rights commitments, therefore, often reflect diverse local and international understandings of inclusion, and attempt to bind them together.

However, peace agreements are born of compromise between differing local end-state aspirations, as well as those of the international community. Post-conflict political orders are best thought of as institutionalised spaces of disagreement. Rather than reflecting a commitment to a common community within a common political framework, these political structures operate with ongoing questions as to whether the actors at their centre are committed to any project of common good, and whether such a project is even possible in their context.

We have characterised the dynamic that results as one of 'formalised political unsettlement', wherein the conflict is translated into political and legal institutions rather than being resolved. We suggest that trade-offs and compromises between competing agendas of inclusion and exclusion produce this dynamic. Policy-makers and academics engaged in the field recognise the dynamics of formalised political unsettlement, and point to the need to embrace its *realpolitik* and work creatively with it. However, they show tendencies towards two converse instincts. The first is the instinct to seek more robust action or smarter sequencing that could replace the existing formalised political

unsettlement with a more stable 'normal' political settlement. The second is to give up in the face of its stranglehold – to empower local communities to help themselves by assisting them to deal with the consequences of the failure to achieve a political settlement (referred to by Chandler, 2017, as 'governing effects'). Although these are caricatures, suggestions of both approaches can be seen in our review of policy and academic thinking.

Seizing the opportunities of the formalised political unsettlement

We suggest an alternative approach of: considering the entry points for inclusion within the formalised political settlement, and supporting marginalised communities to access them. Surprisingly there are some.

First, the focus of the peace agreements is on the accommodation of the main groups whose grievances drive the conflict. This focus can produce innovative power-sharing models that offer types of structural group equality and access to political power that 'pure' liberal democratic models cannot. Political power-sharing and territorial devolution of power can give minority groups access to power and resources significantly removing some of their incentives for conflict. These arrangements can give momentum to broader arguments and modalities for inclusion, and mobilise communities well beyond those who use typically violence, such as women, non-aligned minorities, young people, and religious groups. Commitments to political equality for those at the heart of the conflict can often be successfully pressed to extend: there is some evidence, for example, that matters such as quotas for women become easier to accept in contexts where broader group rights are implemented (Bell, 2017). However, these arguments for broader forms of inclusion will at times be enabled by the central power negotiations, and at times disabled by them. Trade-offs between different forms of inclusion need to be understood and carefully managed from a position that recognises that both elite pacts and broader processes of development should, by necessity, change.

Second, the dynamic of perpetual reform means that questions of inclusion can be continually addressed. Peace agreement implementation focused on party-political inclusion at the expense of social inclusion will remain unsettled and subject to change. While this makes for a figuratively and literally 'unsettling' political order, more positively it means

that the central political deal is always open to renegotiation. As we have seen, the process will encounter moments of sudden crisis that need to be resolved, in which agendas for inclusion may be moved on suddenly. Equally, these moments can be moments of opportunity for socially conservative forces and those opposed to change to 'roll-back' previous commitments to inclusion. Those seeking to foster inclusive political settlements should look for potential moments of renegotiation and help marginalised communities to access them.

Third, the reference points of the formalised political settlement include both domestic and international legal frameworks. Peace agreements are negotiated with reference to both, because the existing legal system is often implicated in the conflict, and so becomes the object, as well as the subject of change. Human rights norms provide a standard external to any parties to the conflict – one that is capable of being trusted. This means that international law, including human rights norms, can have a heightened legitimacy as a domestic political reference point during transition. International actors can, therefore, play a legitimate and useful role in promoting these norms. However, human rights norms always have to be negotiated into local contexts, and so promoting norms in ways which circumscribe political negotiations is a hindrance to the peace process (Arnault, 2014). In terms of when and how norms are implemented, some uncomfortable and difficult decisions may need to be made as to what levels of change the local political climate can withstand at particular times, as well as how to sequence the delivery of competing rights, not all of which can be delivered simultaneously.

Fourth, the incomplete political settlement places contestation at the heart of the political order in ways that appear to be destabilising. However, this contestation reflects an attempt to avoid resolving questions of the state's political and territorial configuration, and indeed, incentivises violent conflict. In so doing, a space for further political development and for the construction of common community rooted in a commitment to the common good is created. It may, therefore, be important to understand and support activities which seek to keep fundamental questions as to the nature of the state open, rather than those that seek to foreclose them in 'more normal' forms of statehood. Human rights claims enable social actors to question 'who the state serves', and continue to push for new political and territorial configurations of the state. These can provoke responses of further accommodation that are useful to widening social participation in the state and access to public goods and services.

Acting in ‘politically smarter ways’

A common contemporary call is that for international development and peacebuilding actors to act in more politically smart ways. International actors could do this by helping parties access the entry points of the formalised political unsettlement, and so navigate inclusion in this environment. Three observations seem important to ‘doing things better’.

