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INSTITUTE FOR INTEGRATED TRANSITIONS

Inclusive Social Contracts in Fragile States in Transition

Strengthening the Building Blocks of Success

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Introduction

Dozens of countries have experienced transitions out of armed conflict or authoritarian rule in the past four decades, yet few have met expectations. Fewer still have produced inclusive social contracts to guide their future. Insecurity, weak institutions and competition for power and resources often create a zero-sum dynamic between groups, overwhelming attempts to forge a new social contract. Nowhere has this been more the case than in fragile states.

There has been notable progress among policymakers in recent years to understand the unique challenges fragile states face and strategise how they might be overcome. There is, for example, a greater focus on issues such as inclusive politics,[1] societal dynamics[2] and local solutions. In-depth country assessments are now considered essential for developing a clear roadmap to reduce fragility.[3] However, increases in understanding have not been matched by improvements in practice; weaknesses persist in how fragility is defined, flagged, assessed and addressed. Too often, the wrong issues are emphasised, possible trouble spots go unidentified, lessons gained from assessments are unused, and links between fragility and conflict cycles are underestimated.

Building upon the New Deal for Engagement in Fragile States and other peacebuilding documents, this publication examines an approach more rooted in the societal and institutional dynamics that cause fragility than is normally emphasised. These dynamics frame how more formal institutions and processes work and thus determine the quality of government, inclusiveness of the economic and political systems, trajectory of a political transition and whether violence or authoritarianism will reappear. It breaks new ground in the issues it examines, the dynamics it emphasises and the policy recommendations it offers.

The study that lies at its heart places particular emphasis on periods of transition out of armed conflict or repressive rule. It is these critical junctures when – in ideal cases – a window of opportunity exists for disrupting and gradually overcoming the harmful underlying societal and institutional problems that too often condemn fragile states to repeat cycles of authoritarian rule, violent conflict or both. It focuses in particular on processes of social contract formation, which have rightly become a major concern of the global peacebuilding community (e.g., Peacebuilding and Statebuilding Goals and Sustainable Development Goal 16 on peace, justice and strong institutions). However, in contrast to most studies and practice, it attaches less importance to formal vertical processes and institutions and more to the larger informal and horizontal drivers of fragility. It assumes that while the state-society relationship is obviously important, the society-society one is at least as relevant, as the perception and reality of a state's effectiveness and legitimacy are strongly and directly influenced by the dynamics of the society in which it is embedded.

The central topic thus is *how to strengthen the building blocks of an inclusive social contract in fragile states during times of political and post-conflict transition*. This involves assessing why and the degree to which the following combination of mechanisms should work in conjunction with each other to facilitate attainment of a durable and inclusive social contract in these states:

1) the bringing together of different groups around a social covenant that bridges social divides and creates a greater common sense of nationhood;

2) the deliberate adoption of inclusiveness as a guiding principle across a broad range of policy areas (politics, education, rule of law, security, economics, culture); and

3) the establishment or strengthening of measures that enforce political commitments and reduce biases in how institutions work.

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[1] New Deal for Engagement in Fragile States, http://www.pbsbdialogue.org/en/new-deal/new-deal-principles/.
[2] Alexandre Marc et al., *Societal Dynamics and Fragility: Engaging Societies in Responding to Fragile Situations* (Washington, DC: World Bank, 2013).
[3] International Dialogue on Peacebuilding and Statebuilding (IDPS), "Guidance Note On Fragility Assessments," May 2014, 1-2.

The focus is less on each individual mechanism, more on how all three interact, with the result of either reinforcing or weakening each other and the social contract formation process as a whole.

Combining in-depth expert interviews with extensive desk and field research, the study examines and contrasts positive and negative lessons from specific transitions that occurred in four regional pairings of cases. Each pairing reflects varying degrees of fragility:

1) Tunisia's and Libya's respective transitions from 2011 to present;

2) Colombia's transition from 1991 to present and Guatemala's transition from 1985 to present;

3) Ukraine's transition from 2014 to present and Macedonia's transition from 2001 to present (with significant references to previous transitions in both cases); and

4) Sri Lanka's transition from 1994 to 2004 (with some reference to the post-2015 transition) and Nepal's transition from 2006 to present.

The overall aim is to enable national and international policymakers and practitioners to better understand the processes that influence how likely a country is to forge a strong, inclusive social contract; better assess conditions within countries; and better design and implement programs to shape such processes and conditions, with the aim to overcome fragility.

The first three chapters set the stage with introductions to the problems of fragility, the challenges of transitions, and the premises that guide the three overarching research questions. The subsequent four chapters – the research component – examine the regional pairings (eight states in all). The final two chapters present conclusions and policy recommendations.

Above all, **this publication shows the critical importance of strengthening both the relationships between groups (social cohesion) and the capacity of institutions to work efficiently and equitably across groups in order to bring about social contract formation**. The former is essential to managing conflict, overcoming a history of discord, changing attitudes and forging a consensus on change. The latter is essential to ensuring that any new policies can be implemented as designed and not become a further source of tension.

The conclusions complement key ideas espoused in IFIT's Inclusive Transitions Framework, which lays out a roadmap for advancing inclusiveness in fragile states in times of transition. The emphasis there was on the "what"; here it is on the "how". Deeper examinations are also made of the specific challenges in bringing together groups that have long had difficult ties and of the importance of institutions being able to deliver inclusive change.

There is no magic bullet to advance social contract formation during difficult transitions. Nevertheless, and most importantly, this publication seeks to contribute to improved practice by showing, through in-depth case studies, what issues to focus on and how they might be resolved.

Definitions of Key Terms

Fragile states*:* A fragile state has two defining characteristics: a society deeply fractured along political-identity or ideological lines, such that the population is unable to cooperate effectively in pursuit of public goods; and dysfunctional formal and informal institutions that cannot act equitably to resolve differences among groups or constructively channel political competition. These defects manifest themselves to varying degrees across fragile states, but in general create unstable political orders that are difficult to reform and pose an obstacle to ending or preventing further violent conflict. At least symptoms of fragility exist in some form in all states.

Inclusive dynamic: This is the end-result of inclusive policies and rhetoric when practised systematically across the political and social spectrum over an extended period, and when reinforced by institutions that act equitably towards every group and individual regardless of background. Once in place, an inclusive dynamic reinforces itself in a virtuous cycle; the more people act inclusively, the stronger the dynamic is.

Social cohesion: This reflects the overall quality of relationships across groups. More cohesive societies enjoy higher levels of trust and collaboration, which enables them to interact constructively in ways that promote common goals. In less cohesive societies, groups have less constructive interactions, marked by distrust, and are thus less able to cooperate in pursuit of common goals. The nature of institutions has a major impact on social cohesion.

Social contract: A social contract is an agreement (usually presumed) defining the relationship between a society and a state. It is based on the concept that the people are the ultimate arbitrators of the state's political power, and governments must serve the people (e.g., by providing public goods) or give up power. The legitimacy of a government or its key institutions (rather than of individual politicians) is one way to judge whether a population thinks that its will is reflected. Perceptions of legitimacy can differ substantially across societal groups.

Social covenant: A social covenant is an agreement (written or presumed) defining a framework for cooperation among the major groups of a society. Forged from negotiations between groups, it is a society-society rather than state-society pact. It builds a common identity that defines the origins and make-up of political society and a common sense of purpose for the state.

Transitions: Transitions are critical political junctures at which a country emerges from war or repression. In ideal cases, they open a rare window of opportunity for system-level change that can disrupt (and start to overcome) the harmful underlying societal tensions and institutional deficits that often condemn fragile and conflict-affected states to repeat cycles of authoritarian rule, violent conflict or both.

PART I

OPENING CONSIDERATIONS

1. Fragility: Understanding its Sources

Many international policymakers misdiagnose what fragility is and what causes it. Fragility is often believed to result from: 1) a weak state; and 2) a weak state-society relationship. Governments are thought to lack legitimacy because of how they are chosen and to be unable to provide quality public goods because of a lack of capacity or will. According to this thinking, fixing what ails the state–society relationship is largely a matter of holding regular elections and increasing the government's ability, once elected, to execute core functions such as providing education, healthcare, justice and security.[4] For instance, a 2012 OECD report defined fragile states as unable to "develop mutually constructive relations with society" and often having a "weak capacity to carry out basic governance functions."[5] It highlighted the importance of the state-society relationship fifteen times and the social contract thirteen, yet never touched upon the societal dynamics that determine these relationships.[6]

Though many international actors have recognised that the unique problems of fragile states require specialised responses,[7] the substance of these responses remains an open question. In some policy circles, there has been increased emphasis on horizontal inequalities, social capital and the need for institutions to mediate between groups. Yet, such ideas still operate at the margin of thinking on policy and have had little impact on programming.[8]

Most problematically, fragility's causes and effects continue to be confused. For example, widely-cited lists of fragile states[9] cite characteristics that have no causal relationship with fragility (such as population growth and income levels); are products, not causes, of fragility (such as violence and corruption levels); or are based on Western political norms (such as regime type). By measuring outcomes rather than processes, existing indices conflate resilience (or luck) with true robustness, automatically characterising as non-fragile states that have exhibited stability, even if that stability belies significant weakness. Not surprisingly, these lists have performed poorly in predicting conflict or state failure. Many Arab countries now in turmoil (e.g., Libya and Syria) were not on them before 2011.[10] Though any tool will have limits to its predictive power, a framework that more correctly identifies drivers of change rather than products of crisis is far likelier to yield a practicable policy toolbox capable of identifying options for bolstering inclusion, prosperity and security before conflict unfolds.

An additional problem is that the concept of fragility is often based on political and moral suppositions that underlie the Western conception of how states *should* work and thus how they should be improved. Discussion frequently focuses on the importance of democracy and human rights. Yet, there is little evidence existing models of promoting such goods can yield solutions to the deeper structural challenges fragile states face. A state needs a minimum level of cohesion and institutionalisation before it can effectively implement a democratic social contract.[11]

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[4] Alexandre Marc et al, Societal Dynamics and Fragility: Engaging Societies in Responding to Fragile Situations (Washington, DC: World Bank, 2013), 1–2, 12.

[5] Emmanuel Letouze´ and Juana de Catheu, "Fragile States 2013: Resource Flows and Trends in a Shifting World," Organisation for Economic Cooperation and Development, 2012, 11, http://www.oecd.org/dac/incaf/FragileStates2013.pdf.

[6] Letouzé and de Catheu, "Fragile States 2013."

[7] See, for example, Organisation for Economic Cooperation and Development, "Principles for Good International Engagement in Fragile States and Situations," April 2007, http://www.oecd.org/development/incaf/38368714.pdf.

[8] For an example of new thinking, see World Bank, *World Development Report 2011* (Washington, DC: World Bank, 2011) and Marc et al., *Societal Dynamics and Fragility*. Britain's Department for International Development (DFID), for example, takes a more holistic approach than many other aid organisations, yet still ends up focusing on "core state functions" including "citizen security, justice and financial and economic management," and "strong state-society relations." See DFID, "Building Peaceful States and Societies: A DFID Practice Paper," 2010, 6–7.

[9] See, for example, those formulated by the Fund for Peace and *Foreign Policy* (which together publish the Fragile States Index), the Political Instability Task Force (originally the State Failure Task Force), the Brookings Institution, the World Bank, the OECD, or the Institute for Economics and Peace.

[10] Seth Kaplan, "Identifying Truly Fragile States," *Washington Quarterly* 37, no. 1 (January 2, 2014): 50–51, doi:10.1080/0163660X.2014.893173.

[11] Samuel Huntington argued as much almost half a century ago. See Huntington, *Political Order in Changing Societies* (New Haven, CT: Yale University Press, 1968). Intellectual blinders are further solidified by the needs of donors and international organisations to

The Underlying – and oft-ignored – Society

With weak institutions and deep social divisions, fragile states such as Somalia, Afghanistan, Sri Lanka and Libya face formidable obstacles to stability, development and democracy and are often trapped in a vicious cycle whereby instability and underdevelopment feed on each other. Social divisions hamper efforts at improving governance and fostering economic opportunity, which in turn creates discontent and a zero-sum competition for power and resources.

A good way to understand whether a country is structurally fragile is to analyse how individuals, groups and institutions interact. Though the state is important, its function is largely a product of how groups in society relate to one another and to it. Capacity matters, but the functioning of a state is strongly influenced by the dynamics of the society in which it is embedded.

Social cohesion – the quality of relationships between groups – determines levels of trust and collaboration and how institutions interact. The more cohesive a society, the greater likelihood groups and institutions will work together and manage conflict constructively. Even if consensus is elusive, the great majority realises the importance of working together according to commonly accepted rules and values. Social cohesion is especially vital in less developed countries, because formal institutions are weak and often susceptible to manipulation, corruption and bias. Unlike those in the more institutionalised developed world, they are often incapable of neutral mediation and enforcement of rules and unable to deliver truly public goods. Elites and officials thus can have much undue discretion, even compulsion, to bend rules and appropriate state resources.

When formal institutions are weak, pre-existing social cohesion can, to an extent, encourage leaders to resolve problems with public spirit, as happened at crucial times in Somaliland, Chile and Tunisia. But generally it is very hard in such contexts to improve formal institutions, an approach often advocated by donors, because elites and officials have strong incentives to undermine reform as harmful to their interests. If a state is strongly formally institutionalised, however, social fractures are less likely, or at least matter much less, because the government (except when highly autocratic) will be much more likely to act according to a principle of neutrality and thus be a more equitable conflict manager and resource distributor.

Institutionalisation of the state is not synonymous with strong security forces; a country can have powerful security forces that serve the interests only of a particular clan, ethnic group or ruling clique. Rather, it is about "the extent to which the political organisations and procedures encompass activity in the society" and are able by their "adaptability, complexity, autonomy, and coherence" to respond with resilience to its rapidly evolving needs.[12]

Fragility can be understood as existing along two dimensions (see Table 1), with socially cohesive, highly institutionalised states occupying one corner and socially fractious and poorly institutionalised states the opposite one.[13] Combinations of fragility exist between these extremes. Dynamic states (category I) are genuinely robust and capable of fully tackling development challenges. Stable but sluggish states (category II) have potentially bright futures if they can foster good investment climates and improve their capabilities. Fragile but controlled states (category III) are inherently weak and potentially unstable. Countries that combine low-capability governments (especially low coercive powers) with highly fragmented political cultures (category IV) are fundamentally weak and unstable. Fragile states are concentrated in categories III and IV.

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find strong leaders, centralised governments, and formalised processes and institutions with which to work. Their own financial instruments, accountability mechanisms, and human-resource policies limit their ability to do otherwise. This strongly biases action in particular directions whether local situations call for it or not.

[12] Samuel P. Huntington, "Political Development and Political Decay," *World Politics* 17 no. 3 (April 1965): 393–94.

[13] There is some similarity between this analysis and the limited access orders used in Douglass North, John Wallis, Steven Webb, and Barry Weingast, eds., *In the Shadow of Violence: Politics, Economics, and the Problems of Development* (Cambridge: Cambridge University Press, 2012).

Table 1. Four Types of Political Orders (with Examples)[14]

	Low Political–Identity Fragmentation	High Political–Identity Fragmentation
High Institutionalisation (or at least high coercive capacity)	*I: Dynamic* Botswana Turkey Chile China	*III: Fragile but Controlled* Syria (before 2011) Soviet Union (before 1991) Iraq (before 2003) Saudi Arabia Uzbekistan
Low Institutionalisation	*II: Stable but Sluggish* Senegal Armenia Tanzania Bangladesh	*IV: Fragile and Unstable* Nigeria Congo (DRC) Somalia Libya (after 2011) Syria (after 2011)

Of course, different combinations of fragility exist all along the continuum, with even the most dynamic countries having some degree of it. But wherever they are on the continuum and no matter how successful, states and societies need incessantly to reinforce cohesion, inclusiveness and institutions (the three issues this publication examines) or risk seeing their fragility increase.

States towards the continuum's fragile end are trapped in a vicious cycle of societal fragmentation and weak institutions that feed on one another and make escape more difficult. The combination of profound social divisions and weak state institutions in Lebanon, Libya and Yemen, for instance, means that institutions become stages for sometimes-violent competition over power. In African countries such as Nigeria and Kenya, the state has limited islands of effectiveness but is constrained by networks of patronage and corruption. It lacks the autonomy and capacity to manage conflict and drive development forward constructively and is beholden to competitive power dynamics within society.

These underlying forces affect how economies, politics, security apparatuses, administrative organs and legal systems perform. The more cohesive the country, the more likely these will work constructively, inclusively and with less bias. Institutions may still be flawed (especially if we define the highest standard as what exists in the West), but will be much more constructive catalysts for cooperation, dispute resolution, institutional reform, industrialisation (crucial to inclusive growth) and democratisation. In fragile states, institutions will be susceptible to capture or corruption. It is virtually impossible to construct sturdy formal institutions in Afghanistan or Somalia without mitigating the social cleavages that threaten to rip them apart. Elections or economic reforms alone cannot lead to deepening democracy and growth, not least as long-standing group divisions and the residue of historic betrayals rarely dissipate quickly.

This publication aims to provide a more realistic policy framework, taking into account the structural constraints that fragility presents rather than discounting them.

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[14] Kaplan, "Identifying Truly Fragile States," p. 55.

2. Transitions: Opportunities and Risks

When a conflict draws to a close or an authoritarian regime falls, opportunities open for a society to chart a new path. In the best cases, these moments present a critical and time-sensitive possibility to break with the primary causes of past disorder and violence and forge a new national dynamic based on inclusiveness. The first few years of a transition are the most important, as what happens then can set in place enduring dynamics that lead the country along a particular path. While consolidation of legitimate, equitable, inclusive, accountable governance is a long-term process, a well-managed start can lay the groundwork for formation of a robust, sustainable social contract.

Experience is hugely varied. We generally associate "success" with the transitions in places such as Spain, Northern Ireland, Chile, Brazil, the Czech Republic, South Africa, Ghana, South Korea and Indonesia. We tend to associate "failure" with those in such countries as Somalia, the Democratic Republic of the Congo (DRC), Iraq, Libya and Afghanistan. Yet, the more typical examples – such as El Salvador, Hungary, Romania, Serbia, Uganda, Liberia, Timor-Leste, the Philippines, Lebanon and Algeria – do not lend themselves to easy characterisation.

The reasons for mixed outcomes are numerous. One centres on starting conditions. All else being equal, a country that enters a transition with a solid middle class is likely to do better than one without (Uruguay versus Guatemala); one that has functioning public institutions is likely to succeed more (Tunisia versus Libya); one that has a high degree of social cohesion is likely to do better than one without (Poland versus Nigeria); and so on.

But these and other hard-to-control factors (e.g., geography and neighbourhood) should not eclipse another crucial variable. The policy decisions taken during a transition by political, civic and business leaders, as well as the process for reaching those decisions, are also key determinants. It is precisely in this arena where inclusive-oriented leaders can have an enduring impact. This is especially relevant for fragile states. Resilient states can rely on strong social bonds, trust and a set of informal institutions that establish how to work together despite differences of opinion; fragile states cannot. As a result, the forces transitions unleash tend to bring a resilient state's society together but push a fragile state's society apart.

Resilient states can work even when their governments fall. Leaders are expected to come together to settle disputes in a way that builds trust, strengthens ties and leads to a new, widely accepted political order. In fragile states, the reverse is often true. During transitions, leaders tend to compete in ways that undermine trust, weaken ties among them and yield an unstable political order with low legitimacy. Inclusive-oriented political, social and business leaders face an uphill struggle from the start in a fragile state. Beyond these challenges lies an additional set of complications and constraints that vary more in degree than kind. They include:

Tenuous political settlements: The forces that come to power during a transition typically rely on an initial agreement that binds the major actors together. This can be explicit (the 1977 Moncloa Pact in Spain and peace accords in Guatemala and Sierra Leone) or implicit (Kosovo in 1999, Ukraine in 2004). Whatever its origin or form, the initial political settlement in a fragile state is usually weakly binding and may exclude important groups, making it difficult for a new or interim regime to maintain public support when crises arise.

Clashing visions and priorities: Even if key actors in a fragile state come together to end a war or overthrow an authoritarian regime, they may quickly deadlock over how to move forward, as groups may have starkly contrasting views of how the state should be re-organised and key resources distributed. Religion can be especially divisive in both countries with multiple creeds (Syria and the Central African Republic) and those struggling to determine its role in public life (Egypt and Libya), because it permits few areas for compromise and accommodation.

Economic malaise: Living conditions and access to vital goods frequently are crucial in igniting the public anger that sparks a transition. Yet, these typically are difficult to improve in fragile states because of weak economic and educational foundations. Often, budget deficits will widen in transitions, forcing governments to cut public spending. Instability frequently reduces private investment, resulting in decreased job opportunities. People may see no improvement in their lives for many years, contributing to a rise in social tensions and decreased support for reformists.

Weak non-state sectors: Though activist groups, trade unions and social movements often play a key role in overturning dictators or ending civil wars, they tend to be less adept in transition policymaking, in some cases dividing into competing factions. The business sector's frailty may also be revealed. With no political patron to dole out special concessions, industrialists may go out of business. Similarly, the local media tends to lack the independence and professionalism necessary to act effectively and impartially in the early stage, just when most needed.

The weight of history: When states transition, old mind-sets and conflicts acquire new salience in everything from elections (e.g., the ethno-religious divide in Iraq) to justice (e.g., a decade of war crimes prosecutions in Croatia primarily targeting ethnic Serbs). As public support can rapidly turn to disillusionment, a dangerous nostalgia can arise for the old order, when there was more oppression but less instability and uncertainty. Populist and authoritarian leaders can exploit these circumstances to (re)take power.

Spiking violence: Civil strife and political violence (whether horizontally or vertically directed) may recede in a transition only to be replaced by a rise in common crime and more ad hoc forms of terror or violence. Extremists, sectarian groups and leaders of a former regime may use threats and acts of violence to gain or regain power and influence. When combined with tenuous political settlements, a fragile state's weak institutionalisation offers these disruptive actors ample opportunities to exploit, with devastating social, political and economic impacts.

Transnational organised crime: Transnational criminal activity has skyrocketed in recent years due to globalisation and technological change. This threatens countries everywhere, but fragile states in transition are especially vulnerable. Transnational criminal groups target weak states with systemic violence and corruption, undermining institutions and intimidating or killing important political, judicial and economic actors. Their most common offences include money laundering, cyber-crimes and trafficking of people, drugs, weapons, endangered species, body parts or even nuclear material. These activities may hinder progress in a wide range of areas and weaken support for change.

International disorganisation: Bilateral donors, multilateral agencies and international NGOs can be significant sources of financial aid and diplomatic influence in transitions. Yet, the immense number of actors, with their particular interests and operational requirements (and frequently limited local knowledge), can easily overwhelm fragile states. The typical result – after an initial honeymoon – is confusion, followed by frustration and, potentially, backlash against perceived corruption. There is also risk that their interventions, unless well organised, will cause more harm than good or be manipulated by domestic actors.
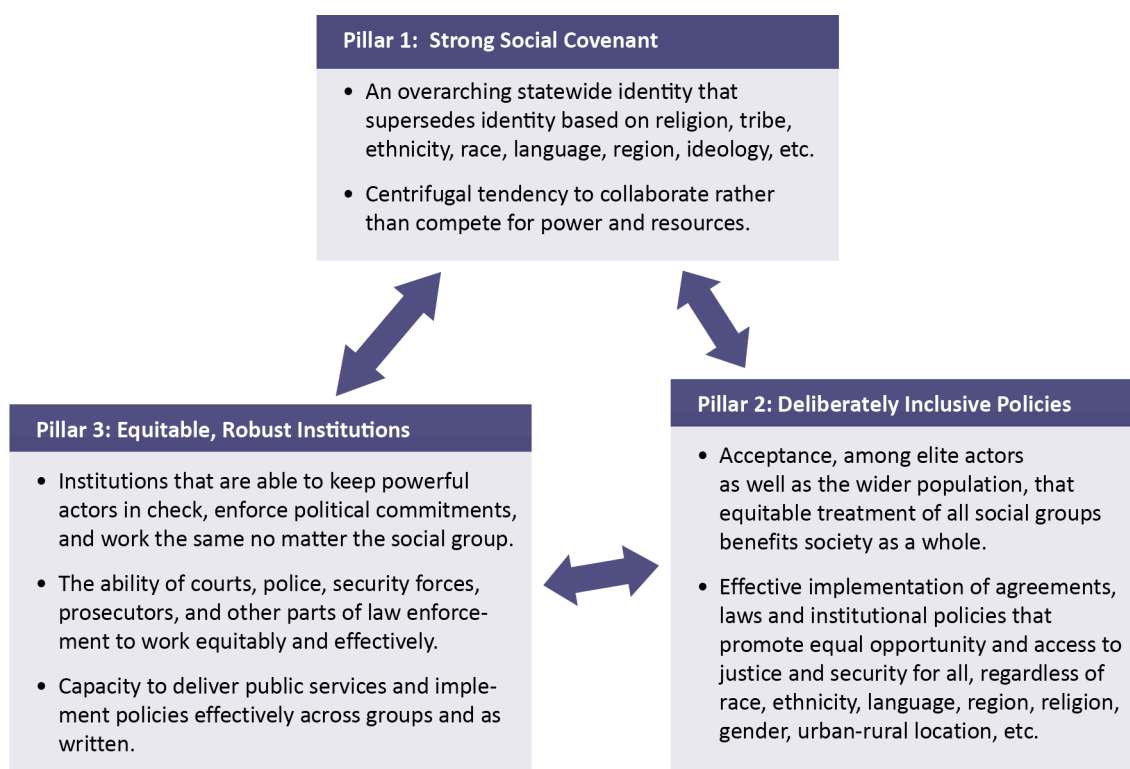
External hostility: A transition does not occur in geographic or political isolation. Important foreign powers sometimes stand in the way of success and may even fund or arm local groups opposed to change. They may see the fall of a regime as threatening their interests (e.g., Iran vis-à-vis Syria) or wish to help one or more favoured ethnic, religious, or ideological groups gain power (e.g. the US vis-à-vis Iraq in 2003). In some cases, they may even prefer instability (e.g. Russia in Ukraine), reducing the possibilities for an inclusive transition.