First, long-term approaches to social change are necessary. The current apparent failure of transition can be re-framed by questioning what we understand as the timescales and trajectories of change. The case studies highlighted in this report indicate the ways in which post-settlement political development is non-linear and unpredictable, with post peace-agreement landscapes involving both movement towards and away from conflict. It seems useful to prepare long-term implementation strategies for human rights commitments that would understand ongoing conflict resolution as an important conflict-prevention activity. This might involve committing to immediate peace agreement implementation support to be accompanied by a 10–15-year ‘conflict resolution as conflict prevention strategy’. Peace agreement design might usefully contemplate and build-in processes of review, and should ideally establish hybrid international-domestic mechanisms to undertake them.

Second, implementation of human rights commitments needs to be supported in more politically aware ways. The implementation of the human rights commitments in peace agreements is critical to holding open political space in which conflict resolution can continue to be negotiated. It is possible to view commitments to human rights norms and institutions as projects requiring technical implementation. However, in deeply divided societies, human rights commitments often aim to continue an initial reallocation of power and provide a back-stop against parties at the centre of government using the agreement to assert unilateral control for selfish interests. International interveners need to understand that their support for human rights norms can assist local actors to hold open political space, but if pressed unthinkingly can also assist those who seek to close it. Current debates over when and how to implement transitional justice, for example, increasingly reflect awareness that the timing and balances of power are often more important to ensuring effective institutions than the right design.

Third, a level of risk is involved. It is difficult to navigate support for human rights in deeply divided societies where they are so closely connected

to political claims, such as to secession, and/or replacement of existing political structures and classes. International interveners need to be prepared to take on a level of risk, and should be supported to think through how it can be mitigated (see further, Social Change Initiative, 2016).

Recommendations relating to useful field activities in support of peace processes

We recommend that a more political approach to human rights implementation needs to be adopted; one which takes account of both the challenges and the opportunities of post-agreement environments and political structures. We therefore suggest the types of activity that are likely to be useful to navigating inclusion, some of which are, of course, already in motion, and in those cases this report acts as an endorsement.

1. **Joint analysis between international interveners and local actors as to long-term strategies for transformation and their likely obstacles.** Such analysis would be developed by listening to local opinion on what is necessary to do to embed change that will positively affect day-to-day lives, and would consider what types of activity could help achieve such change. Mechanisms for joint analysis can even be provided for within the peace process through hybrid institutions such as the International Contact Group in the peace process in Mindanao, Philippines. This group included state and non-state (local and international) actors who were able to play different roles and connect the talks to different constituencies throughout the mediation. This joint undertaking would focus on analysis of different political constituencies with which to engage on different issues, and would anticipate which issues would easily build consensus and which would need to be navigated through polarised political positions.
2. **Continuous post-agreement support for both ongoing and 'one-off' mediation capable of working at the track one level of formal political diplomacy, supporting bottom-up processes, and identifying and supporting 'middle-out' actors that can connect across social layers such as cross-sectoral faith, gender, or business groups.** This support would enable moments of crisis to be responded to by creating capable support mechanisms. Building progressive alliances and agendas, even in the absence of clear opportunities to advance them, might enable them to find their moment.

3. **Joint analysis across different international organisations and actors, capable of supporting an integrated approach to post-conflict contexts.** This analysis should consider how to support elite-level political bargains to stabilise, and how to support ongoing struggles for inclusion and broader social transformation which seek to re-work these bargains over time. Not all interveners will have the political appetite or capacity to address both projects of inclusion. Moreover, sometimes international actors will cut across each other in ways which make it useful to have different organisations supporting different activities. However, the relationship between processes of elite inclusion and social inclusion, or to put it another way top-down and bottom-up approaches to peace implementation, needs to be analysed and support systems co-ordinated so as to take account of different capacities and appetites for risk.
4. **Ongoing periodic analysis of conflict dynamics, potential spoilers and consideration of useful strategic intervention to avoid conflict recurrence.** Such analysis should be linked to reappraisal of achievements and objectives. Post-agreement dynamics change over time, as new elections take place, new conflict dynamics appear, or peace process incentives become disincentives.
5. **Material support focused on keeping open spaces of civic contest, in situations where political/military elites co-operate to hold power in ways that tend to institutionalise and sustain the conflict between themselves.** Post-conflict 'shared' government often operates in practice as a series of discrete agreements to divide spoils – that is, to share out public goods for personal and partisan ends. Power-sharing mechanisms can see former opponents finding an ability to co-operate by: facilitating reciprocal patterns of control and ownership of social goods; pursuing conservative social agendas shared across the normal political divisions to the detriment of women and sexual minorities; or, by co-operating to restrain third sector activities that challenge their own. This co-operation can increase the exclusion of already marginalised groups and shut down their broader inclusion in public life that is necessary to facilitate longer-term political stability. Here, international pressure and technical support can be useful to counteract the exclusionary practices of joint governments. At the local level, the creation of broad cross-cutting alliances between groups can create useful leverage, because different groups have human rights and equality demands which appeal to, and are resisted by, different parties. Presenting

these demands in a concerted way across social divides can make it more difficult for reluctant political actors to dismiss them.