These issues each have direct bearing on the three building blocks for social contract formation discussed below. The more they constrain a society's ability to strengthen them, the more they hold back its ability to move ahead in a way that meets the needs of its people.

3. The Three Building Blocks

As noted, international efforts to reduce conflict and fragility tend to focus excessively on (re)crafting the vertical social contract and under-emphasise the informal and horizontal drivers of fragility.[15] This study posits that fragile states need a deeper assessment of societal and institutional conditions and contexts.[16] In particular, it assumes that the more systematically policy can reduce the underlying fault lines that divide societal groups and debilitate institutions, the more likely threats of renewed violence, social fragmentation and repression will be significantly diminished.[17] The more this is done, the more chance there is of making society more cohesive, policy more inclusive, institutions more equitable across groups, traditional and hybrid modalities of government more legitimate, new forms of communication more likely to bridge than exacerbate differences and influential social movements more drawn to cooperation.[18]

> **With this in mind, the key question examined here is whether and in what way the combination of 1) social covenants between groups, 2) deliberately inclusive policies across diverse policy areas and 3) institutions capable of holding elites accountable contributes to the formation and maintenance of inclusive social contracts in fragile states in transition.**

Pillar 1: Strong Social Covenant

- An overarching statewide identity that supersedes identity based on religion, tribe, ethnicity, race, language, region, ideology, etc.

- Centrifugal tendency to collaborate rather than compete for power and resources.

Pillar 3: Equitable, Robust Institutions

- Institutions that are able to keep powerful actors in check, enforce political commitments, and work the same no matter the social group.

- The ability of courts, police, security forces, prosecutors, and other parts of law enforcement to work equitably and effectively.

- Capacity to deliver public services and implement policies effectively across groups and as written.

Pillar 2: Deliberately Inclusive Policies

- Acceptance, among elite actors as well as the wider population, that equitable treatment of all social groups benefits society as a whole.

- Effective implementation of agreements, laws and institutional policies that promote equal opportunity and access to justice and security for all, regardless of race, ethnicity, language, region, religion, gender, urban-rural location, etc.

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[15] Alexandre Marc, *Societal Dynamics and Fragility: Engaging Societies in Responding to Fragile Situations* (Washington, D.C.: World Bank, 2013).

[16] Seymour Martin Lipset. "Some Social Requisites of Democracy: Economic Development and Political Legitimacy," *Am Polit Sci Rev American Political Science Review* 53, no. 01 (1959): 69-105; Juan Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-communist Europe* (Baltimore: Johns Hopkins University Press, 1996); Douglass North, John Wallis, Steven Webb, and Barry Weingast. *Limited Access Orders in the Developing World: A New Approach to the Problems of Development*, World Bank Policy Research Working Paper Vol. 4359, World Bank, 2007.

[17] Frances Stewart, *Horizontal Inequalities and Conflict: Understanding Group Violence in Multiethnic Societies* (Basingstoke: Palgrave Macmillan, 2008); Jeffrey Herbst, Terence McNamee, and Greg Mills (ed.), *On the Fault Line: Managing Tensions and Divisions Within Societies* (London: Profile Books, 2012).

[18] John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (Washington, D.C.: United States Institute of Peace Press, 2002); World Bank, *World Development Report 2011: Conflict, Security and Development* (Washington, D.C.: World Bank, 2011).

■ **Sub-question 1**: Can social covenants (or similar mechanisms) bring together groups with little history of cooperation and thereby facilitate the development of an inclusive social contract during a transition in a fragile state?

In fragile states, horizontal society-society dynamics have an important impact on how vertical state-society relationships evolve, and thus on whether a social contract can be fashioned and what its nature will be if achieved. Developing a "social covenant" that brings together various ethnic, religious, clan and ideological groups may be essential to progress on other fronts.[19]

Forged from negotiations among different groups and thus more akin to horizontal society-society compacts than vertical state-society compacts, social covenants build common identity, common values and a common sense of purpose for the state. They define the origins and makeup of political society, fashioned with the understanding that a cohesive society is a precondition to a successful state. They may be crucial to building legitimate political orders, because the most fragile states lack a common national identity and have populations with stark differences in loyalties, values and priorities. A society that is able to agree on its fundamental principles and values (e.g., who is or can become a citizen, what makes for a legitimate government, how to accommodate myriad ethnic, religious and regional identities) is likely to be better equipped to forge a sustainable social contract, particularly when institutions are weak and unable to enforce rules and commitments equitably.[20] Social contracts, which should set the stage for building a capable, accountable and responsive government, can also have a positive impact on social covenants. In the best cases, the two agreements can complement and reinforce each other.

Social covenants are crucial to building legitimate political orders in fragile states, because such countries are often imposed colonial fabrications viewed as artificial. They typically lack a common national identity and have populations with stark differences in loyalties, values and priorities. As Michael Hudson explained in his classic study of the "legitimacy shortage" in Arab politics:

> a legitimate political order… has to be [based on] some consensus about national identity, some agreement about the boundaries of the political community, and some collective understanding of national priorities. If the population within given political boundaries is so deeply divided within itself on ethnic or class [or, for that matter, religious or clan] lines, or if the demands of a larger supranational community [e.g., ethnic and religious groups that cross borders] are compelling to some [significant] portion of it, then it is extremely difficult to develop a legitimate order.[21]

In the 60 or so fragile states that face this dilemma,[22] a widely accepted and obeyed social contract is very hard to achieve if society's most important groups do not come together to reach consensus on how they will cooperate and what common vision will shape their shared state.

Thinking in terms of covenants does not take for granted that an explicit agreement is reached, any more than thinking in terms of a social contract does. However, in societies riven by divisions and lacking any organisation – such as the state – that can be relied upon to play umpire among competing groups, some agreement, even if implicit, among major identity and ideological groups can be crucial to reducing conflict and dividing power in a way that ensures a degree of common understanding on the national identity and how the state ought to work. In the absence of a working agreement or its informal equivalent, the chase after power and resources is likely to be approached as a zero-sum game between competitors, not compatriots – with dire effects.

With these considerations in mind, the case studies below focus on 1) whether and in what way social covenants (or related mechanisms) can contribute to the development of inclusive social contracts; 2) the practical effectiveness of the main formal and informal institutions that aim to bridge
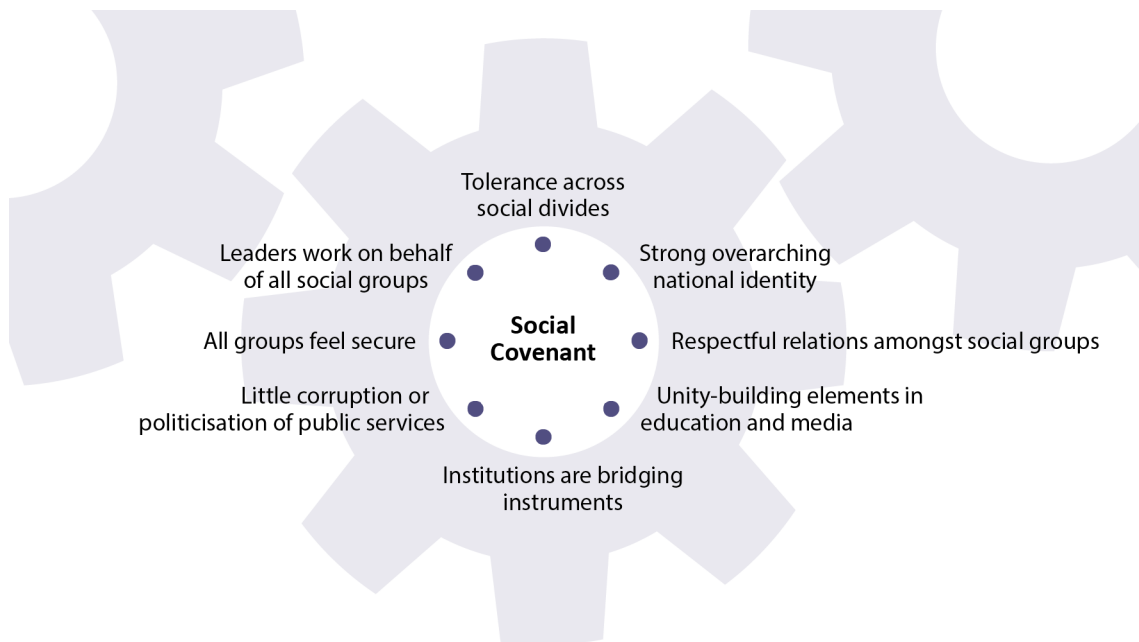
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[19] Daniel Elazar pioneered contemporary work on the use of social covenants in political thought. See http://www.jcpa.org/dje/index-cov.htm
[20] Seth Kaplan, *Social Covenants and Social Contracts in Transitions*, Oslo: Norwegian Peacebuilding Resource Centre, 2014.
[21] Michael Hudson, *Arab Politics: The Search for Legitimacy* (New Haven: Yale University Press, 1977), 389–90.
[22] This figure draw on the managing editor's own research.

societal and political divides and requirements to make them especially useful; and 3) the results when major actors who have historically opposed each other come together to promote adoption of formal or informal agreements between them.

Tolerance across
social divides

Leaders work on behalf
of all social groups

Strong overarching
national identity

**Social
Covenant**

All groups feel secure

Respectful relations amongst social groups

Little corruption or
politicisation of public services

Unity-building elements in
education and media

Institutions are bridging
instruments

The following spectrum is used to plot and show the trajectory:

No social covenant	Weak social covenant	Midstream social covenant	Mature social covenant	Robust social covenant
• Major political divisions and conflict among communities; • Widespread mistrust and fear; • Frequent incidences of inter-tribal or political conflict; • Militias based along tribal or political lines; • Atrocities met with further atrocities; • Civilian defence vigilante groups formed to fight rebels when state forces do not; • Absence of law and order; • Almost all or all efforts to reconcile unsuccessful; • Media based along tribal or political lines; • Lack of strong bonding social institutions.	• Struggle for power and resources between groups resulting in clashes between them; • Proliferation of small arms; • Disarmament in progress; • Social institutions limited in their ability to bridge cleavages; • Lack of credible cross-group national leaders, often due to partiality or conflicts of interest; • Little common media across groups; • Widespread corruption, politicisation of core public services and monetisation of politics; • Particular identities much more relevant to group behaviour than national identity.	• Government getting close to a monopoly on violence; • Weak national identity; • Social institutions expand quality and reach; • Leaders become more responsive to population; • Media heavily biased politically; • Significant corruption, politicisation of core services and monetisation of politics; • Political interference by non-state actors in policymaking and government contracts.	• Social institutions begin to play an active role in bringing groups together; • Groups respect each other within society; • High degree of tolerance for differences; • Institutions highly equitable and inclusive; • Widespread feeling of security across all groups; • National identity stronger than particular identities; • Public services and politics may have some corruption but are not viewed as favouring particular identity groups; • Media has limited bias and politicisation; • Core education, especially on history and current affairs, roughly similar across all groups.	• Friendly relationship among groups within society; • Strong overarching national identity that the great majority of people subscribe to; • Society is free from intimidation and victimisation, and there is tolerance across social divides; • Social institutions typically encompass people from across social divides and work as bridging, unifying instruments; • Leaders/elites feel strong social obligation to perform on behalf of population and advance the state; • Little corruption or politicisation of public services and politics; • Unifying elements in education and media much stronger than divisive elements.

■ **Sub-question 2**: How might deliberately inclusive policies (in the social, political, and economic spheres) facilitate social contract formation during a transition in a fragile state?

Global scholarship and policymaking increasingly emphasise the value of inclusiveness.[23] Terms like "inclusive political settlement" and "inclusive growth" feature prominently in literature and declarations across the development field.[24] Social inclusion and reconciliation have likewise been recognised as crucial.[25] There is also evidence of a growing focus on themes such as trust, reconciliation, crosscutting social capital, citizenship, coexistence and nation building.[26]
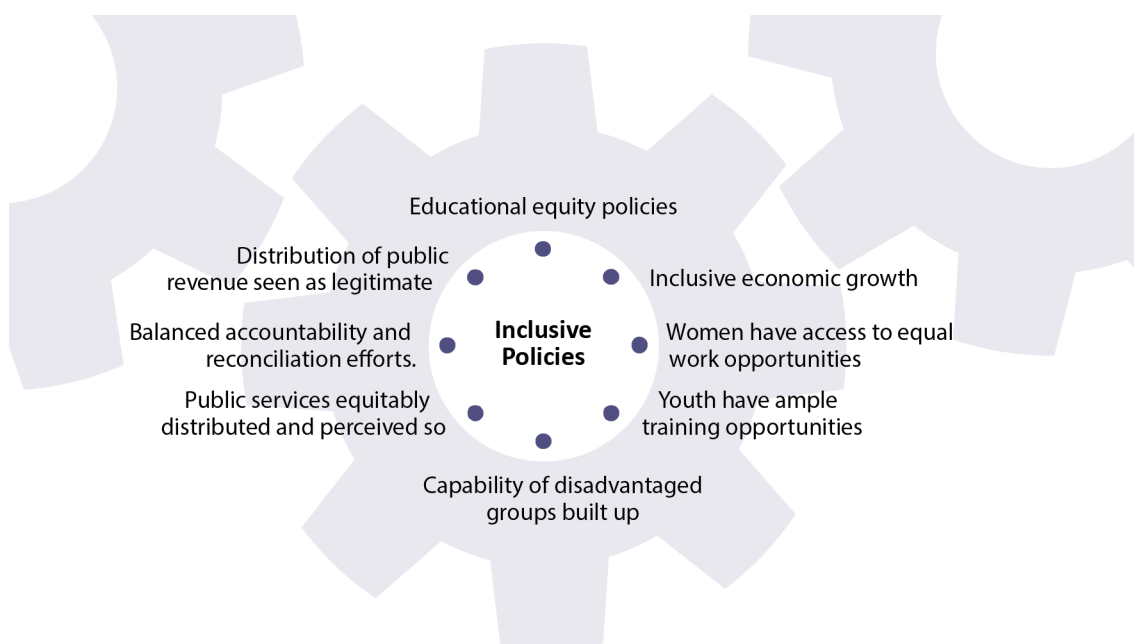
Though inclusiveness is usually not applied as a crosscutting approach for addressing the multifaceted challenges of transition processes, there are many potential advantages to doing so – particularly for facilitating social contract formation where ethnic, religious, clan, regional, and ideological groups, as well as women, are not treated equitably by the state and its institutions.

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[23] "Goal 16: Sustainable Development Knowledge Platform," accessed July 24, 2017, https://sustainabledevelopment.un.org/sdg16.

[24] Thomas Parks and William Cole, *Political Settlements: Implications for International Development Policy and Practice*, Asia Foundation, 2010; World Bank, World Development Report 2011: Conflict, Security and Development (Washington, D.C.: World Bank, 2011); Véronique Dudouet, and Stina Lundström, "Post-War Political Settlements From Participatory Transition Processes to Inclusive State-Building and Governance" (Berghof Foundation, 2016), http://www.berghof-foundation.org/fileadmin/redaktion/Publications/Papers/IPS_Synthesis_Report_web.pdf.

[25] James Putzel and Jonathan Di John, *Meeting the Challenges of Crisis States* (London, United Kingdom: Crisis States Research Centre at the London School of Economics and Political Science, 2012);
 Huma Haider, "(Re)Imagining Coexistence: Striving for Sustainable Return, Reintegration and Reconciliation in Bosnia and Herzegovina," *International Journal of Transitional Justice* 3, no. 1 (March 1, 2009): 91–113, doi:10.1093/ijtj/ijn035..

[26] Robert Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton, NJ: Princeton University Press, 1993); World Bank, *World Development Report 2011: Conflict, Security and Development* (Washington, D.C.: World Bank, 2011); "New Deal for Engagement in Fragile States," http://www.pbsbdialogue.org/en/new-deal/new-deal-principles/.

Creating a more inclusive dynamic requires persistence over a wide range of areas, such as security, education, politics and national symbols. To counteract the exclusionary tendencies common in fragile states in transition, political, social and business leaders may need to chart an overarching inclusive vision and apply it in at least some areas of public policy. For instance, recognising languages and holidays could be a relatively low-cost, easy-to-implement way for a country to become more inclusive. In the best cases, inclusiveness becomes a compass that steers elites and the public to build a common national identity and encourage mutual respect and tolerance. At a minimum, leaders can promote inclusiveness in more limited spheres in the hope that over time this will produce momentum towards greater change. Extending infrastructure to historically-excluded areas, accepting more women into leadership roles and offering minorities a chance to participate in national media programs all can set examples. Ultimately, all major segments of society must begin to feel that they are included in governance processes and practices and equitably so in whatever political, social and economic gains the transition brings.

Establishing an inclusive regime in a fragile state may be more likely if an integrated approach is adopted across many policy areas. This involves tackling economic, political, administrative, legal, security and socio-cultural practices that have produced patterns of conflict and exclusion which, if unaddressed, will undermine a transition or lead to negative outcomes. In its Inclusive Transitions Framework, IFIT has argued that leaders should use limited institutional capacity, financial resources and political capital to prioritise a mix of the following areas of inclusive action, depending on local need and urgency: 1) political dialogue processes; 2) nation-building programs; 3) institutional design; 4) elections and political party development; 5) transitional justice; 6) rule of law; 7) security; 8) education; 9) economic growth; and 10) taxation and administration of public resources.

In the eight case studies examined here, the hypothesis is that the more policies are deliberately designed and externally perceived to be inclusive, the more a transition will likely be seen as relevant and promising by a wide cross section of citizens. This can potentially generate more patience and good will, allowing leaders greater leeway to take difficult decisions that involve short-term hardship and persevere when change is, inevitably, slow in the making.

The following spectrum is used to plot and show the trajectory:

Very weak	Weak	Midstream	Mature	Very mature
• State spending perceived as highly inequitable; • Growth dependent mainly on commodities that enrich only a sliver of the population; • A few business groups dominate economy, with limited competition; • Provision of public services (education, healthcare, infrastructure, security) highly inequitable across districts and regions; • Transitional justice targets only one side of the conflict.	• Discussions on how to reorient public spending more equitably; • Reforms launched to improve access to public services; • Competition increased in bidding for government contracts; • Small and informal businesses get treated better by public authorities; • Youths feel alienated; • Policies significantly disadvantage women.	• Horizontal inequalities are targeted as a matter of public policy; • Access to and quality of public services improve; • Education reforms improve skills of graduates at middle and bottom rungs of society; • Tax reform seeks to create a more level playing field and targets previously untaxed elites; • Discrimination reduced; • Competition increased in key sectors dominated by a few players.	• Horizontal inequalities are reduced; • Natural resources are managed in a way that ensures revenues are employed in a generally equitable manner; • Religious freedom is ensured; • Anti-discrimination laws are passed; • Education provides competitive skills for people of all backgrounds; • Taxes ensure fair distribution of cost of running the state; • Women receive the same quality public services as men; • Youths have opportunity to participate in power structures.	• Public services equitably distributed and perceived as such across social groups; • Public revenue distributed according to a highly legitimate formula; • Affirmative action policies introduced to equalise access to higher education and public jobs; • Transitional justice perceived as treating all sides more or less equally; • Economic growth provides opportunity across groups and income levels; • State invests heavily in building capabilities of lower classes and disadvantaged groups; • Women receive the same work opportunities as men; • Youths have ample work opportunities.

■ **Sub-question 3**: What transition mechanisms might help enforce political commitments and reduce inequalities in how institutions work, thereby facilitating the forging of an inclusive social contract?

Weak institutions in fragile states, unable to keep powerful actors in check, make enforcement of political commitments and reduction of inequalities hard in transitions. Establishing widely accepted public entities strong enough to stand up to powerful political and economic actors depends on distributions of power and wealth fragile states usually lack. High levels of inequity and/or great differences in political and societal groups' strength create incentives to work against their establishment. Many states have weak rule of law largely because those in power prefer it.

Mechanisms to enforce the commitments and accountability of elites (e.g., impartial application of the law to powerful actors) are especially crucial in a transition, needed to safeguard social covenants and social contracts, maintain stability and generally move towards a predictable, inclusive political process. Without them, one or more parties is likely to withdraw from a foundational agreement, torpedo its application, appeal to external actors to override it or seek to use violence, money or other pressure to accomplish its goals. But the more committed parties are to foundational agreements (and the more these align with the interests of or provide incentives for the parties), the more likely such mechanisms will work as envisioned or not be necessary.[27]
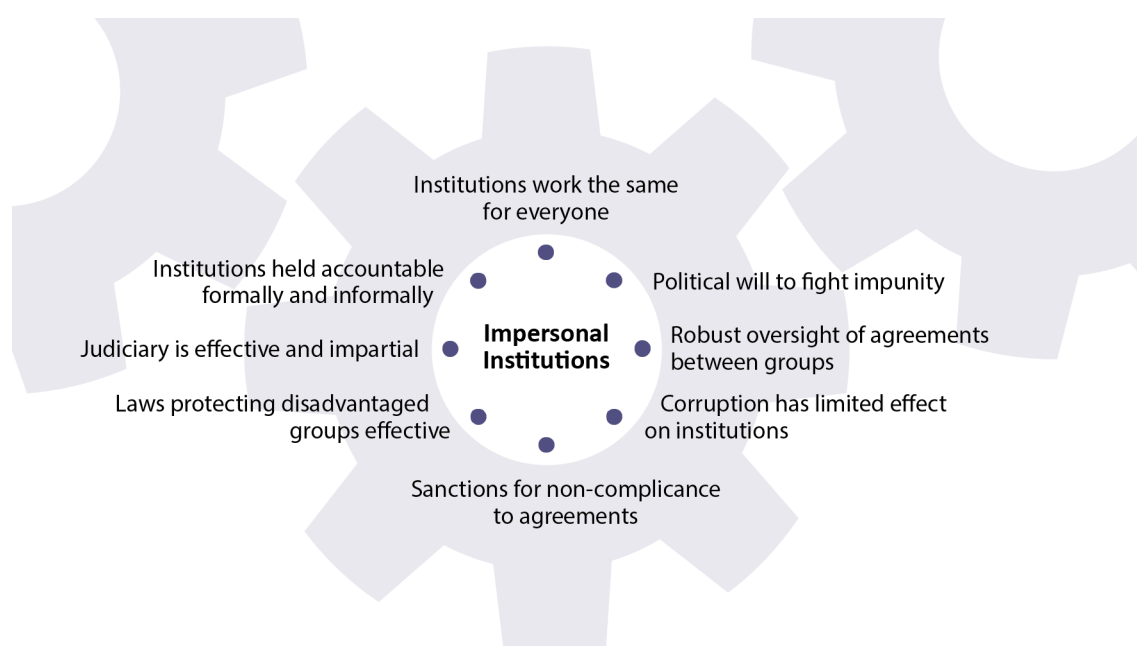
Commitment mechanisms must be tied to specific agreement provisions, include oversight and verification instruments and provide credible sanctions for noncompliance. Depending on context, they can be based on domestic or international institutions and be permanent or temporary. In the case of negotiated transitions in particular, the central accord has a meta-contractual (or foundation-

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[27] Seth Kaplan and Mark Freeman, *Inclusive Transitions Framework* (Barcelona: Institute for Integrated Transitions, 2015).

al) nature. If breached in bad faith, all other transition commitments between the parties become unreliable. Moreover, the actions of elites have strong demonstration effects: ordinary citizens will not respect the smaller rules if power holders blithely breach the bigger ones expressed in the central accord.

Beyond foundational agreements, it is important to ensure that courts, police, security forces, prosecutors and other parts of the justice side of government work equitably and effectively. This is especially so for historically disadvantaged and marginalised groups such as women, ethnic minorities and even members of the middle class without the excess cash and connections needed to ensure fair treatment by public authorities in many fragile states. Corruption can be so pervasive in these institutions that their employees actively use the organs of the state to enrich themselves at the expense of others, producing resentment towards government and its leaders and a recipe for instability and return of conflict or repression.[28] Ultimately, stronger institutions are about the kind of fairness that makes everyone in a society feel they have known and enforceable rights and remedies that cannot be overturned arbitrarily or ignored. A country can never be genuinely inclusive until its institutions work equitably for everyone, including the powerful.

With these considerations in mind, the case studies assess the effectiveness of various mechanisms to enforce commitments and reduce institutional biases and the degree to which these influence the ability to form sustainable, inclusive social contracts.


Institutions work the same for everyone

Institutions held accountable formally and informally

Political will to fight impunity

Judiciary is effective and impartial

Impersonal Institutions

Robust oversight of agreements between groups

Laws protecting disadvantaged groups effective

Corruption has limited effect on institutions

Sanctions for non-complicance to agreements

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[28] Rachel Kleinfeld, *Advancing the Rule of Law Abroad: Next Generation Reform*, Washington, D.C.: Carnegie Endowment for International Peace, 2012; Gary Haugen and Victor Boutros, *The Locust Effect: Why the End of Poverty Requires the End of Violence* (Oxford: Oxford University Press, 2014); Susanne Kühn and Laura B. Sherman, *Curbing corruption In Public Procurement: A Practical Guide* (Transparency International, 2014); "Corruption Perceptions Index 2016" *Transparency International* (2017) https://issuu.com/transparencyinternational/docs/2016_cpireport_en.