6. **Models of support which enable groups to analyse and respond to key moments of 'political opportunity' which open up during peace processes and post-conflict environments.** These recommendations call for modalities of material support to be re-thought. This could involve several components which are deeply unfashionable and difficult to win support for:
 - a. Core funding should be given to marginalised groups to pursue long-term strategies and develop proposals for what will be a situation of ongoing reform and flux;
 - b. Fast, flexible, responsive funding models should be adopted that are capable of enabling groups to convene across sectors quickly when a new opportunity arises with the potential for furthering broader social progress. Funding should require a minimum of bureaucracy, and a minimum of specified 'outcomes';
 - c. Engagement with, and support to, 'unpopular' or 'problematic' communities who have promoted, and continue to promote, either violence or state break-up should be given, even if their formal representatives are 'beyond the pale'.

7. **Conflict-sensitive approaches to aid, in support of the delivery of social goods such as healthcare, education, or sectoral reform.** Support to post-agreement governments should understand their internally divided nature. Key questions for any intervention are: does this intervention ameliorate or exacerbate inter-group tensions around 'who has won the peace', that is who stands to benefit from the peace deal? Could the mode of decision-making and delivery of aid be fashioned to require and build forms of inter-group cooperation? Has the timing of interventions been considered in terms of how it will affect the balance of power between divided groups, either symbolically or materially?

Recommendations relating to future research

As new funding lines have recently emerged for research on conflict and development, notably through the Global Challenges Research

Fund, we also thought it would be useful to address some of this report's recommendations to researchers. Throughout the writing of the report, challenges of the contemporary peacebuilding context appeared to raise wider research questions and 'needs'. We set them out here for further discussion and debate.

1. The need for reflexive responses to challenges to expertise.

If development and peacebuilding actors are reaching a consensus as to the need to 'do things differently', which talks about 'complexity', 'unknowability', 'experimentation', and 'acting more politically', this has consequences for traditional concepts of academic expertise and what academics offer to expert worlds. A better dialogue needs to be created between practitioners and academics as regards the challenges of the new context for traditional ways of producing and disseminating knowledge. Academic self-reflection is needed regarding who has capacity to produce the relevant expertise to inform this new world.

2. The need to embrace critical friendship. Global processes of transition now clearly appear to be rejecting liberal peace values and architecture. Some difficult academic choices are, therefore, needed as regards the role of criticism with regard to political projects of progressive social change. Some of the most interesting insights into the contemporary context have come from a position of critical theorising, which perhaps offers more of a resource for this new context than new technocratic advice. However, the question now looms as to whether academics are involved in a project of critical friendship to interventions that seek to do good, or one of pure criticism that views these interventions as inevitably so flawed that academics are complacent about them being abandoned. There is a crucial distinction. The suggestion of a choice as to the politics of research of course also implicates issues of academic neutrality which could benefit from further consideration.

3. Reckoning with 'extreme unknowability'. Researchers should consider more explicitly how to address the challenge of 'extreme unknowability'. This challenge flows from the ongoing multiple political transitions at the level of fragile and conflict-affected states and at the level of the international architecture for addressing them itself. Both are characterised by rapid and unpredictable political change and intervention. It is almost impossible to keep pace with the degree of institutional change at either level. Increasingly

unfashionable activities of context-mapping and institution-mapping may be important academic contributions. If – as is being suggested by development and peacebuilding actors – detailed analysis of political context is missing, then this calls for in-country expertise, capacity for mapping domestic political landscapes, and detailed ongoing mapping of the ever more complex and expanding international and regional dynamics and architectures which respond to situations of conflict. At present, practice is outpacing academic capacity to analyse, in ways that researchers rarely talk about. Forensic contextual work, and forensic institutional mapping, are increasingly irreconcilable with the demands of academic life and are unrewarded, and even penalised, by current funding models and concepts of ‘paradigm-shifting’ or ‘cutting-edge’ research.