The following spectrum is used to plot and show the trajectory:

Very Weak	Weak	Midstream	Mature	Very Mature
• No mechanisms to enforce commitments between groups; • Elites are generally not sanctioned when they commit crimes or breach the law; • Selective and preferential justice: "might is right"; • High levels of corruption within the government or public authorities; • The capacity of institutions and government personnel is very low; • There are very few cases where high-profile people have been brought to justice (e.g., for corruption); • Regular interference of the executive in the affairs of major institutions; • Public service depends on hierarchy within the political system; • Few people trust the government, state institutions or political authorities.	• A transitional justice mechanism such as a Truth and Reconciliation Commission is established, to look at past human rights violations; • Mechanisms established to enforce agreements are not very effective; • Some independence and improvement in institutions that hold leaders/elites accountable; • Institutions are developing human and physical capacities, but major inconsistencies remain in how they operate; • No effective mechanisms to protect vulnerable groups, including women, the disabled, minorities and the elderly.	• Mechanisms to enforce agreements work inconsistently; • Formal discrimination is declining; • Efforts to decentralise and improve formal institutions are bearing fruit; • Some high profile prosecutions have been undertaken, but perception of corruption and political interference in justice still high; • Civil society organisations can readily challenge elites, hold government accountable; • Laws relating to natural resource management in place but with limited enforcement; • Improved reconciliation and dispute resolution; • Public confidence in the equity of institutions has increased; • Use of violence to resolve disputes is declining.	• Mechanisms to enforce agreements have oversight and verification instruments and sanctions for noncompliance; • Implementation of truth and reconciliation commission recommendations; • Impunity of leaders/elites clearly declining; • Laws to protect vulnerable groups; • Independence and accountability of the judiciary advancing; • Corruption still affects institutions but not in way that favours any group.	• Institutions more or less work the same for all no matter ethnicity, religion, income level or location; • Demonstrated political will to fight impunity; • Independence and accountability of institutions well established, formally and informally; • Effective laws protecting vulnerable groups in place; • Mechanisms to ensure agreements between groups have robust oversight, verification instruments and credible non-compliance sanctions.

The interaction of the three mechanisms: The case studies give important and distinctive answers to the three main sub-questions posed above. The results are interesting in isolation. Of greater interest, however, is what the research shows of the combination and interaction of the three main mechanisms (social covenants, deliberately inclusive policies and institutions to hold elites accountable). The formation of inclusive social contracts in fragile states in transition does not arise through the detached role of any one of these mechanisms. For that reason, the publication focuses attention on how movement in each of the three areas reinforces or weakens movement in the other two and how the interaction influences the social contract formation process. Also considered is whether positive movement in at least two areas may be sufficient, for a time, to at least partially advance formation of an inclusive social contract, even if positive movement in all three may ultimately be necessary for a stable, inclusive social contract.

The figure below illustrates this process, showing how the three building blocks are critical to the construction of a social contract. Each building block is represented as a gear to illustrate that if one does not function well, it can significantly slow the others and have a deleterious effect on formation of robust social contracts. Within each building block there are ideal end goals (outlined above) that societies should strive for, so as to ensure that each "gear," within the social contract "machine," works well.
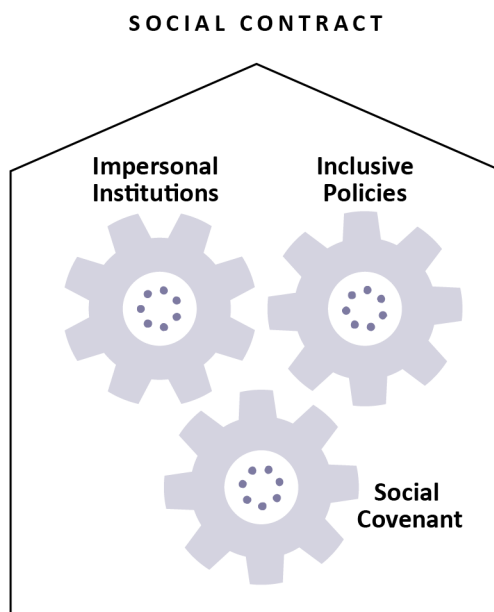
SOCIAL CONTRACT

With this interaction in mind, the following spectrum is used to plot and show the trajectory of social contract formation over time:

No social contract	Weak social contract	Midstream social contract	Mature social contract	Robust social contract
• Almost no political dialogue among factions; • Factions use violent measures to solve conflict (not necessarily continuously); • Most or all agreements are breached; • Marginalisation, forced displacement of certain groups; • Systemic political, social and economic oppression; • Arbitrary oppression and killings; • Breakdown in centre-periphery/ capital-regional relations; • Power is based on force; • The state is not present throughout the country; • Traditional governance systems have broken down; • Lack of inclusive or agreed political settlement; • Social cohesion across communities barely exists.	• Initiatives towards political dialogue to resolve political differences; • Lack of structured frameworks for consultations between groups; • Highly inequitable power sharing between groups; • Improving centre-periphery relations; • Constitutional review started; • Peacebuilding initiated; • Government service delivery begins to expand beyond capital; • Leaders have legitimacy, at least within their groups; • Decentralisation begins; • Accountability mechanisms still relatively weak.	• Formal dialogue between political parties exists; • A number of political dialogues conducted and agreements signed; • Peace agreements are respected and implemented and joint communiqués often signed; • Situation is generally peaceful; • Institutions support dialogue between political parties but lack of constructive cooperation; • Political tolerance increased; • Division of competencies clearly defined in the constitution but implementation still weak; • Functional local governments.	• Government officials chosen in credible, non-violent, inclusive political process; • Biases may exist in how institutions work, but outright discrimination is limited; • Stable, legitimate public authority exists throughout the country, working through ever improving institutions; • "Rules" of how dialogue and competition are conducted between groups are at least partly institutionalised; • Government can provide security everywhere and basic services to most of the country.	• Strong degree of political legitimacy and inclusiveness; • Robust and equitable governance; • An institutionalised peacebuilding framework, dialogue and power sharing; • Wide range of institutions able to hold the government (vertically) accountable; • Clear separation of powers within government (horizontal accountability); • Agreed political settlement with traditional authorities; • Local government is effective across whole country; • High social cohesion across communities.
Example: **Somalia**	Example: **Iraq**	Example: **Kenya**	Example: **Indonesia**	Example: **South Korea**

PART II

CASE STUDIES

Introduction

This section focuses on a few regionally paired case studies that shed important light on the challenges and methods of social contract formation in fragile and conflict-affected states: Tunisia and Libya in North Africa; Colombia and Guatemala in Latin America; Ukraine and Macedonia in Eastern Europe; and Sri Lanka and Nepal in South Asia. They were chosen on minimally shared conditions: 1) a mix of ongoing and prior attempts at social contract formation (at the political level, societal level or both) in a transition period in the recent history of each; 2) overlapping and typical fragile-state problems, including state capture, stark social divides, social exclusion and institutional weakness; and 3) a baseline of quality literature.

In addition, each pair had to offer not only a common set of regional factors (e.g., colonial history and culture), but also significant contrasts in some key variables, including socio-political make-up, economic conditions, role of the military and external players (as reflected in the table below).

Table: Country comparison

	Sri Lanka	Nepal	Tunisia	Libya	Colombia	Guatemala	Ukraine	Macedonia
Stark horizontal inequalities	✓	✓	✓		✓	✓		
Longstanding, deeply entrenched identity-based social divisions	✓	✓		✓		✓		✓
High degree of social exclusion	✓	✓	✓		✓	✓		
Long history of elite domination of institutions		✓	✓	✓	✓	✓	✓	✓
Military significant political player				✓	✓	✓		
History of authoritarianism		✓	✓	✓		✓	✓	✓
Secessionist threat	✓						✓	✓
Recent civil war	✓	✓		✓	✓	✓		
External actors playing actively destructive role				✓			✓	
Radicalised groups fighting the state	✓		✓	✓	✓			
Criminality affecting the nature of the state or conflict				✓	✓	✓	✓	✓
Economic woes aggravating political problems	✓	✓	✓	✓		✓	✓	✓
History of exclusive growth and development		✓	✓		✓	✓		✓

Though the findings (discussed in Part III) necessarily take the form of contingent generalisations, they yield valuable ideas that can be of practical utility for those working on the front lines, designing and implementing programs in transitioning societies.

Each of the country case studies is divided up as follows:

1) review of the countries' starting conditions;

2) summary of the main transition(s) under consideration;

3) assessment of progress across each of the three main building blocks of social contract formation (i.e., establishing a social covenant, adopting inclusiveness as a guiding principle, and strengthening institutions); and

4) analysis of how the three building blocks interact in the transition.

Each of the regionally paired cases conclude with a comparison of the two countries' experiences.

4. Transitions in North Africa: Tunisia and Libya

By Monica Marks

Tunisia and Libya offer an instructive, high-contrast comparison. Why did their transitions follow such drastically different trajectories, and what can they teach us about the building blocks necessary for effective political transitions? This chapter looks first at Tunisia then at Libya, and examines each country's starting conditions and the extent to which its post-2011 political transition was able to foster inclusive reforms. To assess the extent to which inclusiveness gained traction in each, the focus here, as in all chapters, is on three specific building blocks of inclusiveness: (1) promotion of social cohesion (2) adoption of more inclusive policies and (3) strengthening of state institutions to operate in a more accountable, inclusive manner. What progress did the Tunisian and Libyan transitions make, and how did progress or lack thereof in one area engender or inhibit progress in others?

TUNISIA

While attempts at democratic transition have been squelched and reversed elsewhere in the region, Tunisia's has survived and achieved significant milestones. The country held free and fair national elections for the first time in October 2011, then again in fall 2014. It drafted a democratic constitution and dodged potentially grave blunders that could have sunk the transition. For example, the legislature reluctantly nixed a lustration law that would have prevented ex-members of the Democratic Constitutional Assembly (RCD, former President Ben Ali's disbanded party), from contesting the 2014 elections. It would have created a strong constituency for a coup among disgruntled ex-RCD members and their supporters. Political groups and civil society associations also mediated their way out of the Bardo Crisis, a political impasse that dovetailed with and was indirectly influenced by the 2013 coup against former President Mohamed Morsi of Egypt (Nahda, Tunisia's centre-right Islamist party, was more open to compromise). Some powerful actors in that impasse sought to replace the Constituent Assembly with unelected technocrats before the constitution was finalised, a demand that would almost certainly have spelled disaster for the transition.[29]

However, the transition towards more inclusive governance remains fragile, reversible and incomplete. Unemployed youths and residents of the historically marginalised southern and interior regions decry a transition that has not yet dealt them concrete revolutionary dividends, such as economic dignity – a central demand of the 2011 uprising – and religious validation. Similarly, Tunisia has made only halting progress towards much-needed legislative and institutional reforms. Corruption, police brutality and bureaucratic inefficiency are rampant. To harmonise daily reality with the inclusive, democratic aspirations of the 2014 constitution, ambitious administrative, legislative and institutional reforms are necessary. Meanwhile, many parties, including the ruling Nidaa Tunis party, are internally dysfunctional and struggle to take proactive leadership towards such reforms. The result has often been stasis and indecision, compounded by persistent security concerns originating in neighbouring Libya and Tunisia's lonely position as the first fragile Arab democracy in a region of anti-democratic regimes. The growth of Salafism can be seen as both a product of alienation from the state and elites and a challenge to an unsatisfactory status quo. Floundering in some areas and making gradual progress in others, the transition is still afloat, but not progressing at the speed citizens desire.

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[29] For further information on the Bardo Crisis and the Nobel Peace Prize-winning National Dialogue Quartet that resolved it, see Marks, Monica, "What Did Tunisia's Nobel Laureates Actually Achieve?" *Washington Post*. October 27, 2015. www.washingtonpost.com/news/monkey-cage/wp/2015/10/27/what-did-tunisias-nobel-laureates-actually-achieve/ (accessed April 6, 2017).

1.   Starting Conditions

Of the six Arab countries that experienced popular uprisings in 2011, only Tunisia sustained a transition towards inclusive governance. From the outset, it stood a better chance of doing so, because its starting conditions were more advantageous.[30] These included relatively high levels of education and social cohesion, strong institutions and a military that served, rather than controlled, the state. Tunisia also benefitted from having a genuine transition that began through peaceful, home-grown popular protest rather than armed uprising and/or foreign intervention.[31]

Main Societal Cleavages – Unlike other Arab Spring countries, Tunisia was not riven by ethnic, racial or sectarian cleavages. Its population is 99 per cent Sunni Muslim, with small Jewish and Christian communities. President Habib Bourguiba's educational policies in the 1960s made co-ed public K-12 education freely available for all children, which promoted social cohesion, mobility and gender equality. However, the country was challenged by two significant societal cleavages: a class-based, regional divide and tension between Islamists and secularists.

Society has two principal sociological groups: an urban-coastal elite (the *baldi-saheli* class), which tends to be wealthier, more Francophone and politically more powerful; and people from the interior and southern regions, who tend to be more Arabophone and were marginalised under former Presidents Bourguiba and Ben Ali.[32] Many Tunisians say the struggle for independence from French colonialism, from the 1930s to 1950s, intensified this regional-class cleavage. Bourguiba, a *saheli* (coastal), Sorbonne-educated lawyer, who became the first president in 1956, fought with Salah Ben Youssef, a southerner, for control of the independence movement. When he became president, he had Ben Youssef assassinated, waged a legal and economic attack on institutions affiliated with his supporters and oversaw policies that developed the northern and coastal regions at the expense of the south and interior, where Ben Youssef had been popular.

These policies, continued by President Ben Ali (another *saheli*), produced a regional rift so large that in 2015 a handful of interior governorates, led by Kasserine, requested recognition of state-sponsored abuses against their regions.[33] The truth commission (see below) continues to investigate whether and to what extent the state intentionally marginalised them. Regardless of its findings, residents of the south and interior widely perceive deliberate state-led marginalisation as reality. Residents of the southwestern Gafsa mining basin, for example, have risen repeatedly, before and after the revolution, to protest state corruption in the awarding of phosphate mining jobs that they allege benefit cronies of the *baldi-saheli* elite at local expense.

Another key cleavage is ideological: the Islamist-secularist divide, which pits supporters of the centre-right Islamist party, Ennahda, against its opponents.[34] Bourguiba and Ben Ali repressed Ennahda, seeing threats to their power because of its grassroots activism and religiously toned injunctions against autocracy and corruption. Under Ben Ali, tens of thousands of peaceful Ennahda members and their families were arrested, tortured, imprisoned, forced into exile and blacklisted from jobs and educational opportunities. The media portrayed Ennahda as violent, theocratic, extremist terrorists. By January 2011, the ideological divide between Ennahda and those willing to engage it in dialogue on the one hand, and those who believed it an existential threat to a peaceful, modern Tunisia on the other, was substantial. This Islamist-secularist divide reinforced regional

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[30] This was immediately noted by scholars of the region. See Anderson, Lisa. "Demystifying the Arab Spring: Parsing the Differences between Tunisia, Libya, and Egypt." *Foreign Affairs*. 2011. http://pages.ucsd.edu/~phsmith/documents/Anderson-Demystifying-the-Arab-Spring.pdf (accessed April 6, 2017).

[31] Tunisia's revolution involved less state violence than subsequent Arab Spring uprisings. Yet state violence against protesters did occur: at least 219 people were killed and 510 wounded in the month of protests that ousted Ben Ali.

[32] Sadiki, Larbi. "Political Liberalisation in Bin Ali's Tunisia: Facade Democracy." *Democratisation* Vol. 9, No. 4 (Winter 2002).

[33] See Sbaoui, Sana. "Kasserine Constitutes Victim Region." *Inkyfada* July 13 (2015).

[34] For Western readers, the terms "Islamist" and "secularist" can be misleading in the Tunisian context. Ennahda – which in May 2016 officially rejected the Islamist label – advocated for multiparty democratic competition since its founding in 1981 and never sought classically Islamist goals, such as enshrining sharia as the main source of law. Meanwhile, rather than embracing the separation of religion and state, Tunisian secularists have typically supported state-imposed modernisation and strict control over religious expression, religious dress, and religion's role in politics.

cleavages, as Ennahda supporters tended to have historical roots in the more Arabophone Youssefist cities, while anti-Islamists – concentrated mainly in more Francophone coastal cities like Sousse, Monastir, and Tunis – tended to support Bourguiba.

Under Ben Ali, human rights groups and feminist associations, which often are among the strongest advocates for state reform and inclusivity on liberal terms in many authoritarian countries, tended to view Ennahda as an existential threat to liberal values. This complicated efforts towards genuine inclusiveness, since many modernist Tunisians disliked Ben Ali but saw him as a necessary bulwark against Islamist extremism. Some feminists, for instance, even became enforcers of exclusionary directives (e.g., hijab bans in schools) that discriminated against more religiously conservative Tunisians, including Ennahda supporters, a group that after the revolution were seen to be approximately a quarter of the voting population.

Equity of Policies – Under Ben Ali, Tunisia functioned as a classic protection racket scheme: the dictator promised protection against threats his regime manufactured or at least exaggerated (Ennahda's Islamist extremism), while prohibiting democratic political contestation and abusing power to enrich himself and his cronies. Beyond harassing, repressing, imprisoning and even torturing leftist trade unionists, pro-democracy activists and Ennahda members and their supporters, Ben Ali adopted thuggish, exclusionary economic policies. Scholars have detailed how he manipulated tax codes and land permits and used other economic tools to benefit himself and the family of his much-loathed wife, Leila Trabelsi.[35] He "won" re-election with a farcical margin of 99 percent in rigged polls. His regime coerced the judiciary, muzzled the media into sycophantic compliance, ceaselessly harassed the few opposition parties and independent civil society organisations that existed and banned genuine politics or historical narratives in schools and other public fora. This repression silenced dissent and masked growing socio-economic inequity and dissatisfaction.

State of Institutions – Though social policies under Ben Ali were deeply inequitable, the strength of state institutions was a comparative advantage over most other Arab Spring countries. Unlike Libya and Yemen, for example, Tunisians had a strong sense of statehood and a comparatively competent administration. Their territorial integrity and centralised governance date back hundreds of years, though policy enforcement and service provision in the south, particularly along the Libyan border, tend to be weaker. Constitutionalism was a vitally important theme. Tunisia adopted the first constitution in the Arab world (the brief-lived 1861 document); its anti-colonial independence movement was called the Destourian (constitutionalist) party.

Though the country remained relatively strong, its state administration had major weaknesses. Corruption permeated all levels of bureaucracy. The administration was heavily centralised, with local governance virtually non-existent. Instead, the interior ministry – the basement cells of which held tortured political prisoners – oversaw municipal governance. Many decisions rested with Ben Ali, making the top-heavy state structure slow moving, discriminatory and highly non-representative. The judiciary and internal security forces were handmaidens of the dictatorship. While Tunisia lacked a military prone to coup-making, Bourguiba, and especially Ben Ali, transformed it into a police state whose security forces (police, national guard, gendarmerie) were distrusted and abusive, with a reputation for brutality, incompetence and unethical behaviour.

2. Overview of Main Transition

Antecedents to the Main Transition – Unlike countries such as Ukraine, Tunisia did not have separate attempts at stalled or failed political transitions. Ben Ali took power from an aging, senile Bourguiba in 1987, promising a move towards democracy. However, he quickly reneged and cancelled the 1989 elections after a stronger-than-expected showing from Ennahda-affiliated independents, and used electoral lists to round up that party's members and families. By 1990, his regime was pursuing full-scale authoritarian retrenchment. Widespread human rights abuses, mono-

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[35] Béatrice Hibou, *The Force of Obedience*. Cambridge: Polity Press 2011.

party dominance, silencing of media and kleptocratic corruption moved Tunisia away from democratic transition.

In the mid-2000s, rumblings of cross-ideological opposition to Ben Ali's regime began. In 2003, Moncef Marzouki – an exiled secular intellectual who headed the Tunisian League of Human Rights in the early 1990s (before it was co-opted by Ben Ali) – along with the secular politicians Nejib Chebbi and Mustapha Ben Jaafar and various activists for political prisoners' rights, gathered with top members of Ennahda in France to draft and sign *L'Appel de Tunis* (The Call of Tunis). It attempted to develop "a political contract establishing a democratic society", laying out "new norms" for the construction of a "pluralistic, tolerant society" that could guarantee freedom of belief and equality (*musaawa*) between men and women.[36] Signed by three of Ennahda's top leaders, it identified popular sovereignty (*sayadat al-shaab*) as the "sole source of legitimacy," and made no mention of Islamic law.[37]

Two years later, on October 18, 2005, an expanded group of prominent opposition figures staged a month-long hunger strike to coincide with a UN-sponsored international summit in Tunis.[38] These included the secular Nejib Chebbi, the communist party leader Hama el-Hammami and Ennahda leader and prisoners' rights campaigner Samir Dilou. Follow-up meetings in Tunisia, France, and Italy between 2005 and 2010 transformed what began as a hunger strike into a cross-ideological opposition movement, the October 18 Collective. Documents it released, such as its 2006 manifesto "Defending the Rights of Society: Grounds for Common Political Work", set out core principles of a democratic polity. The participants from vastly divergent ideological backgrounds met, built trust and signed onto shared principles, including, in the words of the 2006 manifesto: 1) equality (i.e., no discrimination on social, sexual or cultural origin); 2) national sovereignty; and 3) rejection of violence, both as a means to resolve political or ideological differences and as state violence to resolve political and social conflicts.[39]

These efforts were critical antecedents to the political transition, as they created a foundation of trust and familiarity between Ennahda and more secularly oriented groups that, despite differences, recognised a shared, overarching goal: replacing Ben Ali's dictatorship with democracy. The three parties that formed the "Troika" coalition government following the first free and fair elections in October 2011 – Ennahda, Moncef Marzouki's Congress for the Republic (CPR) and Mustapha Ben Jaafar's Ettakatol – were all members of the October 18 Collective. Without the trust built from this experience, Ennahda might have been unable to find credible coalition partners and incapable of forming a strong or legitimate government in the fragile transitional landscape, thus jeopardising the transition early on.

Main Transition – The first free and fair nationwide elections, in October 2011, created a Constituent Assembly comprised of Islamists and secularly-oriented Tunisians, neither of whom had a simple majority. Initial constitutional debates circled around identity: Is Tunisia a Muslim country? Should the constitution mention Sharia (Islamic law)? What is the role of women in family and society? This focus on identity fuelled distrust of Ennahda, a party many secularly-oriented Tunisians resented and feared. Compounding some Tunisians' distrust was the expansion in 2011-2012 of Salafi jihadism, an aggressively conservative subculture associated with a small, vocal minority of youths, who, after 2011, donned long beards and face-covering veils. Under Ben Ali, they would have been imprisoned. Salafi jihadists, to the right of and usually very critical of Ennahda, believed

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[36] The Appel de Tunis laid out twelve democratic objectives for Tunisian society, the seventh of which was "the realisation of equality [*tahqiq al-musaawa*] between citizens and especially between men and women." Chebbi and Ben Jaafar were present at the talks, but did not sign, in part because both were based in Tunisia where the political consequences of signing such a document could have been extreme.

[37] Due to a French ban that restricted him from travelling to the country at the time, Rached Ghannouchi was not in attendance at the Aix-Marseille talks.

[38] The summit, entitled " World Summit on the Information Society" (WSIS), aimed to expand internet access in the developing world, but was marred by the oppression of local human rights activists and international journalists covering the event.

[39] 57 people from the aforementioned political groups signed this document. For more on the Call of Tunis and the October 18 Collective, see Monica Marks, "Purists vs. Pluralists: Cross-Ideological Coalition Building in Tunisia," in Alfred Stepan, ed. *Tunisia's Democratic Transition in Comparative Perspective*, NY: Columbia University Press, 2017.

that preaching or violence – not democratic political contestation – was the answer to society's ills. Ennahda's critics, however, accused it of being close to the Salafi jihadists, or at least too lax on Salafi jihadi crime. Tensions between the Ennahda-led Troika government and Salafi jihadists escalated in 2012-2013, culminating in two political assassinations of members of Jebha Chaabia, a leftist Arab nationalist party opposed to Ennahda. Though jihadists claimed both, Jebha Chaabia leaders and many Tunisians held Ennahda largely responsible.

The second of those assassinations, in July 2013, plunged Tunisia into political crisis, emboldening Ennahda's opponents from the left and individuals with old-regime backgrounds to call for the ousting of the Troika government. For a moment, it seemed possible that – flanked by the hard power of trade unions, business elites and the security sector – they might forcibly dissolve the government and even the Constituent Assembly. Thousands of protesters streamed nightly into Bardo Square, outside the Constituent Assembly building, chanting for the government to resign and arguing that unelected technocrats should rule in its place. The crisis was resolved through a protracted, Nobel Prize-winning National Dialogue process, mediated by a quartet of civil society actors. The Assembly completed the constitution in January 2014, and the Ennahda-led Troika government handed power to a technocratic caretaker government that organised the second round of free and fair elections in the fall of 2014.

Nidaa Tunis won the most votes in 2014. The party was a quilt of diverse political tendencies (leftist, trade unionist, big business and secular modernist) driven by money and manpower, linked to Ben Ali's former party and stitched together by the charismatic leadership of its founder and director, Beji Caid Essebsi, and opposition to Ennahda. It campaigned as a party of seasoned statesmen, criticising Ennahda as a party of "7th Century" Islamist incompetents. Nevertheless, Ennahda President Rached Ghannouchi developed a working relationship with Essebsi, who was elected president. Essebsi was even the keynote speaker at the May 2016 party congress, when Ennahda took important steps towards better integrating itself into mainstream politics by eschewing its Islamist label and opting to be described as a party of "Muslim democrats". This resulted in an internal vote prohibiting elected party officials from preaching in mosques and easing membership requirements to attract a more diverse following.[40]

As Ennahda took long-planned steps towards organising itself more effectively, Nidaa Tunis appeared to be in crisis. Rifts that developed over the role of President Essebsi's son Hafedh, who dominated the party anti-democratically, boiled over. With clubs and sticks, Hafedh's men prevented Nidaa leaders from holding the November 2015 party conference. A few months later, dozens of Nidaa members defected to a rump party, Hizb Machroua Tunis. While some later returned, and the parliamentary bloc now often votes as a group, deep rifts remain. As of early 2017, virtually none of Nidaa Tunis's original executive board members other than Hafedh remain in the party. The lack of an organised vision from Nidaa has hampered the governing coalition's efforts to develop proactive policies to bridge social, economic and regional divides.