4. **Re-thinking ethical partnership.** New funding models for conflict research increasingly require North–South partnerships in research production. Funding perhaps requires even more staged approaches than currently exist, to enable Northern partners to build relationships on a basis of equality, and develop research proposals using joint analysis. This necessitates funding models which operate in several steps. If the UK’s research capacity is to be extended in this area, it cannot be assumed that a joint analysis mind-set prevails or that the North–South relationships exist to underpin it.
5. **Changing approaches to research and teaching.** Greater opportunities for movement between fields of practice and academia are needed. Creative thinking should build on initiatives already embraced in some higher education institutions, such as:
 - a. The development of clinical education and praxis research which would not only build connections between practitioners and academics, but also between teaching and research, in ways which could encourage students to address global grand challenges.
 - b. Institutional support for connecting academics and communities of practice that lift this activity from the grey-zone of the personal commitment of the researcher into the supported part of the institution’s business.
 - c. Institutional structures that promote interdisciplinary spaces and conversations without requiring them to deliver neat proposals for change capable of immediate ‘impact’.

References

- Acharya, A., 2017. *Nepal: A Costly Constitution*. [Online] Available at: www.aljazeera.com/indepth/opinion/2016/12/nepal-costly-constitution-161207093116670.html [Accessed 13 January 2017].
- Al Jazeera, 2017. *Nepalese Opposition Stages Mass Rally in Kathmandu*. [Online] Available at: www.aljazeera.com/news/2017/01/nepalese-opposition-stages-mass-rally-kathmandu-170106134544275.html [Accessed 1 June 2017].
- Allen, T., 2006. *Trial Justice: The International Criminal Court and the Lord's Resistance Army*. London: Zed Books.
- Anon., 1996. Human Rights in Peace Negotiations. *Human Rights Quarterly*, 18(2), pp. 249–258.
- Arnault, J., 2014. Legitimacy and Peace Processes: International Norms and Local Realities. *Accord*, April, Issue 25, pp. 21–25.
- Arthur, P., 2009. How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice. *Human Rights Quarterly*, 31(2), pp. 321–367.
- AusAID, 2011. *Framework for Working in Fragile and Conflict-Affected States: Guidance for Staff*. Canberra: AusAID.
- Baker, C., 2015. *The Yugoslav Wars of the 1990s*. London: Palgrave.
- Baral, B., 2016. *With Debate Over Constitutional Amendments, Nepal Enters a New Phase of Uncertainty*. [Online] Available at: <https://thewire.in/84464/nepal-political-uncertainty/> [Accessed 16 May 2017].
- Barnett, M. & Zürcher, C., 2009. The Peacebuilder’s Contract: How External Statebuilding Reinforces Weak Statehood. In: R. Paris & T. D. Sisk, eds. *The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations*. New York: Routledge, pp. 23–52.
- Bell, C., 2000. *Peace Agreements and Human Rights*. Oxford: Oxford University Press.
- Bell, C., 2006. *Negotiating Justice?: Human Rights and Peace Agreements*. Versoix: International Council on Human Rights Policy.
- Bell, C., 2008. *On the Law of Peace: Peace Agreements and the Lex Pacificatoria*. Oxford: Oxford University Press.
- Bell, C., 2017. *Unsettling bargains? Power-sharing and the inclusion of women in peace negotiations*. New York: UN Women.
- Bell, C. & Pospisil, J., 2017. Negotiating Inclusion in Transitions from Conflict: The Formalised Political Unsettling. *Journal of International Development*, 29(5).

- Bieber, F., Galijaš, A. & Archer, R. eds., 2016. *Debating the End of Yugoslavia*. Abingdon: Routledge.
- Boege, V., Brown, A., Clements, K. & Nolan, A., 2008. On Hybrid Political Orders and Emerging States: State Formation in the Context of 'Fragility'. *Berghof Handbook Dialogue*, October, Issue 8.
- Bogati, S., 2014. Assessing Inclusivity in the Post-War Army Integration Process in Nepal. *IPS*, July, Issue 11.
- Brown, S. & Grävingholt, J., 2011. *From Power Struggles to Sustainable Peace: Understanding Political Settlements*. Paris: OECD.
- Brubaker, R., 2013. From the unmixing to the remixing of peoples: UNHCR and minority returns in Bosnia. *New Issues in Refugee Research*, August, Issue 261.
- Carothers, T. & Samet-Marram, O., 2015. *The New Global Marketplace of Political Change*. Washington, D.C.: Carnegie Endowment for International Peace.
- Chandler, D., 2015. Resilience and the 'everyday': beyond the paradox of 'liberal peace'. *Review of International Studies*, 41(1), pp. 27–48.
- Chandler, D., 2017. *Peacebuilding: Twenty Years' Crisis, 1997-2017*. Cham: Palgrave Macmillan UK.
- Chaturvedy, R. R. & Malone, D. M., 2012. A Yam Between Two Boulders: Nepal, India and China. In: S. Von Einsiedel, D. M. Malone & S. Pradhan, eds. *Nepal in Transition: From People's War to Fragile Peace*. Cambridge: Cambridge University Press, pp. 287–312.
- Cilliers, J. & Sisk, T. D., 2013. Assessing long-term state fragility in Africa: Prospects for 26 'more fragile' countries. *ISS Monograph*, 27 November, Issue 188.
- Curtis, D., 2012. The International Peacebuilding Paradox: Power Sharing and Post-Conflict Governance in Burundi. *African Affairs*, 112(446), pp. 72–91.
- Dahal, P. K., 2017. *Nepal's Supreme Court paves way for deliberation on second Constitution Amendment Bill*. [Online] Available at: www.dnaindia.com/world/report-nepal-s-supreme-court-paves-way-for-deliberation-on-second-constitution-amendment-bill-2288843 [Accessed 16 May 2017].
- Daley, P., 2006. Ethnicity and Political Violence in Africa: The Challenge to the Burundi State. *Political Geography*, 25(6), pp. 657–679.
- Daley, P., 2007. The Burundi Peace Negotiations: An African Experience of Peace-making. *Review of African Political Economy*, 34(112), pp. 333–352.
- Desouza, N., 2015. *Nepal: the struggle for equal citizenship rights for women*. [Online] Available at: www.opendemocracy.net/5050/nicoal-desouza/nepal-struggle-for-equal-citizenship-rights-for-women [Accessed 16 May 2017].
- DFID, 2010. *Building Peaceful States and Societies: A DFID Practice Paper*. London: DFID.
- Dhahal, D., 2015. *Is the Nepalese Army the most inclusive armed force in the world?* [Online] Available at: <http://southasiacheck.org/fact-check/is-the-nepalese-army-the-most-inclusive-armed-force-in-the-world/> [Accessed 16 May 2017].
- Duffield, M., 1998. Post-modern Conflict: Warlords, Post-adjustment States and Private Protection. *Civil Wars*, 1(1), pp. 65–102.

- Engel, U. & Gomes Porto, J. eds., 2010. *Africa's New Peace and Security Architecture: Promoting Norms, Institutionalizing Solutions*. Abingdon: Routledge.
- EU, 2016. *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy*, Brussels: EU.
- Ghani, A. & Lockhart, C., 2009. *Fixing Failed States: A Framework for Rebuilding a Fractured World*. New York: Oxford University Press.
- Gordy, E., 2015. Dayton's Annex 4 Constitution at 20: political stalemate, public dissatisfaction and the rebirth of self-organisation. *Southeast European and Black Sea Studies*, 15(4), pp. 611–622.
- Grauvogel, J., 2015. Regional sanctions against Burundi: the regime's argumentative self-entrapment. *The Journal of Modern African Studies*, 53(2), pp. 169–191.
- Greenberg, M. & McGuinness, M. E., 2000. From Lisbon to Dayton: International Mediation and the Bosnia Crisis. In: M. Greenberg, J. H. Barton & M. E. McGuinness, eds. *Words Over War: Mediation and Arbitration to Prevent Deadly Conflict*. Oxford: Rowman & Littlefield Publishers.
- Hirschy, J. & Lafont, C., 2015. Esprit d'Arusha, Es-Tu Là? La Démocratie Burundaise Au Risque Des Elections de 2015. *Politique Africaine*, 1(137), pp. 169–189.
- Human Rights Watch, 2003. *In the Name of Counter-Terrorism: Human Rights Abuses Worldwide. A Human Rights Watch Briefing Paper for the 59th Session of the United Nations Commission on Human Rights*. [Online] Available at: www.hrw.org/report/2003/03/25/name-counter-terrorism-human-rights-abuses-worldwide/human-rights-watch-briefing [Accessed 16 May 2017].
- Human Rights Watch, 2010. *'We'll Tie You Up and Shoot You': Lack of Accountability for Political Violence in Burundi*, New York: Human Rights Watch.
- ICG, 2011. *Burundi: From Electoral Boycott to Political Impasse*. [Online] Available at: www.crisisgroup.org/en/regions/africa/central-africa/burundi/169-burundi-from-electoral-boycott-to-political-impasse.aspx [Accessed 16 May 2017].
- ICG, 2012. *Nepal's Constitution (I): Evolution not Revolution*, Asia Report No 233, 27 August Available at: www.crisisgroup.org/asia/south-asia/nepal/nepal-s-constitution-i-evolution-not-revolution [Accessed 25 May 2017].
- ICG, 2014. *Les Terres de La Discorde (I): La Réforme Foncière Au Burundi*. Rapport Afrique N°213. Available at: www.crisisgroup.org/africa/central-africa/burundi/fields-bitterness-i-land-reform-burundi [Accessed 16 May 2017].
- ICG. 2016. *Nepal's Divisive New Constitution: An Existential Crisis*. Asia Report 276. www.crisisgroup.org/asia/south-asia/nepal/nepal%E2%80%99s-divisive-new-constitution-existential-crisis [Accessed 23 May 2017].
- Jamar, A., 2016. *Escalating Conflict in Burundi: The Challenges of Overcoming Radicalisation. Briefing Paper 10*, Edinburgh: The Political Settlements Programme Consortium.
- Jha, P., 2016. *Nepal govt approves constitutional amendment*. [Online] Available at: www.hindustantimes.com/world-news/nepal-govt-approves-constitutional-amendment/story-QcMbdvZd07qQ0UuQfQGx9J.html [Accessed 16 May 2017].
- Joinet, L., 1997. *The Administration of Justice and the Human Rights of Detainees. Report of the Special Rapporteur on the Question of the Impunity of Perpetrators of Human Rights Violations*, New York: United Nations.