3.   Assessment of Progress

3.1   *Building a Social Covenant to Bridge Divides and Create Common Nationhood*

Since the revolution, Tunisia has taken strides towards safeguarding and, in some cases, strengthening horizontal relationships between social groups. This has primarily played out through the drafting of a new constitution; avoiding exclusionary electoral legislation; overcoming political crisis through dialogue; and forging cross-ideological governing coalitions.

Drafting of a democratic and inclusive constitution began in early 2012. The process was consultative, bringing diverse sectors of society together within and outside the Constituent Assembly for dialogue and feedback on four successive drafts. From 2012 to 2014, Assembly members, civil society groups and citizens exhaustively debated how best to improve the draft articles. Problemat-

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[40] Monica Marks, "How Big Were the Changes Ennahda Party Just Made at Its National Congress?" *Washington Post*. Monkey Cage. May 25, 2016.

ic text – for instance, a clause that would have ambiguously defined men's and women's roles as complementary rather than fully equal – was mostly replaced with clearer, more democratic wording. The process, though time-consuming, was salutary and cathartic for Tunisians, who had never before been able to debate such matters openly.

Ennahda and its secularly-oriented opponents worked together face-to-face on the Assembly's six sub-committees. Though they often disagreed, this built understanding between secularists and Islamists.[41] Since Assembly members were elected from every region, the constitutional debate and iterative drafting also provided a platform for discussing regional cleavages and economic marginalisation. Legislators from broadly different social backgrounds (an actress, a former taxi driver, schoolteachers, lawyers, businesspeople and doctors, among others) came to know one another while crafting a more inclusive constitution. The final draft, passed in January 2014 with 200 of 216 votes, reflecting 92 per cent of the total Assembly vote, commits the government to guarantee gender equality in its bodies, bridge socio-economic divides, decentralise power to locally-elected bodies and other goals aimed at enhancing social inclusivity.

Since ratification, legislators have taken tentative steps to harmonise legal codes with these constitutional directives.[42] However, progress has been slow. Marginalised groups (including youths, women and persons of colour, among others) continue to face widespread discrimination in law and society; laws protecting human rights and freedom of expression need to be adjusted to accord with the constitution, and decentralisation – critical for mitigating glaring regional inequities – has been beset by financial and legislative hurdles.

By avoiding exclusionary electoral legislation, Tunisia sidestepped a major setback to inclusivity between social groups. In summer 2014, the Constituent Assembly nearly passed a lustration law that would have barred ex-members of Ben Ali's disbanded RCD party, including current President Essebsi, from contesting that fall's elections. The draft, iterations of which had been debated for a year and a half in and outside the Assembly, failed to pass by the single vote of an Ennahda member who changed his abstention to a "no".

The lustration law likely would have created a dangerous dynamic of exclusion within politics. That would have prevented Essebsi and other top Nidaa Tunis members from contesting the 2014 elections, thus seriously exacerbating tensions along both class/regional and secular/Islamist divides. The law could have created a strong constituency for a coup among Essebsi and Nidaa Tunis supporters, whose preferred candidates would have been locked out of electoral competition. It failed to pass mainly thanks to pressure from Ennahda's executive leadership, including the party president, Ghannouchi, who lobbied the Ennahda bloc in the Assembly to vote against it. Though many within the party strongly supported the bill and were disappointed with the leadership's opposition, Ennahda's decision fostered trust between secularly-oriented Tunisians and Islamists and preserved elections as the key forum in which all segments of society could participate competitively and later govern.

The Bardo Crisis, in summer 2013, was the most dangerous period for the transition. During the political impasse, a number of anti-democratic possibilities existed. The most dangerous demand of Ennahda's opponents was for dissolution of both the Troika government and the Constituent Assembly – before the constitution was completed and a board was appointed to oversee the 2014 elections – and their replacement by unelected technocrats. Had that happened, "technocrats" close to Nidaa Tunis and the interests of its constituents would likely have subverted the democratic process and possibly co-opted or cancelled the elections.

Fortunately, all stakeholders found a mediated solution that preserved the logic of democratic competition and electoral inclusion. By January 2014, the crisis was resolved, and elections were held later that year. Savvy mediation and political manoeuvring by the leaders of Ennahda, Nidaa

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[41] Monica Marks, "Ennahda's Approach to Tunisia's Constitution." *Brookings Institute*. February 2014.
[42] See, for instance, the June 2016 law that took robust steps towards guaranteeing full equality for women on local electoral lists.

Tunis, the Tunisian General Labour Union (UGTT) and others prevented a scenario in which one or two groups acting together would have undermined the democratic process entirely.

Since 2011, the elected governments have been cross-ideological coalitions including both Islamist and secularly-oriented actors. This has helped maintain social cohesion and bridge the Ennahda/anti-Ennahda ideological divide. In spring 2011, months before the first post-revolutionary legislative elections, Ghannouchi vowed to include secularly-oriented parties in the governing coalition even if Ennahda won an outright majority. It won a plurality and went into coalition with CPR and Ettakatol, two secularly-oriented parties.

Following Nidaa Tunis's victories in 2014's parliamentary and presidential polls, many observers were concerned about how it would govern. The victory of Essebsi, a veteran of the Bourguiba and Ben Ali regimes, provoked concern for authoritarian backsliding among some analysts. Ennadha members particularly feared ancien regime-era policies and a crackdown on party members. Nidaa Tunis briefly put forward a strikingly non-inclusive government in January 2015, but it offered a slightly more consensual one a month later. A single, unappealing cabinet seat was offered to Ennahda: the employment ministry. It accepted, reckoning that inclusion in government would help normalise it as an integrated political actor and help stave off an anti-Islamist exclusion that could harm it and destroy the transition.

This give-and-take at the elite political level between Nidaa Tunis, which offered a seat at the table, and Ennahda, which accepted, helped incubate and preserve dynamics of cross-ideological inclusivity. Instead of locking out secularists or Islamists, both parties chose to govern in coalitions that included the other. This has helped foster social cohesion at the political level between competing ideological trends that also reflect some class and regionally-based cleavages. It may, over time, also foster cohesion on a more grassroots level. For now, however, many Tunisians perceive the alliance between the leaderships of the two parties as exclusionary, serving to promote their own interests, rather than those of the people as a whole. Leadership by Tunisians desperate to see the government craft policies that help the country overcome its roiling socio-economic divides is particularly critical.

3.2 *Adopting Inclusiveness as a Guiding Principle in Policymaking*

Tunisia has made important, if incomplete, strides towards building social cohesion at the political level, but few tangible policies have been enacted to promote inclusivity. There are exceptions, such as a robust gender parity law, adopted in June 2016, that guarantees equitable female representation on local electoral lists. Legislation that translates the inclusive principles of the new constitution into real-world policy, however, has mostly yet to be enacted.[43] Ancien regime-era institutional inertia and policies prevail in many areas. In the security sector, for instance, efforts since 2013 to deal with the intertwined issues of terrorism and Salafi jihadism have drawn heavily on old tactics. Repressive responses that shut down space for religious expression and discriminate against religiously conservative individuals abound. These include heavy reliance on dragnet-style arrests of men with beards, shuttering of mosques outside prayer time and branding of preachers merely critical of the government as security threats.

Such responses highlight the extent to which fundamental social cleavages, such as the tension between secularly-oriented and Islamist-oriented Tunisians, have not yet been resolved. Just as nonviolent religious conservatives can be targeted for long beards or full-face veils, the secularly oriented can still be targeted for threatening and disrupting public morality and order by making art the state deems blasphemous. Young women who wear the hijab (headscarf) continue to complain of grade and wage discrimination within educational and professional institutions from teachers, professors and employers who view it as a sign of Islamist backwardness.

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[43] For more information, see www.unwomen.org/en/news/stories/2016/6/tunisia-moves-closer-to-achieving-gender-equality-in-politics (accessed April 6, 2017).

Corruption and exclusionary economic policies continue to make it very difficult for small and medium-size enterprises (SMEs) to compete in many fields. Though the parliament adopted a new investment law in 2016 designed to simplify and facilitate investment, decades-old problems persist, including monopolistic sectors of the economy that shut down competition through police harassment, bribes, and discriminatory legislation. The absence of enforced policies that combat such disparities contribute to the persistence of class divisions and the inability of many to achieve upward mobility.

On the surface, the draft Economic Reconciliation Law put forward by President Essebsi's office in 2015 promises to recoup money expropriated under Ben Ali for the benefit of Tunisia; in practice, it would risk functioning as a broad amnesty for corrupt businessmen accused of plundering public funds. That this is the most prominent bill related to corruption currently being considered by the government demonstrates the extent to which old dynamics of exclusionary gain, rather than inclusive accountability, continue to shape policymaking. It is wildly unpopular with civil society, the truth commission, Ennahda's base and international technical assistance providers, all of whom view it, correctly, as favouring impunity over accountability. However, with Nidaa Tunis (a party linked to old regime actors) and Ennahda (a party concerned primarily with preserving stability and its seat at the transitional table) at the helm of government, advocacy for accountability and institutional reform has fallen largely to civil society, the international community and a few entities such as the country's truth commission and anti-corruption commission.

3.3 *Strengthening Mechanisms to Enforce Political Commitments and Reduce Bias in Institutions*

Since the revolution, progress for accountability and inclusivity in state institutions has come via increased media independence and diversification; flowering of an increasingly vibrant civil society willing to hold government accountable; efforts towards transitional justice; creation of an anti-corruption commission; and efforts towards decentralisation. Compared to the full impunity enjoyed by Ben Ali's regime, Tunisia has come a long way in promoting fairness, reducing bias and enhancing the accountability of state institutions. However, important challenges remain, particularly in the corrupt security sector, which continues to perpetrate systematic human rights abuses for which it enjoys a near blanket impunity.

The media, tightly muzzled under Ben Ali, has near-total independence from government interference. Critical outlets, which previously operated underground or in exile, such as the investigative reporting website Nawaat, flourish in the open, and fresh websites and news channels – including Inkyfada, TNN, and Tunisia Live – have sprung up. The most well-established radio, television, and print news media initially tended to be highly critical of Ennahda and its Troika partners and comparatively less so of Nidaa Tunis and its partners. However, following Nidaa Tunis's victory in 2014 and the subsequent controversies and defections within that party, they began adopting a more critical approach to Essebsi and Nidaa leaders.

HAICA, an independent regulatory commission, was established in 2013. Comprised of nominees from each of the government's three branches, as well as journalist unions, it seeks to regulate audio-visual communication in a manner that safeguards media independence from party and government co-optation. It faces challenges over enforcement of its injunctions, but its existence, along with creation of new reporting outlets and slow reform of older, regime-tinged outlets, produces a media landscape increasingly capable of holding Tunisia's leaders accountable.

Since the revolution, citizens are free to protest and critique government policy. Civil society organisations (CSOs) silenced, harassed and co-opted to various degrees by Ben Ali (including the labour union UGTT, the preeminent feminist association ATFD and the Tunisian League of Human Rights) have reasserted themselves without fear of reprisal. A host of new organisations, most notably the anti-corruption organisation, I-WATCH, and a parliamentary and budgetary transparency watchdog, Al Bawsala, monitor government policy. By advocating strongly for transparency, these groups help hold the government more accountable.

Efforts towards accountability and transitional justice have had varying success. In 2011, the Constituent Assembly created a commission to investigate the deaths of revolutionary protesters at the hands of state security forces (the "martyrs of the revolution"), but it produced relatively few high-profile convictions. Of 53 government officials, police and other security forces tried before military tribunals in 2011, 25 were acquitted. Those convicted received lenient sentences.[44] In December 2013, the Constituent Assembly passed a transitional justice law that created a Truth and Dignity Commission (TDC) to investigate and collect material on state abuses between 1956, the year of independence, and 2013. It has received over 60,000 files from victims of the Bourguiba and Ben Ali regimes, including secular leftist and Islamist political prisoners and protesters injured in the 2011 revolution.

Since November 2016, the TDC has promoted awareness of the suffering of these people by holding nationally broadcast public hearings monthly in which a handful of victims testify. This has significantly raised awareness of the persecution committed by past regimes, its effect on both secularists and Islamists, and the institutional discrimination experienced by the southern and interior regions. However, the commission has encountered constant pushback from President Essebsi and the state's entrenched administrative apparatus (the "deep state"), which together adamantly oppose the transitional justice process. For example, Sihem Ben Sedrine, the TDC president, found it nearly impossible to arrange the first round of public hearings in November 2016, which administrators tried to block by repeatedly rejecting applications to rent a meeting hall, price-gouging and surprise cancellations of bookings.[45]

Like HAICA and the TDC, the National Anti-Corruption Commission (INLUCC) was created by the Constituent Assembly and formed 2013-2014. Tasked with combatting corruption, its mandate is distinct from but sometimes complementary to the TDC. It was moribund until it came under the leadership in 2016 of Chawki Tabib, who transformed it into an active, vocal force. It now has an anti-corruption hotline that can be called to report corruption. Through high-profile interviews and compelling statements on the gravity of the threats corruption poses to the economy and social fabric, Tabib has moved the issue to the foreground of national politics. Deeply entrenched opposition to its efforts and the TDC's exists within administrative apparatuses, but creation of these vocal, active and independent entities was a major step forward for the strength, accountability and inclusivity of state institutions.

Efforts in the works to enhance local governance will, if well implemented, be significant for the inclusivity of government policies. This is an important issue: the highly centralised government in Tunis has traditionally divvied out budgetary resources to the regions and municipalities arbitrarily – often according to the logic of cronyism and political self-interest. Decades of such centralisation left the southern and interior regions especially underfunded, under-developed and bereft of local political institutions that could represent residents' interests efficiently against an overreaching, unconcerned, and often incompetent state. The absence of quick progress on decentralisation after the revolution perpetuated problems that continue to vex average Tunisians, including lack of local sanitation and poorly enforced zoning and anti-crime legislation at the local level. This contributes to a sense that whatever progress there has been in the abstract, or at the elite and political level, is a world apart from citizens' everyday concerns.

Despite passage of a local elections law in January 2017, there is no legislative framework to ensure the autonomy or financing of municipal government institutions, so elected local institutions struggle in practice to act efficiently. The draft Economic Reconciliation Law, if adopted, would be a significant setback, enshrining impunity for the corrupt over inclusive economic policy. That this bill periodically resurfaces reflects the extent to which impunity logic stubbornly competes with democratic inclusivity logic in post-revolutionary Tunisia.

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[44] Human Rights Watch, Flawed Accountability: Shortcomings of Tunisia's Trials for Killing During the Uprising, January 2015.
[45] Author interview, Sihem Ben Sedrine, January 11, 2017.

Ultimately, the struggle to enhance fairness and accountability in state institutions remains a long slog. Significant institutional pushback exists, particularly regarding corruption and impunity. These problems are especially prevalent in the security sector. The interior ministry, which controls the police, national guard and counter-terrorism units, tortured political prisoners under Ben Ali. It remains opaque and largely unreformed. Since 2013 and especially 2015, old-regime-era human rights abuses – conducted under the banners of counter-terrorism and lengthy states of emergency – have increased. A February 2017 Amnesty International report details the "disturbing rise" of such abuses as anal rape, electric shocks, stress positions (the "roast chicken" being a favourite), warrantless late-night home raids by masked men who break down doors and destroy property with impunity and discriminatory arrests based on appearances (e.g., a beard).[46] Police unions are influential and close to leading parties, including Nidaa Tunis, which have been broadly supportive of their tactics.

3.4　*Summary of General Progress*

Since the revolution, there has been significant progress towards building social cohesion between Islamist-leaning and secular-leaning Tunisians, at least at the elite, political level. There have also been important strides towards strengthening mechanisms that enforce political commitments and reduce bias in institutions. However, there has not been comparable progress in adopting more inclusive policies. Similarly, work remains to bridge regional and class-based divides more effectively. Policies and institutional reforms that could contribute to the latter, such as a clear framework for the financial autonomy of elected local government, are frequently shelved or delayed. There is also significant pushback from within administrative apparatuses and sometimes from the executive branch against meaningful reforms to tackle corruption and hold state institutions more accountable, though independent, active commissions like the TDC and INLUCC offer promise that inclusive reforms can be scaled up.

4.　How the Three Building Blocks Interact in Transition

Tunisia's transition shows that the degree of progress in one area of inclusivity – be it towards greater social cohesion, more inclusive policies or more accountability and impartiality in state institutions – often has spillover effects elsewhere. For instance, progress is uneven on the third building block (improving accountability and reducing bias in institutions' work). Civil society and media have grown more independent and diverse, but transitional justice, holding abusive members of the government and security forces accountable, and creating a clear monetary and legal framework for local government autonomy have been delayed and often actively stymied. As a result, progress on the second building block – improving inclusivity of state policies – is rendered more difficult. Without full support from the top for a more accountable, less corrupt, more locally representative institutional framework, it is hard for the government to reform specific laws to curtail police abuses of power, ensure less corruption in government and so on. A mixed climate prevails, marked by both positive special commissions (HAICA, INRIC, the Truth and Dignity Commission) and a more powerful "deep state" apparatus and its sympathetic politicians standing in the way of institutional accountability reforms.

This helps explain why the transition in Tunisia has been more successful at resolving identity-based ideological cleavages than regional and class-based ones. Most positive reforms have been elite-level, abstract, political gains: the growth of an increasingly vibrant media and civil society and, above all, avoidance of political exclusion during the Bardo Crisis and over the anti-RCD lustration bill that could have steered the transition down a rabbit hole of political violence. Negotiated solutions and political cooperation have prevailed, helping make elite-led gains in social cohesion, especially regarding cooperation between Islamists and secularists. But such cooperation has not

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[46] "We Want an End to the Fear: Abuses under Tunisia's State of Emergency." Amnesty International, Amnesty International Ltd., February 2017.

translated into concrete gains towards bridging regional and class divides, in part because obstacles in the second and third building blocks negatively reinforce one another to prevent much-needed steps towards accountability and inclusivity on matters that fuel such discrimination, including security sector abuses, economic corruption and decentralisation. They also increase the alienation of some inland communities, such as those in the south that have long been estranged from the state and the elites who control it, thus feeding into the increase in Salafism and extremism that, in turn, impacts security and fragments civil society.

During the transition's early phase, both domestic and international attention focused disproportionately on ideological threats to social cohesion. From 2011 to 2014, conflict between Ennahda and anti-Islamists consumed a huge amount of energy and focus. This distracted not only Ennadha and more secularly-oriented parties in government, but also potentially strong civil society advocates for state reform and inclusivity such as human rights groups, trade unions, and feminist associations, from grappling with other dimensions of inclusivity (e.g., making state policies and institutions more equitable). The 2013 Bardo Crisis was, in part, an outcome of the early preoccupation with religion as a key threat to social cohesion.

Parties and civil society negotiated their way out of that impasse and kept the transition afloat, but it was an elite, narrowly focused achievement. Inclusiveness was mainly advanced among the top echelons of politics by formation of a Nidaa Tunis-Ennahda coalition government in 2015. Though many lauded it as a sign of great strides towards pluralism and ideological inclusivity, the fragile consensus has arguably pushed aside voices that advocate more strongly for transparency and institutional reform, goals that could help achieve other dimensions of inclusivity.

A key lesson of Tunisia's transition, therefore, is that actors concerned about identity issues should not be allowed to crowd out those calling for a focus on institutional reform and equitable state policies. Early preoccupation with spicy identity issues was natural: institutional reform and policymaking seemed dry and heavy by comparison. This was especially so because immediately after the revolution, politicians and media had little experience making or communicating denser policy goals, let alone contemplating complex institutional reforms. This arguably played out more powerfully in Tunisia than in other transitional contexts, in part because international actors – perhaps taking their cues from the old regime-influenced press or saddled with assumptions that Islamofascism would pose the chief threat – focused on the ideological secular-Islamist conflict to the exclusion of critically needed legal and institutional reforms. The completion of the constitution in January 2014, and Ennahda's subsequent electoral loss, collectively cooled preoccupation with ideological identity issues among both Tunisians and internationals. Local leaders and international technical aid providers turned their attention to other dimensions of inclusivity, including institutional reform and more equitable policymaking.

Getting past the noise of identity politics early on in order to focus more concretely on institutional reform later (especially since laws could not be reformed until a new constitution was in place) would have likely created a more dynamic, positive feedback loop between the second and third building blocks in the transition. Progress on institutional reforms and more equitable policies could then have helped forge a more inclusive social contract that addressed other concerns (such as rampant corruption in the bureaucracy, security sector abuses, lack of local governance mechanisms and deep-seated regional inequalities) much faster.

5. Other Conclusions

Like most countries that embark on a post-authoritarian transition after a dramatic uprising, Tunisia experienced an economic "J Curve": an immediate dip in output and consumer and investor confidence. International aid offset the sharpest effects but has not been sufficient to shield citizens from its impact. As a result, many – coping with high inflation and the lack of economic progress (jobs were a core demand of the revolution) – were quickly disillusioned with democracy,

which they realised was not a quick-fix economic panacea. Nostalgia grew for pre-revolutionary Tunisia, when the economy was somewhat better and times seemed simpler.

Tunisia lacked the benefits enjoyed by Eastern European countries that experienced democratic transitions in the late 1980s and early 1990s. Instead of having prospective European Union (EU) membership to exert a positive economic and pro-democratic attraction, its neighbours were either in chaos (Libya) or staunchly opposed to democratic transition (Algeria and, after 2013, Egypt). The EU gave some aid but did not propose a drastic reduction of trade tariffs. Meanwhile, Gulf actors loomed large: Qatar broadly supported Muslim Brotherhood-affiliated groups throughout the region, and the United Arab Emirates (UAE) and Saudi Arabia threw their economic might behind anti-democratic, old regime-linked trends. These countries interfered less heavily in Tunisia, however, than in other Arab Spring countries.

The stunning collapse of Syria's attempted transition into state brutality made it a destination for the latest international jihad wave. Tens of thousands of foreign fighters went there imbued with notions of standing up for fellow Muslims against the Assad regime. As al-Qaeda-affiliated groups entered the fray, ISIS – the first attempt at a jihadist, settler state – formed in Iraq, and more recruits came. Approximately 4,000 to 6,000 Tunisians, mostly from marginalised regions with large numbers of alienated groups, went to Syria and Iraq as foreign fighters between 2011 and 2016. Many trained and transited through Libya, and some returned home to commit terrorist attacks. The collapse of Libya and the simultaneous tragedy in Syria, thrust Tunisia's transition into an environment of regional terrorism that has repeatedly haunted it. Attacks from Tunisians trained in Libya and/or with links to ISIS decimated the tourism sector in 2015, and fears of turmoil provoked by returning fighters have created much controversy in politics subsequently.

LIBYA

One of the few states with an Arab Spring uprising that received Western military intervention, Libya has descended into chaos and civil war.[47] Ongoing security and political problems have left it on the verge of collapsing into a failed state. Since the summer of 2014, power has been divided between rival governments in Tripoli and Tobruk. In December 2015, the Presidential Council (PC), a body that acts as the joint head of state and supreme commander of the armed forces, was created by the UN-brokered Libyan Political Agreement. Creation of the PC, which presides over the Government of National Accord (GNA) in Tripoli, further fractured power at the national level. Today, control is in effect divided between three nationally significant centres: the GNA in Tripoli, the rival Government of National Salvation in Tripoli and the House of Representatives (HoR) in Tobruk. A kaleidoscope of additional actors tussle for power with these bodies, including armed militias, municipal councils, tribes and the Islamic State group in Libya.[48]

The popular uprising against Muammar Gaddafi in 2011 generated much hope and an upsurge in civil society activism. The armed nature of the uprising, however – combined with a poorly planned lustration law in the spring of 2013 and a history of weak state institutions – plunged the attempted democratic transition into chaos and fighting. A paralysed, largely powerless national government gave way to an increasingly atomised, fractured conflict. In spring 2013, militias besieged the national ministries and sent the transition into a downward spiral. In the absence of state institutions with capacity to govern a vast, tribal, historically fragmented country and to arbitrate disagreements among myriad actors equitably, armed militias advocated their own disparate interests and became the instrument some local actors used to press their demands to the state. The militias soon became politicised and replaced political leaders and elected institutions. Assassinations and armed attacks increased throughout 2013-2014, and the sense of promise that characterised the uprising against Gaddafi was quickly replaced by widespread despair.

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[47] Western countries also gave military aid to rebels in Syria.
[48] IS in Libya faced a major defeat in December 2016, when it lost the territory it held to Libyan militias who fought with the backing of US airstrikes. Though the group no longer holds territory, its cells remain active in various parts of Libya.

As an expert testified before the U.S. Senate Foreign Services Committee, Libya became not one big mess, but a collection of a hundred messes.[49] Hope for constructive progress increasingly rests on local institutions, as enduring agreements at the municipal level have enabled local actors – tribes, elders, municipal councils and other leaders – to emerge as credible mediators in a context of chaos and an absent national authority.

1. Starting Conditions

Libya enjoyed none of Tunisia's advantageous initial conditions. Due to lack of social cohesion, equitable policymaking, firm statehood sense and strong state institutions, it was clear from the outset it had the worst starting conditions of the eight case studies examined here. Many challenges had roots in historical dynamics; others worsened under Gaddafi's rule (1969-2011). They were compounded by the fact that the transition was heavily reliant on armed struggle. In the absence of capable national authority and strong state institutions, it was born out of a violent armed uprising and quickly overtaken by power struggles and armed conflict that splintered society. The absence of inclusivity in all three dimensions examined here has fed into a continuing vicious cycle.