- Kaldor, M., 2007. *Human Security: Reflections on Globalization and Intervention*. Cambridge: Polity.
- Kelly, T. & Thiranagama, S. 2017. *Against Civility*. Available at: <https://conversations.e-flux.com/t/against-civility/6003> [Accessed 16 May 2017].
- Kennedy, D., 2009. The mystery of global governance. In: J. L. Dunoff & J. P. Trachtman, eds. *Ruling the World?: Constitutionalism, International Law, and Global Governance*. Cambridge: Cambridge University Press, pp. 37–68.
- Khatiwada, P. P., 2014. The Nepalese Peace Process: Faster Changes, Slower Progress. *IPS*, Issue 9.
- Lawoti, M., 2012. Ethnic Politics and the Building of an Inclusive State. In: S. von Einsiedel, D. M. Malone & S. Pradhan, eds. *Nepal in Transition: From People's War to Fragile Peace*. Cambridge: Cambridge University Press, pp. 129–154.
- Lederach, J. P., 2005. *The Moral Imagination: The Art and Soul of Building Peace*. Oxford: Oxford University Press.
- Lemarchand, R., 1996. *Burundi: Ethnic Conflict and Genocide*. Cambridge: Cambridge University Press.
- Lemarchand, R., 2011. Burundi 1972: Genocide Denied, Revised, and Remembered. In: R. Lemarchand, ed. *Forgotten Genocides: Oblivion, Denial, and Memory*, Philadelphia: University of Pennsylvania Press, pp. 37–50.
- Lemarchand, R., 2006. Consociationalism and Power Sharing in Africa: Rwanda, Burundi, and the Democratic Republic of the Congo. *African Affairs*, 106(422), pp. 1–20.
- Levitt, J. I., 2006. Illegal Peace?: An Inquiry into the Legality of Power-Sharing with Warlords and Rebels in Africa. *Michigan Journal of International Law*, 27(2), pp. 495–577.
- Mabuhang, B., 2015. From Peace Settlement to Political Settlement: State Restructuring and Inclusive Measures for Marginalised Groups in Nepal. *IPS*, Issue 10.
- Mac Ginty, R., 2010. Hybrid Peace: The Interaction Between Top-Down and Bottom-Up Peace. *Security Dialogue*, 41(4), pp. 391–412.
- Mac Ginty, R., 2011. *International Peacebuilding and Local Resistance: Hybrid Forms of Peace*. Basingstoke: Palgrave Macmillan UK.
- Mac Ginty, R. & Richmond, O. P., 2013. The Local Turn in Peace Building: a critical agenda for peace. *Third World Quarterly*, 34(5), pp. 763–783.
- Martin, I., 2012. The United Nations and support to Nepal's peace process: The role of the UN mission in Nepal. In: S. von Einsiedel, D. M. Malone & S. Pradhan, eds. *Nepal in Transition: From People's War to Fragile Peace*. Cambridge: Cambridge University Press, pp. 201–231.
- McCrudden, C., 2014. Human Rights Histories. *Oxford Journal of Legal Studies*, 35(1), pp. 179–212.
- Miller, H., 2017. Rejecting 'rights-based approaches' to development: Alternative Engagements with Human Rights. *Journal of Human Rights*, 16(1), pp. 61–78.
- More, S., 2010. *Les bailleurs européens et l'approche participative dans le secteur de la sécurité et la justice au Burundi*, London: Initiative for Peacebuilding.

- Neelakantan, A., Ramsbotham, A. & Thapa, D., 2016. Peace, power and inclusive change in Nepal: Political settlements in practice. *Accord*, October.
- Nepali Constituent Assembly, 2015. *The Constitution of Nepal*. [Online] Available at: www.constitutionnet.org/sites/default/files/nepal_constitution_-_official_translaition_eng_mljpa.pdf
- Ní Aoláin, F., 2001. The Fractured Soul of the Dayton Peace Agreement: A Legal Analysis. In: F. Bieber & D. Sokolovic, eds. *Reconstructing Multiethnic Societies: The Case of Bosnia and Herzegovina*. Aldershot: Ashgate.
- OECD, 2011. From Power Struggles to Sustainable Peace: Understanding Political Settlements. *Conflict and Fragility Series*.
- OECD, 2011. Supporting Stabilising in Situations of Conflict and Fragility: Policy Guidance. *DAC Guidelines and Reference Series*.
- OECD, 2012. Improving International Support to Peace Processes: The Missing Piece. *Conflict and Fragility Series*.
- OneWorld South Asia, 2017. *Reservation policies for civil service in Nepal adopted*. [Online] Available at: <http://southasia.oneworld.net/archive/Article/reservation-policies-for-civil-service-in-nepal-adopted> [Accessed 15 January 2017].
- O'Rourke, C., 2013. *Gender Politics in Transitional Justice*. Abingdon: Routledge.
- Paris, R., 2009. Does liberal peacebuilding have a future?. In: E. Newman, R. Paris & O. Richmond, eds. *New Perspectives on Liberal Peacebuilding*. New York: United Nations University Press, pp. 97–111.
- Paris, R., 2010. Saving liberal peacebuilding. *Review of International Studies*, 36(2), pp. 337–365.
- Parlevliet, M., 2009. Rethinking Conflict Transformation from a Human Rights Perspective. *Berghof Handbook Dialogue*, September, Issue 9.
- Parlevliet, M., 2015. *Embracing Concurrent Realities: Revisiting the Relationship between Human Rights and Conflict Resolution*. PhD dissertation, University of Amsterdam.
- Pinheiro, P. S., 2005. *Housing and property restitution in the context of the return of refugees and internally displaced persons: Final Report of the Special Rapporteur, Paulo Sérgio Pinheiro, Principles on housing and property restitution for refugees and displaced persons*. New York: United Nations.
- Ramsbotham, A. & Thapa, D. eds., 2017. Two steps forward, one step back: the Nepal peace process. *Accord*, March, Issue 26. Available at: www.c-r.org/accord/nepal/key-texts [Accessed 16 May 2017].
- Reyntjens, F., 2016. Institutional Engineering, Management of Ethnicity, and Democratic Failure in Burundi. *Africa Spectrum*, 51(2), pp. 65–78.
- Richmond, O. P., 2009. Resistance and the Post-liberal Peace. *Millennium: Journal of International Studies*, 38(3), pp. 665–692.
- Rose, E., 2016. *Bosnian Court Ruling Lends Weight to Croat Agitation*. [Online] Available at: www.balkaninsight.com/en/article/bosnian-court-ruling-spells-constitutional-trouble-say-experts-12-14-2016 [Accessed 16 May 2017].
- Silber, L. & Little, A., 1995. *The Death of Yugoslavia*. London: Penguin Books.

- Social Change Initiative, 2016. *Funding in Conflict-affected Environments: Philanthropy for Social Justice and Peace*. [Online] Available at: www.thesocialchangeinitiative.org/wp-content/uploads/2016/11/FundingInConflictNovV01.pdf [Accessed 16 May 2017].
- Sukrke, A. & Samset, I., 2007. What's in a Figure? Estimating Recurrence of Civil War. *International Peacekeeping*, 14(2), pp. 195–203.
- Swiss Federal Department of International Affairs, 2013. *Swiss Cooperation Strategy for Nepal 2013-2017*, Bern: Swiss Federal Department of International Affairs.
- Szasz, P. C., 1996. The Protection of Human Rights Through the Dayton/Paris Peace Agreement on Bosnia. *The American Journal of International Law*, 90(2), pp. 301–316.
- Thapa, D. 2017. Stability or Social Justice? Political Settlements in Nepal. In: A. Ramsbotham and D. Thapa, eds. *Two Steps Forwards, One Step Back: The Peace Process in Nepal*. London: Conciliation Resources, pp. 13–17. Available at: www.c-r.org/accord/nepal/key-texts [Accessed 16 May 2017].
- The White House, 2002. *The National Security Strategy of the United States of America*, Washington, D.C.: The White House.
- Trbovich, A. S., 2008. *A Legal Geography of Yugoslavia's Disintegration*. Oxford: Oxford University Press.
- UN Commission on Human Rights, 1998. *Human Rights, Mass Exoduses and Displaced Persons. Addendum: Guiding Principles on Internal Displacement*, New York: United Nations.
- UN Commission on Human Rights, 2004. *The Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms*, New York: United Nations.
- UN Commission on Human Rights, 2005. *Report of Diane Orentlicher, independent expert to update the Set of principles to combat impunity - Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, New York: United Nations.
- UN Department of Peacekeeping Operations, Department of Field Support, 2008. *United Nations Peacekeeping Operations: Principles and Guidelines*, New York: United Nations.
- UN Independent Investigation on Burundi, 2015. *Final Report of the Mission of Independent Experts to Burundi, A/HRC/33/37*. [Online] Available at: www.ohchr.org/EN/HRBodies/HRC/UNIIB/Pages/UNIIB.aspx [Accessed 16 May 2017].
- UN Women, 2015. *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on Women, Peace and Security*, New York: UN Women.
- UNDP, 2012. *Governance for Peace: Securing the Social Contract*. [Online] Available at: www.undp.org/content/undp/en/home/librarypage/crisis-prevention-and-recovery/governance_for_peacesecuringthesocialcontract.html [Accessed 16 May 2017].
- UNICEF, 2007. *The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, Paris: UNICEF.
- United Nations, 2015a. *The Challenge of Sustaining Peace: Report of the Advisory Group of Experts for the 2015 Review of the United Nations Peacebuilding Architecture*, New York: United Nations.