Main Societal Cleavages – At Gaddafi's ouster, social cleavages abounded. They were partially rooted in history, as Libya had never had a strong sense of statehood, so had not developed a cohesive national identity and instead fell back on tribes and kin networks. Under Roman, Islamic and Ottoman rule, it was administered not as a contiguous territory, but as separate territories or city-states. As recently as 1943-1951, when Allied forces took it from Italian control, the country was governed as three separate provinces: Tripolitania in the west, Cyrenaica in the east, under British administration, and French-controlled Fezzan in the south. It won independence and statehood through a 1949 UN resolution and became a hereditary monarchy under Idris (1951-1969), its only king. The first constitution (1951) set equal civil and political rights for citizens and equality before the law without discrimination for religion, race, language, wealth or kinship, among other factors. Nevertheless, the national identity did not transcend regional and tribal affiliations. Indeed, Idris, a Sanussi tribesman from the eastern province of Cyrenaica and former emir of Cyrenaica, was known for favouring tribes from the east.

Gaddafi came to power in a bloodless 1969 coup, exacerbated these problems and pursued divide-and-rule policies designed to enhance his autocratic power by increasing inter-tribal conflict. By favouring the southern Tuaregs over the Tebus, he shifted the balance of power in the Libyan Sahel, while Western tribes – especially his own Qhadhafa tribe – gained much from his rule. Following the 2011 uprising, the eastern tribes worked to strengthen their position vis-à-vis the western tribes in the National Transitional Council and beyond, which further entrenched feelings of regionalism in the east. The cumulative result fractured the weak national institutions, including the military, splintering society yet deeper along tribal, regional and kinship lines. This made the attempted political transition more vulnerable to fragmentation and insecurity, as evidenced when the ISIS takeover of Gaddafi's hometown, Sirte, met relatively little opposition from tribes dissatisfied at having been sidelined after the uprising.

Equity of Policies – Gaddafi favoured his tribe, the Qhadhafa, along with other Western tribes, in an attempt to compensate for the years when King Idris favoured eastern tribes. Later, as he began placing more emphasis on pan-Africanism, he gave substantial financial support to the Tuaregs in the south in exchange for loyalty. He also pinned his political legitimacy on his anti-colonialist credentials, playing up his humble tribal roots and styling himself as a revolutionary populist. "Government by the masses" was the philosophy his Green Book stated, and in 1977, he proclaimed the Libyan Jamahiriya – a neologism that roughly translates to "republic of the masses". While in theory Libya was a democracy governed directly by the people through local revolutionary councils, the

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[49] See the Senate testimony of William Lawrence:www.foreign.senate.gov/download/lawrence-testimony-100415 (accessed April 6, 2017).

reality was starkly different. All decision-making powers and state wealth remained under Gaddafi's control. State policy was highly inequitable, resting on brutality, political exclusion and divide and rule strategies.

When political transition was tried in 2011, there was an extremely weak history of inclusive policymaking upon which to draw. Gaddafi's rule was, even by comparison to that of other regional autocrats, personalised and arbitrary. Patronage, clientelism and reliance on a police state prevailed, as in Ben Ali's Tunisia; but unlike Ben Ali, Gaddafi obliterated all trade unions, opposition parties and civil society associations. The "cultural revolution" he tried in the 1980s squashed freedom of expression, attacked private enterprises, relied heavily on violent repression and a stifling personality cult, and burned any books deemed inappropriate or unsound.

Perhaps Libya's saving grace and a key reason why rebellion against Gaddafi did not happen sooner was the oil-based rentier economy. Per capita income increased when Gaddafi came to power, as oil reserves – the fifth largest in the world and the largest in North Africa – became more profitable. The rentier model involved some economic inclusion, so while many citizens perceived the state as inequitable, many also felt they were (at least economically) getting their fair share. During the Gaddafi years, Libyans had access to education, universities and local representatives of national services, such as power providers and healthcare, among others.

State of Institutions – Gaddafi's rule was characterised not only by the exclusionary and inequitable policies common to dictatorships, but also by the dismantling of state institutions that existed under King Idris. Ben Ali created a pyramidal structure in Tunisia, with the state and all of its resources solidly under his control, whereas Gaddafi solidified state institutional power into such a structure to serve himself by fracturing it, sometimes co-opting, manipulating or obliterating whole institutions of the state. Ben Ali had kept an authoritarian grip over certain state institutions, especially the interior and justice ministries, but his authoritarianism was much more institutionalised, as Tunisia built on centuries of centralised state rule, including under its first president, Bourguiba. By contrast, Libya had been a unified state for less than twenty years before Gaddafi, whose violently repressive, highly personalised techniques significantly eroded the weak national institutions built under Idris.

By the 2011 revolution, Libya had no political alliances, network of economic associations or national organisations, including basic forces of law and order, such as the police. State institutions were in shambles. The regime's extravagance, dogmatism and brutality had precluded development of any functional institutions or associative civil society organisations. Functional national institutions of any kind, with the notable exceptions of the Central Bank and National Oil Company, were almost non-existent. Moreover, the means by which the state was governed were opaque and exclusionary. Gaddafi ran the country with his small circle and paid almost no attention to transparency or inclusivity. Few trusted the government, which lacked capacity to govern and was a "might makes right" model. There was no independent judiciary, and no high-profile offenders were brought to justice. Members of the Libyan Islamic Fighting Group (LIFG), who briefly challenged Gaddafi in the 1990s, were harshly punished. Abuses of high-profile individuals close to the regime were not investigated or punished.

2.   Overview of Main Transition

The attempt to transition from authoritarian rule began in 2011, against the backdrop of armed civil conflict exacerbated by historical socio-political weaknesses. Protests erupted in February, sparking violent pushback from loyal forces. Following Gaddafi's fall in October, the National Transitional Council (NTC), which had been recognised as the legitimate government during the uprising, declared the country "fully liberated" and pledged elections within eight months. These were held in summer 2012, allowing a relatively peaceful, democratic transition to the General National Council (GNC). However, those first democratic elections were quickly overshadowed by the killing of US Ambassador Christopher Stephen and three other Americans in Benghazi by Ansar al-Sharia,

highlighting the fractured security situation and rise of Islamist militancy. Recognising the problem, the GNC head, Mohammad al-Magarief, vowed to disband all rogue militias, but attempts to bring rival militias under the control of national security forces and establish a national army with the Libya Shield project were unsuccessful. The central Shield force, affiliated with Misrata, broke away to support the GNC, while the eastern Shield became an eastern federalist force. The festering problems of Islamist militancy and uncontrolled militias steadily worsened.

The situation reached a dangerous turning point in May 2013, when the GNC overwhelmingly passed the Political Isolation Law, a far-reaching lustration meant to prevent any associate of the Gaddafi regime from holding public office during the transition. Popular but politically unwise, it targeted figures at the core of the revolution, including Mahmoud Jibril and Mohammad al-Magarief, both Gaddafi-regime defectors who played key roles enhancing the legitimacy of the uprising and leading the transition. By lumping such figures together with pro-Gaddafi stalwarts, it deprived state institutions of expertise and legitimacy and enflamed exclusionary dynamics.

In 2014, Libya collapsed into civil war. Fighting in Benghazi between rival brigades escalated as renegade Army General Khalifa Haftar, a self-proclaimed anti-Islamist linked to Egyptian dictator Abdel Fatah al-Sisi, launched a military assault to depose rival groups. The GNC announced legislative elections for its replacement by a House of Representatives (HoR). The turnout in June was only 18 per cent, due to security fears and boycotts.

The GNC dissolved in August 2014 as planned, but militias loyal to it moved into Tripoli to prevent the newly-elected HoR from taking office, forcing it to relocate to Tobruk in the east. Amid intensifying conflict between militias mainly divided along pro-GNC and pro-HoR lines, the Islamic State seized control of Derna in 2014 and Sirte in 2015. In the southern Fezzan region, Misrata-backed Tuareg fighters took the El-Sharara oilfield and roads leading to the rest of the region, sparring in deadly clashes with rival Tebu groups in summer 2015.

A UN-sponsored mediation produced a much-awaited political agreement in December 2015. It created the Presidential Council, which presides over the Government of National Accord (GNA) in Tripoli. However, buy-in from all major parties involved in the conflict – particularly General Haftar and members of the HoR – was lacking, thus preventing formation of a nationally authoritative government, a situation that continues.

3.　Assessment of Progress

3.1　*Building a Social Covenant to Bridge Divides and Create Common Nationhood*

Libya did not progress towards social cohesion after the revolution. Strong, hyper-fractured militias gained power, inter-tribal and political conflict escalated, and law and order deteriorated nearly to non-existence, especially on the national level. These negative developments fuelled factionalism and chaotic insecurity, closing off the safe spaces reconciliation efforts needed. This eventually rendered impossible grassroots work that civil society organisations began after the 2011 revolution and, if continued, might have forged more supra-tribal civil and national identities. Despite the success of the 2012 GNC elections and the organisation of multiple municipal elections, two important political dynamics undermined social cohesion and widened tribal and regional rifts: the regionalist movement and post-2014 political breakdown.

Movement towards Regionalism – After lying dormant for decades under Gaddafi, the regionalism movement forcefully resurfaced following the 2011 uprising. Regionalists argue for return to the 1951 constitution, which provided for a federal state that granted Cyrenaica, Tripolitania and Fezzan their own legislatures and executives. The former had final say on all national policy, but the regions had great autonomy. Proponents of regionalism began to re-emerge around 2012, when the first militia attacks in the name of an autonomous Cyrenaica began. Around the same time, preeminent militia leader Ibrahim Jadhran, commander of the NTC's Petroleum Defence Guard, seized the oil terminals in the east and pledged allegiance to an autonomous Cyrenaica. In the same breath, the "Barqa Movement" (Barqa is the Arabic term for Cyrenaica) began to grow in the

east, forming an unofficial army from loyal militias and an executive office. This effort to emphasise Cyrenaica's separateness (as Libya was undergoing its first elections and power transition) fractured social cohesion nationwide and gave significant oxygen to sub-state sources of identity, such as regionalism and tribalism.

Post-2014 Political Breakdown – The post-2014 political breakdown seriously intensified fighting between groups, depriving Libya of a national government, shattering social cohesion and eroding any sense of national unity. The split between the HoR and GNC, following the relatively successful 2014 elections that brought the HoR to power, left a power vacuum at the national level. This rendered moot the notion of a cohesive state, not only hindering the capacity to rebuild social cohesion, but also calling into question Libya's existence as a cohesive state. Breakdown between the HoR, GNC and other factions has been highly divisive, turning many Libyans against each other and ultimately against a system they feel has done little to improve their situation. This is compounded by the rise of General Haftar, whose relentless anti-Islamist discourse and pledge to "cleanse" Libya of "terrorist elements", including non-violent political Islamists, has further eroded social cohesion. Haftar shows no signs of stopping and continues to gain support in the east with military victories against Islamist militias and ISIS. The December 2015 appointment of the Presidential Council and the GNA appeared to many outsiders a step towards mitigating the post-2014 political fallout but has divided Libyans even further. Many view the GNA as an illegitimate puppet of the international system and stick to their support for the GNC, the HoR or Haftar.

3.2 *Adopting Inclusiveness as a Guiding Principle in Policymaking*

The political chaos involves three competing governments, none able to exert authority nationwide, and means next to no policies or proposals for more inclusive reforms have been introduced. Any that have been advanced are unable to proceed due to lack of capacity and authoritative power. The state has thus been unable to make much progress on crafting and enforcing more inclusive policies. This has played out in three major areas: decentralisation policy (i.e., Law 59); public salaries and service provisions; and control over the security sector.

Decentralisation – Decentralisation is the best example of a policy crafted to improve vertical relationships between the state and citizens since the uprising. The NTC spearheaded it before transferring power to the GNC, which institutionalised decentralisation in Law 59 in 2012. That law cemented municipal councils as local institutions and tried to lay the groundwork for devolution across four levels of government: national, provincial, municipal and *mahalliyat* (neighbourhood). By making provisions for seven- to nine-person municipal councils directly elected by local constituents, it ensured all citizens had a voice. Additionally, it gave municipal councils a relatively large mandate over public services, local construction, commercial licences and the civil registry. This in itself was tremendous progress from pre-uprising times, when one had to travel to Tripoli, regardless of residence, to obtain any official document and with few guarantees that it would be ready on time. In theory, Law 59 reinforced socio-economic and political inclusivity by creating empowered municipal councils citizens could easily hold accountable. Additionally, it stipulated that each council should reserve a seat for a female councillor and one for a "wounded warrior" injured during the uprising.

However, the collapse of national-level political authority led to patchy implementation. Libyans and outside observers view Law 59 as incomplete and unenforceable, primarily because no single legislative body exists nationally to monitor implementation or reinforce it with amendments. Additionally, though the municipal councils are seen as highly legitimate in most parts of the country, many fall short of respecting the female representation stipulation. Power struggles between councillors and questionable practices by certain mayors have also led to the implosion and forcible restructuring of some municipal councils. This occurred in Benghazi, where the mayor received a no-confidence vote and was ousted by his councillors for spending too much time abroad in 2016. It also happened in Tripoli, where councillors accused a mayor of inefficiency and

negligence, voted him out and eventually replaced him. Finally, budgetary issues plague all municipal councils and prevent them from exercising their mandate. These challenges stem from financial troubles at the national level, often by-products of the political conflict.

Economic Reforms – Libya has taken multiple steps backwards in terms of economic inclusivity. Insecurity and competition to control the national government have impeded production of commodities and delayed (at times completely obstructed) delivery of funds to municipal councils and public services to citizens. The state under Gaddafi was largely able to meet citizens' basic economic needs and maintain an acceptable degree of public service, but it cannot today, mainly due to weak security and the political situation. Payment of public sector salaries is severely delayed, in sharp contrast to before 2011, when most Libyans received public salaries. Power outages are increasingly frequent in Tripoli and throughout the south, and in early 2017 the entire west was at risk of a complete telecommunication breakdown. Demonstrations in Tripoli and much of the south have protested inequalities in infrastructure and service provision.

Security Sector Reforms – Following the capture of Sirte and Gaddafi's death, the NTC created a Supreme Security Committee (SSC) under the authority of the interior ministry (MOI). This was a first attempt to reintegrate the many revolutionary fighters and militias formed during the uprising by hiring them as ministry employees. This initiative continued under the GNC, and in March 2012, the defence ministry created Libya Shield, another attempt to reintegrate militia fighters into a state-run structure for gainful legal employment, in this case the army. However, both the SSC and Libya Shield failed to dismantle the militias' power and command structures prior to integration, thus paving the way for their continued autonomy.

Assuming nationwide control over militias has proved an insurmountable challenge. For example, in June 2012, the Al-Awfea Brigade militia briefly took over Tripoli International Airport, while another militia that supported regional autonomy sacked the electoral commission building in Benghazi. The fractured security situation – characterised by widespread criminality, virtually non-existent rule of law and over 1,500 competing militias – has entrenched tribal and regional cleavages and contributed to a simmering civil war. Lack of rule of law and entrenched tribal and regional cleavages have led to increased inequality and marginalisation. Populations in conflict-affected zones are often vulnerable to highly discriminatory laws at militia whims, deprived of consistent, clear, enforceable official policies that protect their rights and ensure equitable treatment under the law.

3.3   *Strengthening Mechanisms to Enforce Political Commitments and Reduce Bias in Institutions*

This third building block is strongly tethered to the causes and effects of the first two. National political paralysis, the historically fragmented nature of society and the 2011 armed uprising complicated efforts to strengthen commitments and reduce bias in state institutions. The path towards inclusive institutional reform has been very difficult for three main reasons: weak civil society; lack of national authority over major state organs; and impediments to local governance.

Role of Civil Society – Civil society plays a vital watchdog role against impunity, corruption and other state abuses, and serves as leading advocates for reform, encouraging and helping the state craft more inclusive institutions. But it has been less present and mature than in neighbouring states, including Tunisia. The Gaddafi regime muzzled civil society, shutting down spaces where people might convene and severely punishing independent organising. Following its demise, a number of civil society organisations were created and grew with the help of regional and wider international programs aimed at training them to promote good governance and human rights effectively. However, the work was largely cut short, beginning in 2013, when attacks against civil society activists and organisations became more frequent. In 2014, a number of preeminent activists were assassinated, prompting even more to go into hiding or flee. Due to the dangers, activists

remain unable to play a visible or vocal role within the country, thus curtailing civil society's potential to act as a social unifier, pro-reform mobiliser and watchdog against state impunity.

Authority of State Institutions – The 2014 elections proved fatal for national-level institutions, since the HoR was blocked from power by militias loyal to the GNC. This provoked a political crisis that ultimately pulled the GNC, HoR and now the GNA into a whirlpool of competition for power. The GNC and subsequent contenders for the title of "national government" were unable to consolidate power – especially that of armed groups – under national institutions. Such consolidation would have been a critical first step towards national control and thereafter working to build and inclusively reform state institutions. Control of armed militias is stubbornly atomised, because they remain loyal to one of the three governments. Without nationally authoritative state institutions, such as an interior or defence ministry, to control security forces, pursuing specific security sector reform (e.g., to address police impunity, overcrowded prisons or human rights abuses) is impossible. Libya is consumed not by the need for security sector reform or any other sector reform per se, but by the most basic questions of whether these sectors can even exist as singular, national institutions.

Local Governance – A dichotomous dynamic began emerging post-2011: while national institutions sank further into the quagmire of political conflict, often lacking basic capacity to function effectively, municipal councils often worked surprisingly well, even in the absence of national-level progress. Yet, national problems have had a very negative impact on local government. Many municipal councils complain of receiving delayed or insufficient funds, or none at all. The weak security situation impedes and drastically restricts the work of local government, but sustainable improvement is impossible without a nationally-agreed political framework. No single entity wields enough coercive power to force the others to disarm, an obstacle that complicates efforts to achieve political reconciliation. Finally, until Law 59 on decentralisation is clarified and properly implemented, the decentralisation process will remain incomplete. Municipalities will continue under vague, overly broad mandates, and their work will be stymied and unmonitored as competing national governments attempt to cling to whatever power they can.

3.4   *Summary of General Progress*

Achieving social cohesion in Libya has never been easy. Local and regional identities are older and more deeply entrenched than an overarching national identity. Attempts were made after the 2011 uprising to foster social cohesion and create a national identity by elections for a nationally representative government that would draft a more representative, inclusive constitution, but national institutions remained weak and prone to division and collapse. The return of Cyrenaican regionalism and the chaotic political splits that formed after the 2014 elections further divided a fractious society. The decentralisation process, which conferred unprecedented real power on municipal councils, was the most successful effort at crafting more inclusive policies. The councils enjoy high levels of legitimacy and proximity to constituents. But the absence of functional, authoritative state institutions, related budgetary problems and Law 59's imperfections make it hard for them to function well and limit ability to develop more inclusive state policies.

The biggest impediment to progress in the attempted transition has been the lack of authoritative, capable state institutions, due to political conflict between competing national governments, compounded by rising insecurity and a huge number of jockeying local militias. The challenge of creating, strengthening, and reforming such institutions is compounded by the fact that, due in large part to the dangerous instability, civil society exists today mainly in exile, leaving municipal governments unable to fill the vacuum. Even considering mechanisms that could make for more inclusiveness and accountability is largely beyond Libya's grasp, since the very existence of state institutions is often in jeopardy, rendering progress towards accountable and unbiased ones a largely moot point.

4. How the Three Building Blocks Interact in Transition

The Libyan story powerfully demonstrates an important lesson: when there is little to build on in regard to the three building blocks of inclusive social contract formation, progress towards a sustainable transition is very difficult. The country can be envisaged as a stool with no legs: all three building blocks were missing at the start. A virtuous cycle could potentially have begun if Libya had been able to make substantial progress in one area, lending crutch-like support to the process and potentially spurring progress in other areas. With bleak starting conditions and a heavily armed population, however, getting a leg up on that stool proved extremely difficult.

Major failures, which created a vicious cycle, related most powerfully to the inability to develop either social cohesion or state institutions capable of exerting national power equitably. The failures included to disarm or subsume militias into state security forces effectively; to revive trust across clans and provinces; and to reconstruct a shared national identity. Lack of strong state institutions (the third building block) became the biggest impediment to progress, powerfully undermining attempts to build social cohesion and develop inclusive state policies (building blocks one and two). From the start of its short state history, Libya has been especially riven by a lack of social cohesion. With regional and tribal identities paramount, progress in that direction after 2011 became very difficult, making it much harder to build and sustain legitimate, authoritative national institutions. This fuelled a cycle in which weak social cohesion produced weak national institutions, reinforcing in turn weak social cohesion – all of which reinforced a downward spiral in which propagation of more inclusive state policies was all but impossible.

Had Libyans shared a strong sense of national identity, or at least not been divided by a panoply of disparate, competing tribal groups, coming together under a national government capable of creating and reforming state institutions would have been more achievable. Similarly, had they possessed strong state institutions, they could have worked to deliver services and recruit employees more inclusively, thus building social cohesion. But policy became almost an afterthought, since without the bare minimum of state institutions (a nationally legitimate government that controlled all or most of Libya's territory), meaningful policymaking, at least on the national level, was impossible. While many governments do not exert effective control over their entire territory, Libya, especially since 2014, has bordered on becoming a failed state. Its three national governments compete not only with one other, but also with a wide variety of tribes, local militias, and, until recently, the Islamic State. The rise of General Haftar, who enjoys substantial backing from Egypt, the UAE and now Russia, all of which have interfered to stymie democratic outcomes that may have resulted from Arab Spring uprisings, is also deeply concerning.

Given the weakness of Libya's state institutions, its absence of a national government and its weak social cohesion, a transition was always going to be torturous. A longer time horizon, as well as a redoubled focus on disarmament, strengthening governance institutions and decentralisation may have been advisable, since the almost uniquely disadvantageous starting conditions suggest democratic transition at a speed remotely comparable to Tunisia's was unrealistic. Consolidation of at least one leg of the stool, such as state institutions, would ideally have come first, giving an anchor from which to achieve progress in other areas. There may have been better chances to advance piecemeal by investing in strengthening the comparatively well-functioning local institutions. Creating more space for each area to move at its own pace might have reduced expectations on the centre, in turn making the competition for control less vicious and less of a zero-sum game, so more likely to succeed.

5. Other Conclusions

Other issues impacted the attempts to forge a stronger, more inclusive social contract, including transnational terrorism; the interference of regional actors; the impact of a divided international community on efforts to resuscitate the transition; and the "resource curse", Libya's heavy dependence on oil.

Security breakdown, absence of a nationally authoritative government, proliferation of arms and the presence of large, ungoverned spaces helped make an ideal training and transit ground for terrorist fighters. The rise of ISIS in Iraq and the Assad regime's horrific violence in Syria occurred in tandem. As in Tunisia, insecurity there created a pull factor that, combined with the push factor of economic stagnation, joblessness and marginalisation, led to recruitment of thousands to wage international jihad and/or engage in ISIS's jihadist state-building. Chaos made Libya a key part of that story, as a major transit route and training ground for ISIS and, before that, for young Tunisians and other foreign fighters intent on joining the Levantine jihad.

Outside powers have been divided about Libya from the beginning. Unlike Tunisia, which has attracted comparatively less attention from democratic spoilers and which the US, EU and other Western democracies have supported (even if insufficiently at times), Libya attracted interest from a wider range of actors with confused, sometimes opposing goals. Neighbours, especially the UAE and Egypt, were more heavily involved in its attempted transition than in Tunisia's. Both threw their weight behind General Haftar as an ally against Islamist-inflected trends.

Finally, the "resource curse" legacy – an economy built around oil, rather than the diversified production of goods – saddled the transition with burdens typical to other petroleum-dependent countries. These include the absence of a healthy, diversified economy; a history of state hand-outs, as opposed to development of an educated, high-capacity workforce; and a population that, placated by the distribution of state rents, had been less engaged with democratic processes and less connected to forms of non-state income and political influence.

Conclusion: Comparative Analysis

The transitional experiences of Tunisia and Libya highlight five key lessons. First, starting conditions matter, but history is not destiny. Unlike Tunisia, Libya began its transition almost bereft of social cohesion or state institutions, handicaps from which its transition never recovered. In such a fractured state, where institutions are weak and polities deeply divided, the scope for democratic change is limited compared to that of a country with stronger starting conditions. Riven by conflicting sub-national identities and lacking a unifying historical narrative – what the Latin America chapter below refers to as "a vision of a collective we-ness" – Libya, since its creation as a nation-state, had suffered from an extreme lack of social cohesion. Without much to build on in that crucial first block and lacking strong national administrative institutions, it tumbled into a vicious cycle where weakness in one area brought down efforts in others.

While critical, however, starting conditions do not fully script the course of a transition. Progress towards a more inclusive social contract was contingent and reversible in both Tunisia and Libya. More than once in Tunisia, including the 2013 Bardo Crisis and the proposed electoral lustration law, leaders' decisions could have toppled the country's transition. The obverse is also true. Had Libya's leaders resisted certain exclusionary moves (e.g., rejecting the 2013 lustration law) and invested more in inclusionary actions, its transition may have not unravelled so catastrophically and even have gained a toehold to anchor gradual progress towards social contract formation.

This leads to the second lesson: progress towards formation of stronger social contracts is especially vulnerable when transitions face moments in which exclusionary decisions are popular and politically tempting. These are critical junctures, at which following an inclusionary course requires elites to prioritise strategic pragmatism, not opportunism and knee-jerk populism.

Tunisia avoided by a single vote in its Constituent Assembly the trap of lustration legislation that could have transformed disgruntled members of Ben Ali's disbanded party and their supporters in Nidaa Tunis and other groups into a strong constituency for a coup. Voting against a law popular across the ideological spectrum was Ennahda's hardest decision, but it may have saved the transition. Similarly, the Bardo Crisis, though stoked by the exclusionary opportunism of some politicians, gave way to negotiation. Though less compromising stances were popular with the Ennahda and Nidaa Tunis bases, party leaders bargained a path out of the crisis.