- United Nations, 2015b. *Uniting our Strengths for Peace – Politics, Partnership and People: Report of the High-Level Panel on United Nations Peace Operations*, New York: United Nations.
- UN Security Council Resolution 1325, 2000. *UNSCR 1325: Resolution on Women, Peace and Security*, New York: United Nations.
- Unsworth, S., 2009. What's Politics got to do with it?: Why donors find it so hard to come to terms with politics, and why this matters. *Journal of International Development*, 21(6), pp. 883–894.
- van Veen, E. & Dudouet, V., 2017. Hitting the target, but missing the point? Assessing donor support for inclusive and legitimate politics in fragile societies. *International Network on Conflict and Fragility, OECD*, January.
- Vandeginste, S., 2011a. Bypassing the Prohibition of Amnesty for Human Rights Crimes Under International Law: Lessons Learned from the Burundi Peace Process. *Netherlands Quarterly of Human Rights*, 29(2), pp. 189–211.
- Vandeginste, S., 2011b. Power-sharing as a fragile safety valve in times of electoral turmoil: the costs and benefits of Burundi's 2010 elections. *The Journal of Modern African Studies*, 49(2), pp. 315–335.
- Vandeginste, S., 2014. Governing ethnicity after genocide: ethnic amnesia in Rwanda versus ethnic power-sharing in Burundi. *Journal of Eastern African Studies*, 8(2), pp. 263–277.
- Vandeginste, S., 2015. Arusha at 15: Reflections on Power-Sharing, Peace and Transition in Burundi. *IOB Working Paper*.
- Vandeginste, S., 2016. Legal Loopholes and the Politics of Executive Term Limits: Insights from Burundi. 51(2), pp. 39–63.
- Walker, N., 2012. Universalism and Particularism in Human Rights: Trade-Off or Productive Tension?. *Edinburgh School of Law Research Paper*, 14 March, Issue 2012/10.
- Walker, N., 2014. 'Our Constitutional Unsettlement'. *Public Law* 2014 (7): 529–548.
- Whitfield, T., 2012. Nepal's Masala Peacemaking. In: S. von Einsiedel, D. M. Malone & S. Pradhan, eds. *Nepal in Transition: From People's War to Fragile Peace*. Cambridge: Cambridge University Press, pp. 155–174.
- Wilson, R. A., 2006. Afterword to 'Anthropology and Human Rights in a New Key': The Social Life of Human Rights. *American Anthropologist*, 108(1), pp. 77–83.
- World Bank, 2011. *World Development Report 2011: Conflict, Security and Development*. Washington, D.C.: World Bank.

Many recent peace processes appear to have produced an uncertain, and sometimes transitory, peace. This report points to ways in which peace agreements based on compromise and without a clear pre-commitment to the common good tend to institutionalise 'formalised political unsettlement', i.e. a situation where the root causes of a conflict are carried into the new political and legal institutions, rather than being resolved. This report argues that human rights commitments can facilitate entry points for the creation of an inclusive political order and suggests a novel approach to the implementation of human rights measures. In so doing, it responds to calls from development and peacebuilding actors for more politically smart tactics with regard to intervention in fragile and conflict-affected states.

ISBN 978-0-85672-620-0

THE BRITISH ACADEMY

10–11 Carlton House Terrace

London SW1Y 5AH

+44 (0)207 969 5200

Registered Charity: Number 233176

www.britishacademy.ac.uk

Follow us on @britac_news



**BRITISH
ACADEMY**

for the humanities and social sciences