By contrast, Libya's elected politicians and militia leaders gave into exclusionary temptation often. Those decisions – including the lustration law, the GNC's refusal to step down in favour of the elected HoR and Haftar's insistence on setting himself up as the next strongman – heaved the transition deeper into uncompromising opportunism. The dynamic of chaotic exclusion, in which competing actors refused negotiated paths forward, was fuelled and sustained by the saturation of arms in the country. The presence of independent, heavily-armed militias vying against one another and allying with uncompromising politicians sweetened the temptation of exclusion. In an environment dominated by the zero-sum logic of armed conflict, actors were more likely to perceive inclusive approaches as against self-interest.

Ultimately, both cases highlight an irony of post-authoritarian transitions: that transitional unrest – which can be caused by economic and security challenges of the type both Libya and Tunisia faced – is likely to trigger fear and dynamics of exclusion at precisely the moments when inclusive thinking and action are most important. By thrusting countries into exhilarating, frightening, even chaotic unknowns, transition produces more temptation to use the "us against them" logic often propagated by dictators. Countries with higher levels of social cohesion, especially where prior work has been done to build trust between pro-democratic actors (such as the *Appel de Tunis* and October 18 Collective talks in pre-revolutionary Tunisia), can be insulated from the worst effects of those temptations. That Tunisia has thus far held the sharks at bay is in no small part due to critical talks during the 2000s and the cooperation between political leaders that followed.

Thirdly, the cases suggest social cohesion and state institutions are particularly significant building blocks for transition and that these areas of social contract formation can powerfully reinforce one another, negatively or positively. The presence or absence of these two areas was vital in facilitating or quashing attempted transition. Their interaction fuelled virtuous (in Tunisia) or vicious (in Libya) cycles that made reforms easier or harder in the second area (inclusive state policies).

This leads to the fourth lesson: the importance of front-loading time and resources to strengthen local and national state institutions. Since social cohesion is an historical, socio-economic and cultural product, it cannot be built quickly during transition. It may be better to focus on government institutions that can be improved faster. More attention to strong state institutions at national and local levels earlier in the transitions may have been a wise investment for both countries, as well as pro-transition aid providers. Ideological and identity-based conflicts may dominate the airwaves, but citizens often care more about the presence or absence of state institutions that serve them honestly and efficiently. Transparent, accountable administrative institutions – from timely garbage collection to meritocratic hiring for public jobs – are crucial building blocks for healthy social contracts between citizens and states.

Tunisia's transition, and much of the technical help it received, focused disproportionately on political processes and the Islamist-secular conflict, to the extent that much-needed, achievable institutional reforms were put off or forgotten. Opportunities for far-reaching reforms and a tangibly different state-citizen relationship were missed, with the result that interactions with the state administration today feel mostly as cumbersome and corrupt as before the revolution.

In Libya, expectations to build a democratic transition in the near absence of viable state institutions were unrealistic. Basic goals like fully subsuming militias into the fabric of state security (a precondition for national security) deserved more attention, resources and diligent international cooperation. Investing expertise and resources initially into building national and local administrative capacities – folding citizens into a functional service network that was not militia or tribal-based – would have helped establish a toehold of progress on that third building block of reform onto which further progress in the first building block (social cohesion), perhaps even knock-on effects, could have been anchored.

Lastly, Tunisia and Libya's transitions show that timing and sequencing (the pace and order of steps towards inclusion in the three areas discussed) matter. The majority of Tunisia's wins have come as elite-level political gains: a new constitution and increased Ennahda-Nidaa Tunis coopera-

tion. Tangible wins touching everyday citizens – making the core state institutions less corrupt and abusive, bridging regional and class inequalities, holding powerful abusers to account, making public institutions more efficient and less bureaucratic – have largely not materialised. More focus on social cohesion and state institutions' inclusiveness and accountability might have helped deliver both kinds of early wins, giving citizens tangible evidence of the dividends of the uprising. Libya's transition attempted to build social cohesion, equitable state policies and more accountable state institutions simultaneously, but with no one leg to stand on, it quickly collapsed.

Based on the divergent degrees to which state institutions and social cohesion are strong and inclusive, different transitional outcomes – each comprised of different moments of opportunity when momentum-generating successes can be lost or won – are possible. In that respect, the priority is to identify the critical moments in transitional contexts when virtuous or vicious cycles can be created; key moments when progress can be built and iteratively sustained, and when the momentum needed to achieve knock-on gains in other areas can be generated.

5. Transitions in Latin America: Guatemala and Colombia

By Roddy Brett

This chapter analyses the cases of Guatemala and Colombia against the three building blocks considered essential for inclusive social contract formation: social covenants, inclusive policymaking and institution building. Guatemala's transition is viewed from 1985 to the present, Colombia's from 1991 to the present. While they manifest common characteristics related principally to shared experience of protracted political violence or internal armed conflict (and its causes and consequences) within the Cold War context, each is shaped by contextually driven factors that mould the degree to which the three building blocks have evolved, been consolidated and contributed to change in the country.

GUATEMALA

The factors shaping Guatemala's armed conflict were complex, manifest through a combination of ideological, ethnic and socio-economic conflict drivers reinforced by and framed within historical conditions of social and political exclusion, systemic institutional weakness and severe social cleavage and division, especially along racial lines. The conflict was waged between 1960 and 1996, as guerrilla insurgencies – united through the *Unidad Revolucionaria Nacional Guatemalteca* (National Guatemalan Revolutionary Unity, URNG) – mobilised against the lack of access to formal political channels and horizontal inequalities, in particular, lack of access to and control of land.[50] With respect to specific causal factors, it was shaped by mutually reinforcing

- structural drivers: rural exclusion/poverty; inequality (unequal land distribution/tenure); closure of the formal political system to effective political alternatives; and

- proximate drivers: access to land for legal resource extraction; ethnicity and language; rural/urban divides; race; ideology (extreme).

The brutal conflict was then shaped and sustained by an unequivocal bias in the control of economic and political resources by a racist, non-indigenous, Spanish-descended oligarchy. It used the state and its institutions for self-interest, thereby reinforcing societal fragmentation. The conflict was highly complex, with fault lines between victim and perpetrator not easily definable along the lines of ethnic group membership. Some observers saw simultaneous conflicts: one between liberals and conservatives dating back decades, one with Cold War roots that became active after the 1979 Sandinista takeover of Nicaragua.[51] But a fundamental characteristic of the violence was the state's perpetration of genocide against the indigenous Maya in the early 1980s, an outgrowth of the second conflict;[52] some 82 per cent of the war's 200,000 casualties were indigenous.[53]

1. Starting Conditions

Main Societal Cleavages – The constitutive components and raison d'être of the state and founding narrative of the nation were sculpted from the belief both belonged to and were to serve the interests of the Spanish-descended and ladino (mestizo) populations, not the indige-

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[50] Dwight Wilson, "Guatemala: Democracy by Default." *In Latin American Politics and Development*, edited by Howard J. Wiarda and Harvey F. Kline, 528-43. 7th ed. New York: Westview Press, 2007; Frances Stewart, "Policies Towards Horizontal Inequalities in Post-Conflict Reconstruction." Centre for Research on Inequality, Human Security and Ethnicity, 2005. 25-29. Accessed April 21, 2017.www3.qeh.ox.ac.uk/pdf/crisewps/workingpaper7.pdf.

[51] Comment by Carlos Castresana, June 2017.

[52] Roderick Brett, *The Origins and Dynamics of Genocide: Political Violence in Guatemala*. London: Palgrave Macmillan, 2016.

[53] Many of the perpetrators were also indigenous Mayans – recruited as paramilitaries by the army and landowners to commit the massacres of civilians.

nous people who are more than half the national total but disadvantaged in almost every area. Racism and the deep divisions upon which such an ideology was built, presumed and reinforced, have been at the heart of the colonial encounter and post-independence state. Central to the armed conflict's violence and functioning of the post-conflict polity and society, they are reinforced by crosscutting social cleavages, including rural-urban, ideological and class divisions. The fragmentation is a considerable obstacle to social cohesion, an inclusive national identity and a meaningful social covenant.

The military and political and economic elites used an ideology of dehumanisation (ethnic hatred) that framed "indians" – the guerrillas' primary social base – as a primitive, sub-human species, gullible and inherently subversive traitors who must be eliminated.[54] In the context of counterinsurgency, the dehumanisation strategy arguably reduced restraints on the violence, making perpetration of massacres easier. Impunity for the genocide the military conducted – a manifestation of racism and weak state institutions – "validated" the ethnic violence and exclusionary and discriminatory dynamics behind it.[55] That in turn bolstered discrimination, broadened social cleavages and further impeded social cohesion.

Equity of Policies – Little progress had been made to establish equitable public policies or inclusive legislation before the 1990s peace process. At the start of the transition, mechanisms to ensure equity were acutely restricted, with the possible exception, beginning in 1986, of an incipient political party system. Even with the return to civilian rule, the state remained highly exclusionary. Equitable policies and inclusive legislation began to be formulated at the national level only with the end of the armed conflict in 1996 and once provisions within the peace accords had been implemented. The majority of them were developed after 2000, and implementation has been severely limited due to weak political will and institutional capacity.

State of Institutions – The armed conflict was accompanied by periods of protracted authoritarian rule, including during the most egregious violence, when the state was controlled by the de facto president, General Efrain Rios Montt. After civilian rule returned in 1986 with the election of President Cerezo Arevalo (1986-1990), state institutions were severely degraded and ineffective, subject to military control, lacking in civilian oversight and biased in favour of the economic and political oligarchy. The military fully controlled the state apparatus, including but not limited to police, policy, customs, immigration, port and airports, post offices, telecommunications and the complete justice system. Both during the conflict and after, rule of law was absent. Institutions in the decade between the return to civilian rule and the end of the peace process became increasingly corrupt, resulting in capture by both legal and illicit actors and lack of capacity. They exhibited two further fragile-state characteristics: deep division and fracture along political-identity and ideological lines; and inability to act equitably and resolve differences between groups or channel political competition.

Other Key Issues – The armed conflict was shaped by the military, ideological, economic and political logic of the Cold War, as were other protracted wars and episodes of authoritarian rule in Central and South America. Few international impediments to the violence or incentives for social cohesion existed: the mass violence of the region's militaries against subversives (in Guatemala, indigenous communities) was financed by the hemispheric hegemon, the US. After the Cold War, the US reformed the nature of its participation in the region, gradually assuming a role in the democratisation and post-conflict reconstruction processes.[56]

The Cold War experience and its legacy thus are additional drivers of fragmentation in Guatemala. The cleavage between ideologies of left and right is still a significant barrier to social cohesion. Cold War rhetoric remains part of the discourse used across the political spectrum against

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[54] Brett. The Origins and Dynamics of Genocide: Political Violence in Guatemala

[55] Manus I. Midlarsky, *The Killing Trap: Genocide in the Twentieth Century.* Cambridge: Cambridge University Press, 2005.

[56] Victoria Sanford, Buried Secrets: Truth and Human Rights in Guatemala. New York, NY: Palgrave Macmillan, 2003; Brett, Roderick. The Origins and Dynamics of Genocide: Political Violence in Guatemala. London: Palgrave Macmillan, 2016

human rights and other activists seeking to transform exclusionary logic. Thus, human rights and indigenous organisations urging prosecution of ex-dictator Rios Montt for genocide were accused of being communist and subversive, and indigenous communities and organisations linked to the trial were subject to intense, racist discourses. Such narratives reinforce the societal fragmentation related to ethnic group identity and membership. These divisions are made yet more severe by weak state institutions that are formidable obstacles in turn to stability, development and democracy. The country is paralysed in a cycle of mutually reinforcing exclusion and underdevelopment by the inability of weak institutions and lack of social cohesion to manage and mediate conflict constructively. The ethnic and ideological cleavages mean there is little agreement on the fundamental principles and values of society; the terms of an inclusive social contract; what makes for legitimate government; and how to accommodate diverse identities. Acceptance of minimal democratic rules cannot be assumed.

2.   Overview of Main Transition

1985-2016: Political Transition and the Beginnings of the Search for Peace – After the URNG's strategic defeat in 1983-1984, the Chief of the National Defence Staff and General High Command gradually withdrew from direct participation in politics and orchestrated a transition to civilian rule. This was pushed forward through the National Constituent Assembly established in 1984 and the 1985 constitution. In the aftermath of the latter, a civilian, Vinicio Cerezo, was elected president and took office in January 1986.

In 1986-1987, Central American presidents pushed forward their initiative to establish a lasting peace in the Isthmus. With support from the Contadora Group (Mexico, Colombia, Venezuela and Panama), this led to the signing of the Esquipulas II Accord in 1987. Guatemala's peace process gained impetus, especially once the international community began to show interest in a role in the negotiations at the end of the 1980s. Direct negotiations, 1994-1996, produced seventeen accords that aimed to bring a definitive end to the armed conflict. While they failed to address causes of the conflict meaningfully, they included unprecedented initiatives upon which the parties could work to find compromises.

1996-2016: Transition from Conflict to Post-Accord Political Democracy – Two transitions continued simultaneously after 1986: (i) from military rule to political democracy, initiated in 1982; and (ii) from armed conflict to a post-accord scenario (after 1996). As the accords, though imperfectly designed, gained impetus, they became the fundamental motor driving democratisation.[57] At the same time, the stunted extent of that democratisation, influenced by weak institutions and minimal elite political will, limited the actual implementation of the accords.

The final agreement – the Accord for a Firm and Lasting Peace – was signed on 31 December 1996. Implementation under the government of new President Alvaro Arzu was to be overseen by the UN Verification Mission in Guatemala (MINUGUA) and underwritten by the UN and bilateral donors. Implementation was generally slow and disjunctive.[58] Once signed, government will waned considerably, and implementation languished amid increasing homicide, violence and spiralling exclusion.[59] The parties, and the government in particular, consistently failed to adhere to agreed timetables, frustrating international observers and donors. Fiscal reform – a commitment to increase taxable income to 12 per cent (the country's tax revenue is one of the hemisphere's worst) – and transformation of the military's mandate to safeguarding border security exclusively were lengthy, complex processes that never fully achieved their targets. The parties and, in particular, the economic and military elites, delayed and visibly impeded attempts at implementation.

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[57] Dinorah Azpuru, *The Popular Referendum (Consulta Popular) and the future of the peace process in Guatemala*. Washington, DC: Woodrow Wilson International Center for Scholars, 1999.

[58] Corinne Caumartin, *Racism, Violence, and Inequality: an Overview of the Guatemalan Case*. Oxford: Centre for Research on Inequality, Human Security and Ethnicity, 2005.

[59] Roderick Brett "The Janus Face of International Activism and Guatemala's Indigenous Peoples" In *Advocacy in Conflict: Critical Perspectives on Transnational Activism*, edited by De Waal, Alexander. London: Zed Books, 2015.

Despite establishment of new political parties, such as the *Frente Democratica Nueva Guatemala* (New Guatemalan Democratic Front, FDNG) and the URNG, political democracy remained exclusionary and "hybrid",[60] characterised by "brown zones": the coexistence of democratic and anti-democratic/authoritarian values and norms.[61] Unrepresentative parties and weak institutions did little to foster social cohesion and develop inclusive political and legal agendas.

A further characteristic of the transition was the international community's shifting influence. Since the late 1980s, actors including the Contadora Group, Group of Friends, UN, Consultative Group, Organisation of American States (OAS) and European Commission, had assumed and maintained an unprecedented capacity to pressure Guatemala successfully. Their impact on the peace process cannot be overestimated; without it, the accords would likely have looked very different. They gave considerable political and financial support to civil society, thereby strengthening its capacity also to pressure the state and society. The platforms of various civil society actors had sought justice and truth about past human rights violations, development of inclusive state political and economic policies and institutions, and reform of the predominant national ideology and history. In effect, the content of the peace accords, including transitional justice mechanisms and rights provisions, were largely shaped by the coalition between civil society and international actors, but this meant it was weakly rooted in the broader society's aspirations and so less likely to be enforced. Moreover, international leverage began to diminish in the aftermath of the peace process, thus further marginalising civil society. Domestic elites who saw the accords as a threat never felt obliged to carry them out.

The justice system, however, was one sphere in which the international community continued to assert influence, particularly after 2002. Drawing on the provisions of the Global Human Rights Accord (1994) and the recommendations of international organisations, UN observers, and Guatemalan human rights organisations, the International Commission against Impunity in Guatemala (CICIG) was established in December 2006. It sought to combat the growth of organised criminal networks and their infiltration of the state bureaucracy, a phenomenon dating as far back as the 1980s that tended to be linked directly to military counterinsurgency networks.[62] As shown below, CICIG has played a crucial role in strengthening institutions and generating the conditions for a potential social covenant.

3. Assessment of Progress

3.1 *Building a Social Covenant to Bridge Divides and Create Common Nationhood*

Important initiatives were carried out between 1984 and 1999 that had a disaggregated impact upon the building of a social covenant, but after 1999 there were no further efforts in that direction. The next section assesses: (i) the Political Constitution of the Republic (CPR) (1985); (ii) the peace process, in particular the Civil Society Assembly (1994-96); (iii) the two truth commissions; and (iv) the constitutional reform process (1999).

The Political Constitution of the Republic (1985) – The National Constituent Assembly, elected in 1984, precipitated creation of a new constitution. Longstanding cleavages within society, however, were not represented in the Assembly: it neither included diverse ethnic groups, nor represented distinct geographical regions directly, and failed to include a broad ideological spectrum. The left was prohibited from participating.

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[60] Terry Karl, "From Democracy to Democratisation and Back: Before Transitions to Authoritarian Rule." CDDRL Working Papers, 2005. http://cddrl.fsi.stanford.edu/sites/default/files/Karlsep05.pdf.

[61] Guillermo O'Donnell,"On the State, Democratiztion and some Conceptual Problems (A Latin American View with Glances at some Post-Communist Countries)." The Helen Kellogg Institute for International Studies, 1993.

[62] Ivan Briscoe, "A Criminal Bargain: The State and Security in Guatemala." Madrid: Fundación para las Relaciones Internacionales y el Diálogo Exterior, 2009; Guatemala: Squeezed Between Crime and Impunity. International Crisis Group, 2010; Julie Lopez, "Guatemala's Crossroads: Democratisation of Violence and Second Chances." Washington, DC: Woodrow Wilson International Center for Scholars, Latin American Program, 2010.

The 1985 constitution ceded considerable space and power to the military, establishing its immunity from prosecution and maintaining its courts while not authorising civilian control over military intelligence or the budget for undercover counterinsurgency operations. The document also failed to confer constitutional recognition of indigenous culture, languages and customary law. It thus did not address the deepest societal cleavage (between elites and the indigenous poor). But it did create key institutional structures for democracy and human rights protection, such as the Human Rights Ombudsman's Office, Supreme Court and Supreme Electoral Tribunal.

Internationally Monitored Peace Process with Civil Society Participation (1994-1996) – The peace process was engineered to be inclusive by bringing diverse social sectors together at certain moments. Perhaps most significantly, in 1994, civil society was given a seat at the negotiations through the Civil Society Assembly (ASC), which was mandated to formulate consensus positions on the substantive themes in the accords and send non-binding recommendations to the parties and UN. While participation was on a secondary, consultative level, it played a fundamental role in shaping the indigenous agreement, the civilian and military power agreement and the resettlement accord, among others.

However, the ASC's objective of fostering civilian ownership of the peace process was limited. First, it became evident in the 1999 referendum around constitutional reform that the majority of broader society did not take a larger role, as a result of exclusion (in the countryside) or fear (in the cities). Secondly, despite the inclusion of a broad spectrum of social sectors along generational, ethnic, gender, religious and geographical lines, the powerful Coalition of Agricultural, Commercial, Industrial and Financial Sectors (CACIF) and the business sector in general refrained from participating because of concern the ASC was too ambitious and a threat to their status and privileges. They used media control to engineer a huge campaign for a "no" vote. While the ASC was partially representative and cut across some of the principal social cleavages, the CACIF's absence limited its capacity to heal ideological divisions, preventing it from consolidating an inclusive social covenant and weakening its leverage on the parties.

The ASC's input did mean the accords contained unprecedented measures to redress the historical racial discrimination and socio-economic, political and cultural exclusion of women and the indigenous, notably including indigenous rights to language, dress and ethno-education. It also brought to the table issues of military and civilian power and the judiciary. The accords thus envisaged a wide-ranging process of institutional reform aimed at reengineering the state. Implementation, however, was partial and inadequate.

The Truth Commissions (1998-1999) – Along with El Salvador, Guatemala was one of the early cases in which transitional justice mechanisms beyond amnesty became central elements of a formal peace process.[63] Two truth commissions were created: the Catholic Church's (REMHI) and the UN-sponsored Historical Clarification Commission (CEH). Two days after the Church's "Guatemala: Never Again" was published in 1998, military officials murdered Bishop Juan Gerardi, the project director, in retaliation. President Alvaro Arzú refused to accept the CEH's "Guatemala: Memory of Silence" in 1999. Both reports condemned the military's overwhelming role in the killing of civilians during the conflict and the impact of its violence.

The findings of both reports were a fundamental contribution to revision of the parameters of the country's Cold War history and restructuring of its founding narrative. However, the government's and military's rejection and Bishop Gerardi's murder evidenced elite unwillingness to accept responsibility for the counterinsurgency violence. Their repudiation meant that the reformist history in the reports would not become a pillar for a social covenant. Rejection of the commissions strengthened genocide denial, impeding any possibility of establishing an inclusive, historical national narrative and genuine post-conflict reconciliation.

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[63] Alexandra B. De Brito, Carmen Gonzalez-Enriquez, and Paloma Aguilar, *The Politics of Memory: Transitional Justice in Democratising Societies*. Oxford: Oxford University Press, 2001.

The Constitutional Reform Process – The government was required to hold a referendum on any potential constitutional reforms emerging from the peace process. Of central importance were themes including rural and indigenous inclusion, mechanisms for poverty alleviation, institutional reform, transformation of the justice system and recognition of the country as a multi-cultural, multi-ethnic, multi-lingual state. They were meant to overcome deep-rooted, crosscutting cleavages, exclusionary history and inequality. The reforms were rejected by a majority of voters, while 81 per cent of those eligible abstained. The result further evidenced the challenges in constructing an inclusive social covenant, clarifying the persistence of deep divisions around ethnicity, race and ideology and the absence of a collective will to debate these central issues.

3.2 *Adopting Inclusiveness as a Guiding Principle in Policymaking*

The foundational principle of the state and society had been exclusion: of the indigenous, women, peasant farmers and others. The driving force behind the gradual and deliberate, yet partial, adoption of a guiding principle of inclusiveness became the peace process and the obligations to which it bound successive governments. Initially, after the 1980s, civil society organisations and members of the Catholic Church emerged as the most prominent advocates of inclusiveness (along gender, ethnic and urban/rural lines), as related to the peacebuilding agenda. The Human Rights Ombudsman's Office also played a minor role. However, domestic organisations were too weak to exert leverage effectively upon the negotiators and, in general, the state and government.

As the peace process progressed, the increasing presence of the international community and its growing capacity to influence the elite became central to the emergence of a sustained dialogue around issues of inclusiveness. Within the peace process, the alliance between domestic social movements and international actors around inequality, inclusion of the indigenous population and women – among others – came to be crucial for incorporating these issues within the accords. Once agreements were signed, the government was obliged to address inclusiveness. Though mechanisms were formulated, poor implementation impeded any broader social, political, or economic transformation.

In the decade after the peace process, key laws and policies were adopted that related directly to inclusiveness and precipitated a partial recalibration of the state's institutional framework. The Law on Discrimination (gender, ethnic, racial, and religious) and three Decentralisation Laws were passed in 2002. The latter sought to establish a normative framework through which exclusionary acts and attitudes could be sanctioned and to empower actors historically marginalised from decision-making processes on both the federal and sub-national levels.

When the 2002 penal code made discrimination a crime, important racial discrimination cases were successfully tried. The significance of this normative framework remains considerable. However, indigenous peoples continue to suffer structural, institutional and state-sponsored racism daily. Furthermore, incremental successes in claiming indigenous rights continue to be resisted – and increasingly with violence – at state and societal levels. This backlash, precipitated by a perceived threat to non-indigenous interests, is evident in claims that supporting such rights is itself discriminatory and divisive, as became evident during the 2013 trial of General Rios Montt for genocide.

A series of other laws have been debated, some of which were adopted by the state, including the Development Councils Law (and the broader package of legislation relating to decentralisation produced after 2002), which opened space for extensive political participation in urban and, especially, rural communities. These include the Domestic Workers Law; Sexual Harassment Law; Law Governing Indigenous Peoples and Communities; Linguistic Regionalisation Law; Law Concerning Racial Discrimination; and Law Concerning Inter-culturalism. Revisions were also proposed to the Electoral and Political Parties Law; Law of the Judicial Organism; Law of the System of Urban and Rural Development Councils; and General Law of National Languages. In general, many of these laws and reforms sought to overcome the impasse caused by the unsuccessful 1999 referendum. Their partial success evidences some progress, but again implementation has been weak.

Despite important legislative advances – mainly a result of civil society's pressure – the Congress remains an institution profoundly shaped by historical and structural racism against indigenous peoples. An indigenous party, Winaq, was established in 2007 by Rigoberta Menchú, but only approximately 12 per cent of legislators are indigenous. The Congressional Commission for Indigenous Communities is without effective leverage, as demonstrated in November 2016 when Congress rejected formalisation of indigenous customary law. The indigenous population has yet to coalesce around a single identity or party, not least due to fears pertaining to the 1980s genocide that exacerbate historical fragmentation. Given under-representation, obtaining laws relating to indigenous peoples is challenging, despite important recent initiatives, including via the Congressional Commission of Indigenous Communities, supported by the OAS and UN.

From 1999 to 2006, meaningful progress was made at policy level, mirroring legislative developments. Key policies were formulated to construct a more inclusive state and, by correlation, more social cohesion. These included the National Policy for the Promotion and Development of Guatemalan Women and the Plan for Equity of Opportunities (1999-2000), which developed through coordination between the Secretary for Social Projects of the First Lady, the National Office for Women and women's organisations. Others more deliberately aimed to foster inclusiveness were the Public Policy for Coexistence and Elimination of Racism and Racial Discrimination (2006), the Integral Policy for Rural Development (2006) and the National Policy for the Promotion and Integral Development of Women and Plan for Equity and Opportunities (2009). But the overriding obstacle to policy initiatives in the past decade has been the state's consistent failure to assign adequate budgets to them and their related institutions.

3.3   *Strengthening Mechanisms to Enforce Political Commitments and Reduce Bias in Institutions*

A fundamental requisite for successful transition to a post-conflict polity was re-engineering of the state. The peace accords provided a roadmap and blueprint for institutional transformation, but overall, institution-building success has been minimal, despite some gains in recent years. State and government funding and political will have been scarce; money for the myriad initiatives emanating from the accords came primarily from abroad (UNDP, bilateral donors, the EU, etc.), not local authorities.

Table 1. Proposed Institutional Transformations and their Levels of Impact

Thematic Area	Proposed Transformations	Impact
Justice System	Establishment of high impact courts; strengthened public prosecutor's office; law against organised crime; effective sub-national court system; office for legal aid	*Partial, disjunctive success:* impunity remains high; murder rate declined by 40 per cent; Constitutional Court and other courts still broadly corrupt
Military	Downsized from counter- insurgency army and function; no role in internal policing; civilian oversight; adherence to international human rights standards	*Minimal achievements:* military continues to carry out policing role
Policing	Establishment of new, inclusive professional police force; culturally and linguistically sensitive policing of indigenous populations and women; retrained force to respect international standards; special investigative units	*Minimal achievements:* police remain ineffective, corrupt and captured by clandestine groups; investigative units still weak
Civilian Intelligence	Civilian agency to follow mandate relative to democratic functioning, not counterinsurgency	*Minimal achievements:* intelligence agency remains ineffective

Thematic Area	Proposed Transformations	Impact
Development	National-level institution to plan/implement wide array of polices emerging from peace accords (SEGEPLAN)	*Partial success:* development plans increasingly implemented
Ethnic and Racial Issues	Establishment of wide array of institutions to transform state to an entity to represent and promote indigenous rights, identity	*Partial success:* institutions exist, but inadequate funding, despite strong institutional mandates
Gender	State institutions created and others to be strengthened to transform state into an entity that represents and promotes women's rights	*Partial success:* institutions exist, but inadequate funding, despite strong institutional mandates; violence against women has increased over last decade

Rule of Law – The justice system has, with important exceptions, remained deeply corrupt, subject to external pressure and incapable of or unwilling to protect citizens. Rule of law is a fiction for the majority of Guatemalans; homicides are over 16 per day, and impunity is severe: 99.75 per cent in both criminal and civil cases in 2010, according to the Penal Chamber of the Supreme Court. Nevertheless, there have been some recent advances, most significantly following CICIG's, establishment in 2007. The murder rate, which climbed from 26 per 100,000 a year following the failed 2000 referendum to 46 in 2010, dropped back to 27 per 100,000 in 2016, as CICIG began to have demonstrative results (seven convictions in seven high impact cases).

Sponsored by the UN and funded internationally via a multi-donor trust fund UNDP manages, CICIG is a hybrid criminal justice mechanism embedded in the national judicial system.[64] Its inception comes from a side agreement to the 1996 peace accords. Its mandate is to investigate and dismantle organised criminal networks that have infiltrated the state and to strengthen the criminal justice system with the aim of precipitating long-term structural and institutional transformation.[65] Its specific objectives are to (i) support, strengthen and assist state institutions in investigation and prosecution of crimes by CIACS (clandestine illegal security forces); (ii) assist in clarifying their structures, activities, modes of operation and sources of finance; and (iii) bring about their dismantlement and legal prosecution. A key focus has been investigation of state agents linked with CIACS. Central to CICIG's gradual but considerable impact is its embedment within the domestic justice system and dependence on local cooperation.

CICIG has wielded significant influence upon institution building, reduced impunity and partially strengthened rule of law. Creation of effective, neutral state institutions has, in turn, produced successful outcomes in high-impact cases, leading, in part, to dismantling of CIACS. It has provoked an unprecedented strengthening and emboldening of institutions by generating a culture of professional norms and values, transferring capacities and consolidating good practices. Its 2008 work led to establishment of UEFAC, the Office of the Special Prosecutor to Support CICIG (*Unidad Especial de la Fiscalía de Apoyo* a la CICIG). In 2010, CICIG's support to civil society organisations contributed significantly to the appointment as attorney general of Claudia Paz y Paz, a progressive jurist and human rights defender. Its lobbying processes have led to the sanctioning and removal of obstructionist and corrupt officials in several state institutions, including 1,700 police in 2008 and Attorney General Conrado Reyes in 2010.[66] It has given decisive support to the High Impact Courts, created in the 1996 peace accords to prosecute crimes relating to human rights violations, high-

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[64] CICIG has been financially supported by Spain, the UK, US, Sweden, Canada, the Netherlands, Italy, Norway, Switzerland, Finland, Denmark, Germany, Ireland, and the European Commission. Chile, Colombia, Uruguay and other Latin American countries have seconded personnel.
[65] "Recognising the past: challenges to combat impunity in Guatemala," Impunity Watch, 2008.
[66] Guatemala: Squeezed Between Crime and Impunity. International Crisis Group, 2010.

level corruption and drug-trafficking among others. The 2013 prosecution and indictment of Rios Montt was one of those courts' notable successes.

Nevertheless, the ultimate impact remains subject to the overriding historical patterns of social fragmentation, inequality and exclusion, and the systemic weakness, predisposition, lack of funding and politicisation of institutions.

Indigenous Rights and Identity – The peace accords – particularly the 1995 Accord on the Rights and Identity of Indigenous Peoples – obligated above all the government to develop an infrastructure of state institutions to promote and protect the rights and identity of indigenous peoples. After 2004, a wide range of state bodies was established to address indigenous inclusion. Simultaneously, indigenous officials assumed high-level positions in government, including in the Peace Secretariat, the National Reparations Commission, the Commission Against Racial Discrimination (CODISRA), the Directorate of Immigration, the Supreme Court, the culture and intercultural-bilingual education ministries, the Strategic Affairs Secretariat and the Peace Fund.

By 2006, over 30 agencies had been created, many operating autonomously within ministries; most still function. For example, the Defender of the Rights of Indigenous Peoples of the Human Rights Ombudsman, the Office of Indigenous Women's Rights, CODISRA, the Indigenous Peoples' Unit of the Institute for Public Penal Defence and the Advisory Council of Indigenous Peoples were established to address crosscutting themes including racism, discrimination and access to justice. However, they rarely have adequate or autonomous budgets, and racism remains a key determinant of social and inter-ethnic relations within state institutions. The trend towards quantitatively greater indigenous participation at *individual*, not *collective* level, therefore, has neither precipitated a greater qualitative political impact leading to consolidation of a plural state nor yet transformed the image and practice of the state and its institutions.

Indigenous participation in the political party system similarly resembles the patterns of systemic exclusion and individual representation, as opposed to institutionalised party policy or collective participation. There is no quota system for indigenous peoples. During the 2007 elections, indigenous Nobel Laureate Rigoberta Menchú ran for president with the aim of strengthening pluralistic democracy and "opening a path" for indigenous participation in future polls, but won only 3 per cent of the votes. That suggested indigenous Guatemalans are unlikely to mobilise effectively enough to replicate the result in Bolivia, where President Evo Morales, an Aymara, was elected on a broadly indigenous ticket. Parties, however, continually seek to develop strategies to anticipate the possibility of mass indigenous electoral participation and to capture the "indigenous vote".

3.4 *Summary of General Progress*

Progress in building a social covenant has been slow and minimal. Embedded racism and ideological divisions across society have been difficult to overcome and exacerbated by polarised narratives on the armed conflict. A unifying national identity and narrative remain elusive. There has been important paper progress on inclusiveness as a framework for legislation and public policy, and broad mechanisms have been approved. However, there has been little meaningful change due to weak institutions, inadequate budgets and piecemeal implementation. Likewise, wide-ranging institutions have been established, but their relatively strong mandates have been inadequately executed due to the minimal elite political will that limits reform across the board.

4.   How the Three Building Blocks Interact

Two specific factors that have limited Guatemala's potential for meaningful social transformation arose during the post-1986 transitions from military rule to political democracy and from armed conflict to post-peace accords. First, no virtuous cycle or mutually reinforcing interaction was established between a social covenant, inclusion and institution building. Secondly, in part consequently, a vicious cycle of exclusion, societal and social fragmentation and weak, biased institutions has persisted.

Elites' capacity to decisively shape national politics is a principal obstacle. Forging a social covenant depends to a degree on the balance between those in favour of change and those against. In Guatemala, elites opposing such a covenant remain too powerful and far better organised than civil society. Racial and class entitlement drive elite perceptions and action, translating into unwillingness to allow implementation of the mandates of new institutions and contributing to a vicious cycle of political dysfunction. Successive governments have not adhered to obligations on new institutions, policies and legislation, including to allocate adequate budgets. Whenever possible, economic elites have systematically impeded transparency in state institutions, for example pressuring the Constitutional Court to annul sentences in specific cases, including Rios Montt's for genocide. They refuse the rules of the democratic game and seek to obligate institutions to act in their favour, ultimately neutralising state power.

There is some elite fragmentation, principally between the old, conservative oligarchy and the commercial elites represented by CACIF, and those from newer sectors such as mining. There is also a generational divide. Young businessmen, educated abroad and with no responsibility for the criminal activities of the past conflict understand that the dysfunctional, corrupt, weak state model and scandalously unequal, divided society they have received from their parents are not sustainable. But there is a unified elites' response to challenges posed by civil society. Fragmentation is thus insufficient to allow space for effective social mobilisation. Also, illicit actors continue to pressure institutions through threats and intimidation or by infiltrating them.

While the weak interplay across the three areas of social covenant, inclusive policymaking and institution building restricts any possibility for generating a new national identity and narrative, it also impedes generating equity and equality between citizens. Racism, a central social cleavage, remains a key obstacle to meaningful social transformation and cohesion, continuing to block the indigenous from proportional participation in the state and exclude them from policies and programs addressing poverty and rural development. The poor functioning of institutions reinforces societal cleavages while limiting inclusiveness.

Meanwhile, the military, which remains a central political actor, has been increasingly and directly implicated in corrupt activities and networks. Institutions are still captured by illicit networks (involving drugs and other crimes), many of which include military personnel, despite CICIG's work. CICIG has contributed vitally to development of important legal frameworks and somewhat stronger state institutions that have begun to provide at least a minimal counterbalance to elite actors. However, its impact is outweighed by historical patterns of social cleavage, inequality, exclusion and elite prerogative. Limited implementation of the reforms envisaged in the peace accords means that institutions are mostly too ineffective to carry through on policies and legal mandates, which impedes meaningful social, political and economic transformation.

The international community assumed a decisive role in both the peace process and post-accord reconstruction, not only by supporting domestic social movements to force debate around inequality, inclusion and gender, but also by financing state initiatives to address those issues. The alliance with domestic social movement actors was crucial for incorporation of inclusiveness as a guiding principle of the post-conflict state. A substantial international role remains necessary, but national actors need to own the process, a development that lack of interest in and opposition to the peace process and post-accord reconstruction domestically renders problematic.

State institutions' enduring lack of capacity, their capture by illegal actors for profit or for ensuring impunity, corrupt practices and the resulting restrictions on implementation of policies and laws concerning inclusiveness have prevented generation of a virtuous cycle. Spoilers have actively sought to prevent an inclusive social covenant. Simultaneously, this has also prevented development of an inclusive national identity and historical narrative, thus reinforcing societal fragmentation along ethnic and ideological lines.

In summary, weak institutional development, capacity and consolidation have prevented meaningful achievement of inclusiveness. Limited progress in inclusiveness has upheld the vicious cycle of exclusion of indigenous, women and rural populations, thus limiting any progress towards an inclusive social covenant. Lack of a legitimate, broadly accepted social covenant makes it easier for elites and other spoilers to hold to their exclusionary perspectives, particularly as institutions remain mostly absent from the equation. The most hopeful sign is that the gradual shift in institutional capacity resulting from CICIG has recently begun to place increasing pressure upon elites to accept rule of law, even if such acceptance is as yet slight and incipient.

COLOMBIA

For over a century, Colombian society has faced diverse, complex and mutually reinforcing forms of political and criminal violence perpetrated by the state, political parties and non-state actors (guerrillas, paramilitaries and drug traffickers). The Cold War-era armed conflict began with the creation of the Revolutionary Armed Forces of Colombia (FARC-EP) and the National Liberation Army (ELN) in 1964 and of other insurgencies in the 1970s, such as the M-19. By 1991, a new constitution was in place and the government had signed a long series of peace agreements with various insurgencies, other than the FARC-EP or ELN. However, negotiations with the former ended successfully in November 2016, while the latter is, since March 2016, in formal talks with President Juan Manuel Santos's government.

The guerrilla insurgencies emerged in rural areas in response to historical conditions of exclusion, poverty and inequality. Mobilisation was precipitated by unequal land distribution and tenure and closure of the formal political party system to effective alternatives. Persistent lack of any state apparatus – or, where present, systemic institutional weakness – across vast swaths of territory and the resulting weak rule of law exacerbated conditions of exclusion and the lack of access to formal political channels.[67] Socio-economic and political exclusion and the rural-urban cleavage remain key drivers of violence and thus factors that have impeded sustainable peace. The armed conflict and political violence have been shaped by systemic conflict drivers:

- Structural drivers: rural exclusion/poverty; inequality (unequal land distribution/tenure); closure of formal political system to effective political alternatives; and

- Proximate drivers: drug production and trafficking; access to land for legal resource extraction; ethnicity and language; rural/urban divides; race; extremist ideology.

The drivers and patterns of political violence evolved as illegal armed groups became involved in criminal activities, including drugs, particularly during the 1980s-1990s. Political and criminal violence have often become blurred and been mutually reinforcing. While ideological cleavages persist, violence and conflict have also been driven by factors with a less ideological basis. Drug production and trafficking – and other illicit activity such as illegal mining and extraction – have created high corruption and exacerbated the conflict's original causes, while making societal cleavages more complex. Many illegal activities have been conducted by excluded populations and where the state is weak, permitting profitable incomes and temporary zones of economic stability. Illegal activity has, in turn, weakened state institutions and control, as armed groups have often made income for immunity deals with local state and government actors.

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[67] Malcolm Deas, "Violent Exchanges: Reflections on Political Violence in Colombia," in *The Legitimisation of Violence*, Edited by Apter, David. London: Palgrave Macmillan, 1997.

1.   Starting Conditions

Main Societal Cleavages – Armed conflict and political violence have been reinforced by crosscutting social cleavages: ideological (left-right and social class) and demographic (rural-urban and, to a lesser extent, ethnic group identity). Ideological cleavages have been exacerbated through use of private militia groups by sub-national, rural and economic elites to protect land holdings from potential opposition, including peasant rebellion beginning in the early twentieth century and culminating in a wave of paramilitary violence driven by the United Self-Defence Forces of Colombia (AUC) during the 1990s and early 2000s.

Afro and indigenous populations are 3 and 15 per cent minorities respectively. Though the majority of victims are peasants and fighting has been concentrated in rural areas, indigenous and Afro populations have also suffered disproportionately, as the regions most affected by political violence and conflict over resource extraction are their ancestral lands, which tend to be rich in minerals. National and sub-national institutions and interpersonal relations are shaped by racism and ethnic discrimination. Similarly, Colombia remains deeply chauvinist, a dynamic reinforced in the context of the armed conflict, which has disproportionately affected women and girls, including through sexual violence carried out by all actors in the conflict.

Given the challenge of unifying Colombia's vast, fragmented territory, weak state reach and strong regionalism, an overriding national identity has not been forged, thus contributing to persistence of political violence and armed conflict. The sub-national nature of the conflict and weakness of institutions at that level have left the impact of inclusiveness initiatives and institution building disjunctive and ultimately restricted, particularly in conflict-affected zones.

Equity of Policies – Though an incipient framework for policies oriented towards equity existed prior to 1991, it was weak. The 1991 constitution was a turning point, ushering in a normative framework and becoming a reference point for a new social contract out of which legal instruments and public policies or guarantees oriented towards equity and equality were developed. It included sections on social and economic rights, created a Constitutional Court and prohibited indefinite states of emergencies and executive prerogatives. In the last decade, key policy frameworks have emerged for the inclusion of women. Municipal-level policies in conflict-affected zones such as Nariño and Sucre were formulated in 2011, with participation of local civil society organisations and UN Development Programme (UNDP) support. These influenced national debate and moulded some central provisions of the Public Policy for Gender Equity for Women and the Integral Plan to Guarantee Women a Life Free of Violence, launched by the Santos government in 2013.

State of Institutions – Colombia has a long history of formal democratic rule. Limited suffrage was established towards the end of the nineteenth century. Even after the 1991 constitution, however, some institutions at sub-national and local levels have remained ineffective, in some cases even held hostage by illicit and violent actors and economic elites due to systemic corruption. Institutions are weak in rural zones, the majority of the municipalities, their mandates favouring elite interests. Though much stronger in cities, particularly Bogota, Cali and Medellin, they have often lacked capacity, above all in the 1980s, when drug trafficking organisations infiltrated and controlled institutions, notably in Cali and Medellin.

Institution building *during* internal armed conflict is a severe challenge, as many institutions serve elite interests, and state resources are focused on counterinsurgency. During both Uribe administrations (2002-06; 2006-10), implementation of the counterinsurgency strategy implicated a number of state institutions in illegal activities, weakening their reach, neutrality, and capacity. Under Santos by contrast, national institutions have been strengthened and become capable of wielding greater autonomy, while the justice system has worked better as a bulwark against arbitrary power.

Other Key Issues – The key challenge is definitively ending the armed conflict and transforming the more recent conflict drivers, such as illicit drugs and illegal resource extraction, to build sustainable

peace. A key impediment to construction of an inclusive and meaningful social covenant remains the predominance of the political, economic and military logic of the region's Cold War. Radical groups in the private sector such as the Cattle Ranchers Association continue to use its discourse to oppose social transformation, as do illegal armed groups against social sectors such as trade unionists and human rights defenders who oppose the arguably overly liberal economic model and advocate alleviating the extreme levels of inequality.

2.   Overview of Main Transition

1991-2016: Transition from War to Peace – In the wake of the collapse of the Caguán talks with the FARC-EP (1999-2002), President Uribe (2002-2010) was elected on a platform that rejected peace negotiations and called for a military solution to the conflict. US involvement, consolidated during the Pastrana government, escalated, as did its pressure for a military solution. The bilateral Plan Colombia package was agreed by 2000, and between 1996 and 2010, Colombia became the third highest recipient of US aid globally: $6.14 billion in military and economic assistance, $5.56 billion of it through Plan Colombia.

Uribe escalated the armed conflict with his Policy of Democratic Defence and Security (DSP). This stronger assault on the FARC-EP and its social base was effective but brutal. It weakened the guerrillas' command structure and strategic operational capacity and sharply reduced kidnappings, homicides, and extortions, but a paramilitary dirty war on the FARC-EP and its social base accompanied it. The economic elite financed the paramilitaries, and the military armed and trained them. Military operations and paramilitary terror weakened the FARC-EP and gradually pushed it to the negotiating table. Talks began shortly after Santos assumed the presidency in 2010.

The Santos-FARC-EP Negotiations – Santos sought a political settlement, announcing talks with the FARC-EP publicly in 2012, after secret meetings in the months prior. Until early 2016, his government negotiated while continuing military operations, an apparently successful strategy. Negotiations were held in Havana, due to the trust the guerrillas had for the Castro regime. The role of international actors was limited, but key in generating conditions for the talks and keeping them on track. The guarantor countries, Cuba and Norway, and accompanying countries, Chile and Venezuela, as well as the UN and International Committee of the Red Cross, all assisted.

Talks were based on a limited agenda, eschewing the broader economic and political model as well as security sector reform, a lesson learned from earlier negotiations. They were shielded to a degree from spoiling actions, including by Uribe and his supporters. The limited agenda did address some key causal factors of the conflict: agrarian issues, political participation, illicit crops and, importantly, victims. The talks were partially opened to include victims and civil society actors, so as to seek a more inclusive settlement. This insightful move was ultimately successful.

The final peace accord was signed on 26 August 2016. A closing ceremony a month later was followed on 2 October with a plebiscite that the "No" campaign – led by Uribe and his supporters, parts of the Evangelical Church and some agricultural guilds – narrowly won, setting the process back. On 12 November, after renegotiations between the government and FARC, a second package of accords incorporating some of the "No" concerns was agreed. Congress approved it that month, and the Constitutional Court gave its go-ahead on 13 December. However, in May 2017, that court limited the congressional fast-track authority designed for the implementing laws.

(3)   Assessment of Progress

3.1   *Building a Social Covenant to Bridge Divides and Create Common Nationhood*

Initiatives have had a disaggregated impact on building of a social covenant since 1991. This section assesses (i) the 1991 constitution; (ii) the Caguán talks (1999-2002); and (iii) the Santos talks.

The Constitution (1991) – Constituent Assembly (CA) elections to write the constitution were held in 1990, with 75 per cent abstentions. The generally representative CA was a key mechanism for

peacebuilding and democratisation. Its inclusive process aimed to create a new social covenant and national identity.

The progressive new constitution sought both to include groups previously excluded on ethnicity, rurality and gender grounds among others, and to redefine the nation as undergirded by the "social and democratic rule of law." It has become a fundamental instrument in struggles for inclusion and equality, in particular through the institutional framework it established. As a rallying point across the ideological and political spectrum around which diverse groups mobilise and on which they agree, it is a force for social cohesion.

The Caguán Talks (1999-2002) – These talks were a political and military watershed and assumed profound significance with respect to a social covenant and identity. The inclusion of civil society through "justice and peace hearings" resulted from the widespread mobilisation of diverse social movements towards the end of the 1990s, and a peace movement that demanded inclusive negotiations. Peace negotiators saw participation of civil society and victims as an end in itself that had potential to reframe the national identity and forge social cohesion.

No social covenant resulted from the talks, however. On the contrary, the experience polarised the country and fed into a collective fear of the guerrillas. Collapse of the peace process precipitated a severe backlash against the guerrillas and movements searching for peace. The public felt the FARC-EP had duped the government and society, using the talks to rearm. The start of Uribe's all-out war polarised society. Some social sectors that continued to support peace were branded as traitors; as counterinsurgency escalated, some human rights, peasant, women's, trade union and peace movements became targets of state repression under the premise they were linked to the FARC-EP.

The Santos Peace Talks and Civilian/Victim Participation – Santos's negotiations balanced delicately between maintaining momentum towards a meaningful, inclusive deal that satisfied the parties as well as the demands and rights of victims, while anticipating spoiling actions from the Uribe camp and a society unsympathetic to the FARC-EP. The limited agenda was based on five issues that addressed, to some degree, the causes and consequences of the conflict.[68] The talks aimed to end the conflict and took place without a bilateral ceasefire. Key caveats were not to negotiate the economic and political model of the state or the armed forces' status and that "nothing was agreed until everything was agreed."

The parties sought to make the process representative and to sculpt a broad social covenant by including diverse actors. They jointly requested the UN and the National University of Colombia (NUC) to organise public fora around each agenda item. For the Victims Agreement, these were held in diverse locations, in some cases conflict-affected zones (Villavicencio, Barrancabermeja, Barranquilla and Cali). Over 3,000 victims participated in these fora, which, employing a gender focus, incorporated representatives from all social sectors and victims of all armed groups. The parties also requested inclusion of 60 victims in the Havana talks: five delegations of twelve, organised by the UN, the NUC and the Episcopal Conference of the Catholic Church. These brought the human face of suffering to the table, arguably pushing both government and FARC-EP to shift positions of denial of violent acts and acknowledge their responsibility for many victims. The delegations' proposals helped shape the Victims Agreement signed in December 2015.

While the negotiations generated backing from a considerable spectrum of political actors, social organisations and the majority of victims' organisations, there was little popular support beyond those directly involved or affected by the process. Media emphasised rejection of the guerrillas due to their involvement in kidnapping and illicit drug operations. Those opposing the process – including elite actors (Uribe and his Conservative Party), sectors within the Evangelical Church and more populist parts of the population – were generally not persuaded by the various initiatives and

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[68] Draft agreements on all themes have been signed: Agrarian issues (May 2013); political participation (November 2013); illicit drugs (May 2014); victims' rights (December 2015); and an end to the conflict (August 2016). The final agreement is awaiting signature.

changes in perspective of the parties, as the plebiscite showed. Among hardliners, the view remained that the guerrillas should surrender and go to jail, not benefit from the peace accord.

The possibility that the peace process and accords would produce a new social covenant was devastated by the narrow referendum defeat: 50.21 per cent "No".[69] That evidenced a deep division around the necessary conditions for peace as well as gender, ethnic, ideological and demographic cleavages. The "No" campaign utilised disinformation, insisting, for example, that a "Yes" vote would impose an "ideology of gender", including a modernist view of women and promotion of an LGBT agenda. The government's insistence on the plebiscite may thus have been a mistake, particularly given the lack of an effective communications strategy during the entire peace process.

3.2   *Adopting Inclusiveness as a Guiding Principle in Policymaking*

The adoption of inclusiveness as a guiding principle in policy and legislation has seen key moments of advance juxtaposed with institutional closures. The 1990s was a time of fundamental change, while the first decade of the 2000s saw a focus on counterinsurgency and a generally more populist approach (e.g., Uribe's *consejos comunales*). Subsequently, the Santos government has initiated key interventions to strengthen inclusiveness, tied to the peace process and related peacebuilding.

The 1991 constitution consecrated institutions oriented towards equity and inclusion. A fundamental tool was the injunction (*tutela*), a legal mechanism for guaranteeing fundamental rights protections by limiting the risk of arbitrary reach by the state. It has been used to considerable effect at the individual level. The constitution also established a conceptual framework for formulating policies and laws oriented towards incorporation of inclusiveness and equity for ethnic groups as guiding principles. The rapid adoption of laws and policies related directly to ethnic inclusion was significant. Law 70 on Afro populations and land was adopted in 1993. With constitutional underpinning and shored up by widespread social mobilisation, it came to be the normative framework through which Afro populations were able to claim their fundamental rights, including to communal lands, community development and political participation. It has become a crucial mechanism and central reference for Afro struggles regarding land and inclusion.

Similarly, Colombia ratified the International Labour Organisation's Convention 169 on Indigenous and Tribal Peoples in Independent Countries in 1991 and translated its binding framework for protection of those peoples' fundamental rights into national law through Law 21 that year. In 1993, the state approved key legislation on the fundamental rights of indigenous peoples, including Decree 1088, pertaining to the regulation of traditional indigenous authorities as entities of political participation; Law 160 (1994), promoting rural development and agrarian reform; and Law 115 (1994) and Decree 2249, governing indigenous and Afro-Colombian education, respectively. These have established the normative framework for the fundamental rights of Afro and indigenous communities and peoples, while strengthening and legitimating the demands of ethnic organisations for inclusion.

For women's issues, the constitution was the first instrument to widely establish inclusiveness as a guiding principle, through reinforcing articles (13, 40, 42, and 53). In subsequent years, laws and policies were formulated to guarantee women's rights and promote gender inclusion. Law 82 (1993) related to women as heads of family; Law 248 (1995) established legal and administrative guarantees to repair damage in the case of violence and discrimination against women; Law 294 (1996) penalised domestic violence; Law 581 established a quota system for women in participation in politics and public office; Law 832 (2003) established the institutional framework for policies oriented towards equity and equality of opportunities for women, including in social security, and guaranteed reproductive rights; Law 1009 (2006), established the Observatory for Gender Issues. This legal framework was strengthened by policies on gender inclusion. In particular, the Integral Policy for Women (1992), reinforced by the Sectoral Policy for Rural Women (1993), the Policy for

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[69]   "Preconteo   Plebiscito."   Registraduría   Nacional   Del   Estado   Civil   de   Colombia http://plebiscito.registraduria.gov.co/99PL/DPLZZZZZZZZZZZZZZZZZZ_L1.htm, accessed 16/4/2016.

Equity and Women's Equity (1994) and the Plan for Equality of Opportunity for Women (1999). A decade later, Santos's Public Policy for Gender Equity for Women and Integral Plan to Guarantee Women a Life Free of Violence were also launched.

Subjected to widespread gender-based violence in the armed conflict, women today occupy important positions in government at national and local levels. They remain underrepresented in parliament, however.

With the Santos presidency, a further key step was taken towards inclusion of some eight million victims of the armed conflict. In May 2011, Congress approved Law 1448 for Victims and Land Restitution. It acknowledged the armed conflict, gave legal weight and legitimacy to victims' demands and created an innovative institutional framework with procedures and mechanisms for guaranteeing rights and providing for reparations. It enabled victims of armed conflict-related violence after 1985 to access administrative, symbolic and financial reparations, including land restitution, as compensation. Implementation has been slow, however, due to the large challenges faced by the Unit for Victims and Land Restitution. While laws and policies in other areas have been at least partially implemented, their impact has been limited by the scale of claims and national and local government failure to allocate sufficient budgets, augmented by the weakness of the relevant judicial and government apparatuses.

3.3 *Strengthening Mechanisms that Enforce Political Commitments and Reduce Bias in Institutions*

Colombia's state has historically been hybrid, characterised by relatively robust democratic institutions and a limited range of functional institutional arrangements, with authoritarian enclaves controlled by weak, corrupt and dysfunctional institutions, in many cases co-opted by illegal actors.[70] Institutions and their capacity are thus highly disjunctive, varying according to geographic location, institutional mandate and the degree of effective oversight by state and government actors. Given this character, there has been only incremental change as a result of a partial consolidation of institutional reach and capacity. A key challenge has been how to build uniformly effective, transparent institutions across the country in the midst of a protracted armed conflict, itself moulded by patterns of violence and social relations intimately related to illegal drug incomes and associated corruption. This dynamic has inhibited the greater effectiveness of state institutions at national and sub-national levels, despite considerable progress in formulating inclusive public policies and building those institutions necessary to execute them.

A watershed in institution building came in 1991 with the new constitution. As discussed, it paved the way for institutions central to democratisation and rule of law, such as the Constitutional Court, the Public Prosecutor's Office, the Superior Council of the Judiciary, the Procurator's Office (a kind of supreme legal vigilance authority) and the Human Rights Ombudsman's Office. The Constitutional Court has remained an efficient, trustworthy bulwark against state arbitrariness, protecting fundamental rights and avoiding radical politicisation; the Human Rights Ombudsman's Office has also done this to a lesser degree. The Constitutional Court had a vital part in the Santos-FARC-EP peace process, as an important arbiter on critical issues. The Procurator's Office, however – initially stable and robust – became deeply politicised. The former Procurator General, Alejandro Ordóñez, systematically suspended officials he suspected of ties with the armed left, attacked LGBT and women's rights and restricted fundamental rights of other marginal groups.

The new constitution also embedded indigenous, Afro and women's rights within the institutional mechanisms of the state through unprecedented initiatives. The Special Circumscription for Indigenous Peoples, for example, guaranteed two Senate seats for indigenous leaders. Within the framework of the new constitution, the National Commission for Indigenous Territories was established by Decree 1396, followed by the Direction for Ethnic Affairs, which has evolved into the Direction for Indigenous Affairs, Roma, and Minorities and the Direction for Black Communities, Afro-

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[70] Terry Karl, "From Democracy to Democratisation and Back: Before Transitions to Authoritarian Rule." CDDRL Working Papers, 2005. http://cddrl.fsi.stanford.edu/sites/default/files/Karlsep05.pdf.

Colombians, Raizales, and Palenqueras. These institutions are central for representation of indigenous and Afro populations within the state.

As discussed, the disjunctive nature of institutions has been a central challenge to state building and creation of an inclusive social covenant. In parallel with counterinsurgency, the Uribe government adopted a strategy that aimed to build institutions in areas susceptible to guerrilla control. In the aftermath of successful offensives in such contested areas, it implemented a Consolidation Strategy, seeking to impose effective state institutions for security and development. In 2007, its DSP was supplemented by the Democratic Security Consolidation Policy, focused on consolidating territorial gains by increasing state presence in conflict zones. In 2009, a strategic shift was made to the National Territorial Plan of Consolidation (PNCT). The consolidation strategy introduced stabilisation initiatives meant to follow initial military presence with restoration of civilian authority structures, public services and development. However, the program has been consistently criticised for slow follow through, leaving consolidation zones militarised and underdeveloped. While its high military component decreased direct violence and contributed to the withdrawal of the FARC-EP, serious human rights violations were committed, even in zones such as the Macarena, the PNCT's poster child. Institution building was at times accomplished at the expense of the most vulnerable.

Under Santos, political initiative primarily focused on the peace negotiations with the FARC-EP, but institutions linked directly to their thematic priorities and oriented towards inclusiveness have also been established. As noted, Law 1448 (Victims and Land Restitution, 2011) imposed significant obligations to create institutional infrastructure for the benefit of victims, the majority of whom are from historically disadvantaged groups. Especially after 2015, the government began to develop post-conflict reconstruction initiatives and anticipate the institutional changes required if and when the peace agreements are implemented, including establishing a post-conflict ministry (now a high counsellor).

The institutional commitments, forged under the different agenda items of the peace talks, include arrangements for the Land Bank and rural development programs (First Agenda Point: Comprehensive Rural Reform: Towards a New Colombian Countryside, signed 2013); arrangements for the political participation of the FARC-EP and other excluded actors through a Special Territorial Circumscription for Peace (Second Agenda Point: Political Participation: Democratic Openness to Build Peace, signed 2013); the institutional framework to carry out crop substitution, prevent drug consumption, support public health and identify and implement solutions to the illicit drug problem (Fourth Agenda Point: Solution to the Illicit Drug Problem, signed 2014); and institutional arrangements to support the Comprehensive System for Truth, Justice, Reparation and Non-Repetition, including the Special Jurisdiction for Peace (a Chamber of Justice and a Tribunal for Peace) and other bodies, such as the truth commission (Fifth Agenda Point: Victims, signed 2015). Many arrangements to support the disarmament, demobilisation and reintegration (DDR) process with the FARC have been put into place, including the zones in which fighters gather for that process, supported by a UN Special Political Mission. But a number of key implementation issues remain outstanding.

3.4   *Summary of General Progress*

Progress towards a social covenant has been moderate. Ideological divisions deriving from over five decades of armed conflict are acutely difficult to overcome, manifest as they are in polarised narratives around that conflict, including acceptable conditions for guerrilla demobilisation and reintegration. A unifying national identity remains elusive, due in particular to strong sub-national identities, contested historical narratives and the rural-urban divide. Significant paper progress has been made on inclusiveness as a framework for legislation and policy: broad mechanisms have been approved, key institutions established and in some areas, such as victims, important progress is underway. Nevertheless, meaningful change has been moderate on the whole, due to inadequate budgets and piecemeal implementation. Change outside major urban areas is weak, because of

ongoing capture of the state by illicit armed groups and acute corruption. Political elites' lack of will remains a fundamental spoiling factor.

4. How the Three Building Blocks Interact

The transition to a post-conflict state continues, its challenges typical in many respects of transitions elsewhere. The continuing struggle and shifting balance of power between pro-peace and spoiling actors mark recent political and social developments, a phenomenon upon which international actors have had only limited impact.

The 1991 constitution was a key factor in commencement of a first virtuous cycle with mutually reinforcing interaction between social covenant, inclusion and institution building issues. It consecrated institutions central to effective implementation of rule of law and to democratisation, modernisation of the existing institutional framework and imposition of a deliberate orientation towards inclusiveness that were subsequently manifested in innovative policy and laws to guarantee the rights of women, rural populations, peasants, indigenous peoples and Afro communities. The constitution had potential to contribute to the generation of an inclusive social covenant and national identity, while establishing mechanisms through which to increase inclusiveness, equality and equity.

The growth of paramilitary groups during the 1990s, the collapse of the Caguán talks and Uribe's election in 2002 cut this virtuous cycle short. The constitution remained a central instrument, used principally by human rights organisations, to challenge policies (notably the DSP) that weakened the state's fragile fabric and neutered positive interactions initiated after 1991. However, damage to the incipient social covenant was reinforced by the weakening of some key state institutions – the military's strengthening was an exception – and a shift away from a focus on inclusiveness. This created a vicious cycle during Uribe's two terms that reversed some key gains, severely limited interaction in the three areas and, in combination with spiralling political violence, led to increased polarisation and debilitation of the social fabric.

Uribe's all-out war against the guerrillas, combined with the dirty paramilitary war, was a key factor pushing the FARC-EP towards negotiations, a process of which Santos took advantage. Immediately after his election in 2010, he sought to strengthen inclusiveness, introducing legislation and policy relevant to historically marginalised groups, while also seeking to recalibrate state institutions and strengthen their transparency. His presidency has opened space in which to reactivate positive interactions, albeit partially. However, Uribe's legacy and enduring political influence make commencement of a new virtuous cycle still problematic.

Nevertheless, interaction is growing between institution building and inclusiveness. New institutions have generally begun to implement their mandates relating to inclusion of historically marginalised groups, though inadequate budgets and human resources limit their impact. By comparison, there has been little positive interaction between a social covenant and the other two mechanisms. Perceptions of and attitudes towards others in society remain fractured and negative, shaped by fear and distrust. In short, polarisation based upon ideological, class, rural-urban, gender and ethnic cleavages remains acute. The maxim "if you're not with me, you're against me," continues to shape social and power relations. The negotiators' objective of an inclusive settlement representing their principal constituencies and civil society, on the one hand, and broader society on the other, has not been met. Buy-in has been minimal, and the process has failed to orchestrate an inclusive social covenant or national narrative, as the plebiscite evidenced. Progress in institution building and inclusiveness has not been able to overcome the continuing absence of a meaningful and inclusive social covenant.

Unless new bases of cohesion are forged, that absence may gradually impact institution building and inclusiveness negatively, as radical opponents of peace with the FARC-EP (and, eventually, perhaps the ELN) continue to contravene the rule of law, contest the notion of peace and counter the mandates of the new institutions. The pushback, both political and violent, against the peace

process has been severe and widespread. Since 2012, over 120 citizens, including human rights, victim and land restitution leaders, have been assassinated – allegedly, in some cases, by demobilised paramilitary groups. Killings, particularly of victim leaders, immediately spiralled in the plebiscite's aftermath.

Meanwhile, a broad social coalition – including Uribe and his supporters, sectors of the Evangelical Church and some cattle and rural guilds among others – continue to oppose the process, especially provisions of the peace accords on absence of jail sanctions, FARC-EP political participation and land redistribution. This opposition has an impact on institutions. For example, ex-Procurator General Alejandro Ordóñez employed that institution while in office to oppose the process vigorously. At the same time, sub-national identities remain powerfully persistent, as do diverse, mutually reinforcing forms of discrimination against rural, indigenous and Afro populations and women, the latter contributing to a vicious cycle of exclusion, societal fragmentation and social cleavage, reinforced by weak and biased local institutions.

The ongoing transition and accompanying possibility for generation of a new national identity and narrative have been facilitated by the incipient interplay between social covenant, inclusiveness and institution building, but they continue to face severe challenges from the processes, events and actors that have shaped past vicious cycles. Domestic spoilers' lack of political will remains a fundamental impediment to meaningful change. However, the international community has gradually resumed significant support to the government and social movements for debate on issues of inequality, exclusion, gender and ethnic identity and rights and has also given commitments to the peace process and post-accord reconstruction.

In sum, increasing institutional capacity and consolidation under Santos has precipitated meaningful achievements in inclusiveness, particularly for historically marginalised actors. That progress, though partial, has begun to challenge the vicious cycle of exclusion of indigenous, Afro, peasant, women and rural populations. However, state-led initiatives have been unable to foster broad social recognition and acknowledgement of the importance of inclusiveness and generate an inclusive social covenant, due to deep cleavages that continue to shape social and power relations within civil society and between civil society and the state. Lack of a legitimate, broadly accepted social covenant is gradually harming institutions and thus inclusiveness initiatives and needs, therefore, to be overcome in order for a virtuous cycle to be renewed.

Conclusions: Comparative Analysis

Guatemala ended its armed conflict two decades ago, while Colombia is still seeking to break its cycle of political violence. The latter, nevertheless, has shown stronger capacity to develop and sustain a virtuous cycle emerging out of the interplay between inclusive policymaking, social covenant formation and institution building. A key lesson is that while institution building and inclusive policymaking remain complex tasks during armed conflict, they are not altogether impossible. A country's stage of transition does not guarantee its degree of progress; change is not automatic and will emerge only as a result of carefully crafted government initiatives, including policy and legislation, elite and non-elite political will and, often, pressure from civil society and the international community.

Both countries have made important progress in establishing state institutions, including in the justice sector, to address major societal cleavages, except regarding ideology. This applies to ethnic inclusion, identity and equality, within rural development and as regards gender inclusion and equality. In both, institutional change was arguably kicked off by a new constitution that, despite weaknesses, consecrated institutions critical for democratic transformation. In Guatemala, it was the peace process and accompanying accords that provided a roadmap for institution building. In Colombia, the 1991 constitution is the framework for such transformation, reinforced by subsequent initiatives of diverse national governments. Nevertheless, institutions outside the major

cities in both countries remain weak due to capture of the state by illicit armed groups and acute corruption; inclusiveness initiatives thus remain fragile.

Similarly, both countries display important progress, at least on paper, in inclusiveness as a guiding framework for laws and public policy formulation and implementation. Both have approved broad-ranging policy and legislative mechanisms. However, extensive and meaningful change has been limited due to the persistent problem of weak institutions, coupled with inadequate budgets, that impedes effective implementation. In both, though less so in Colombia, lack of political will remains a fundamental spoiling factor.

In contrast with institutional and inclusiveness progress, social covenant formation has been acutely restricted. Both countries retain deep societal, including ideological, cleavages. That inclusiveness and institution building initiatives have done little to lessen the latter is perhaps less surprising in Colombia, where armed conflict remains. However, while Guatemala's conflict ended twenty years ago, Cold War rhetoric and terms such as "subversive" and "communist" are still used to stigmatise human rights defenders and other activists. Ideological divisions are reinforced by, and often coincide with, embedded racism and negative perceptions of rural populations. Colombia's progress towards a social covenant has been moderate. Deep ideological divisions derived from the long armed conflict polarise and fracture society, shaping everyday relations. These realities also dictate perspectives on acceptable conditions for disarmament, thus slowing peacemaking. In both countries progress in inclusiveness and institution building has occurred almost in spite of stagnation on a social covenant. Nevertheless, unifying national identities remain elusive, impeded by societal cleavages and contested historical narratives and, in Colombia, robust subnational identities.

A second lesson, then, is that building institutions and formulating inclusiveness initiatives, complex and difficult as that may be, is perhaps less so than forging an inclusive social covenant – even, as Guatemala shows, long after a conflict ends. A disconnect appears to exist between formal state-led initiatives oriented towards inclusion, equity, equality and transformation of citizen perspectives. Perceptions undergirded by discriminatory attitudes and societal cleavages appear to outlast and arguably slow institution building and inclusiveness transformations.

Where institution building occurs – i.e., where institutions develop capacity, transparency, and neutrality, and officials are emboldened to carry out mandates – meaningful achievements in inclusiveness may potentially take place. This is especially true regarding historically marginalised actors. There is a symbiotic relationship between progress in institution building and inclusiveness, and the dynamic may logically begin to challenge the vicious cycles of exclusion of such populations. But without effective institutions and adequate budgets, inclusiveness initiatives are unlikely to achieve their goals: bold, transparent institutions are needed to carry them out. Moreover, limited inclusiveness progress will maintain the vicious exclusion cycle and reinforce societal cleavages, restricting progress towards an inclusive social covenant. Equally, institutions alone will not produce significant transformation. They need meaningful inclusive mandates and inclusive policy and laws to breach historical exclusion and structural impediments.

Likewise, without a broad, inclusive social covenant to support and bolster implementation of institutional mandates and inclusiveness initiatives, deep and enduring change is unlikely. Both countries show how lack of a legitimate, broadly accepted social covenant reduces pressure on elites and other spoilers to transform their violent and exclusionary perspectives and practices. Societal divisions and an absent social covenant signify that the *we-ness* an effective state and society require is absent, overridden by divisive *us-them* perspectives and practices. The lack of a social covenant, therefore, is an obstacle to fostering broad social recognition and acknowledging inclusiveness.

At the same time, lack of a social covenant also arguably permits and legitimates the deep cleavages that continue to shape social and power relations within civil society and between civil society and the state, an obstacle itself to institution building and inclusiveness initiatives. In the medium to long term, lack of a legitimate, broadly accepted social covenant will also likely weaken

institutions, and thus also inclusiveness initiatives, in a process that threatens the potential for a virtuous cycle. Actors who lack a coherent vision of state, society, and nation undergirded by a unifying historical narrative and vision of a collective *we-ness* will not share the necessary visions of inclusiveness. They likely will also oppose institutional mandates and decisions articulated within that framework, as the rejection of the Rios Montt genocide sentence and subsequent actions of the Guatemalan Constitutional Court illustrate. Institutions and inclusiveness mean little to those who do not acknowledge the shared humanity of compatriots. Perhaps the remaining challenge, then, is how to bridge the disconnect between institution building and inclusiveness initiatives, on the one hand, and transformation of discriminatory perceptions based upon societal cleavages on the other.

6. Transitions in Eastern Europe: Ukraine and Macedonia

By Dane Taleski

Ukraine and Macedonia both experienced democratic transitions as they emerged from communism in the 1990s and subsequent transitions as they tried to address the problems that change exposed. They have also faced common challenges to democratic reforms, including armed, intra-state conflicts. While Macedonia's was resolved, Ukraine's is not, and the transition experiences of both highlight the importance of neighbours and external incentives for the success of democratic reform. They also show how a democracy crisis can increase cohesion across society if the local context enables inclusive, crosscutting social mobilisation, as in Macedonia, or can increase majoritarian social cohesion if the local context drives societal cleavages yet deeper, as in Ukraine.

UKRAINE

An independent Ukraine emerged after the Soviet Union's dissolution. The new democracy needed to address three main challenges to avoid conflict: structural reforms, identity issues and its geopolitical balance. Structural reforms involved building democratic institutions and a free market economy to allow personal advancement and progress. However, institutional inertia and the oligarchic economy created a society in which the elites were very rich and the majority of the population very poor. Work to resolve identity issues needed to address contested matters dividing Russian and Ukrainian identities, which span language and history. Instead, the communist legacy created a facade of social cohesion, and the identity gap widened and was reinforced by regional divisions. The third challenge involved balancing Ukraine's affinity for the "West" with its proximity to Russia. This started in the early 1990s, when Ukraine reluctantly (under some pressure from Russia) joined the new Commonwealth of Independent States, while aspiring to join the European Union (EU). When it seemed Ukraine would at last become closer to the "West", Russia annexed Crimea and instigated armed secessionist conflict in the Donbass region. Ukraine did not address the three causal drivers of conflict successfully; instead, they worked together to mutually reinforce the escalation of political and violent conflict.

1. Starting Conditions

Main Societal Cleavages – Divisions between the western and eastern regions, reinforced by ethno-linguistic differences and attitudes towards Russia and the "West" (i.e., the EU), are the main sources of societal cleavage. Though central Ukraine and the capital, Kiev, are a conglomerate of identities, languages and geopolitical preferences, many refer to "two Ukraines." Ukrainian ethnic identity is stronger in the west: Ukrainian is the preferred language, Soviet history is viewed negatively, and there is overwhelming preference for closer collaboration with the "West." A substantial percentage of the population in the east considers itself Russian or Russian-speaking Ukrainians, and the Russian language is widely used, Soviet history is praised, and there are strong preferences for closer relations with Russia. The regional division became increasingly relevant politically after the 2004 Orange Revolution. It deepened further during the 2013-2014 Euromaidan events and solidified with the annexation of Crimea and the armed conflict in the Donbass.

Equity of Policies – Degraded public institutions do not provide equitable access to public services. Low gas prices are maintained to buy social peace in major cities; in rural areas, however, access to quality public services, even basic services and utilities, is a significant challenge for much of the population. The annexation of Crimea and the frozen conflict in the Donbass exacerbated this. The government is unable to provide services to its population in those areas.

State of Institutions – The bulk of the inherited bureaucratic, burdensome Soviet-era institutions were never transformed into modern, efficient or public service-oriented ones. The political elite kept institutional reforms shallow and slow and did not strive to build independent institutions functioning the same for all, allowing them instead to favour the political class. Rule of law was weak and corruption widespread. The economy became oligarchic instead of developing on free market principles.

Other Key Issues – Russia's policies are a significant security concern. The threat to peace, security and territorial integrity is a fundamental problem for democratic transition. Reforms have lagged because elites consider Russia's interest and/or because of Moscow's direct interference. Crimea has been a focal point in bilateral relations, one reason being that some 76 per cent of the population considers Russian its mother tongue.[71] Separatist tendencies and strong pro-Russian attitudes were present there throughout the transition period. Crimea established a presidency in 1993, which was abolished in 1995. Anti-Western protests were held in 2006 and pro-Russian demonstrations in 2009. More importantly, the Crimean port of Sevastopol is the Russian Black Sea Fleet's base. Russia recognised Ukraine's territorial unity in 1997, after it secured a 20-year lease on the port. In 2010, under Viktor Yanukovych's government, the lease was extended to 2042. However, Russia annexed Crimea in March 2014, a few days after Yanukovych fled from Kiev. Crimea's status and Ukraine's territorial sovereignty remain problematic.

2. Overview of Main Transitions

Ukraine has had three transitions. The first (1990-1991) was a relatively smooth secession from the USSR. The last Soviet parliament introduced political pluralism, and Ukraine experienced a strong emergence of an elite class. However, this transition was a facade. Institutions deteriorated in the absence of significant democratic reforms. The corruption and "oligarchisation" of the economy curbed progress, and authoritarian governance strengthened. The Orange Revolution transition (2004) was a reaction to the first's failure and an attempt to re-institute democracy, but many reforms were incomplete, leading to the Euromaidan transition (2013-2014), a democratic process that became affected by conflict. A civil society revolt against an authoritarian and corrupt government escalated into clashes between protesters and police, the occupation of public buildings and a government turnover. Russia subsequently occupied and annexed Crimea and instigated an armed conflict (now frozen) in the Donbass region. As of early 2017, nearly 10,000 lives had been lost. In addition, Ukraine has almost 1.8 million internally displaced persons.

The armed conflict did increase social cohesion across Ukraine's ethnic Ukrainian community, which is experiencing unprecedented volunteering and reinvigorated civil society engagement. Newly-elected President Petro Poroshenko, his government and the parliamentary majority share similar political values and outlooks. This is a significant change from the first two transitions, which were marked by lack of social cohesion and incremental, shallow reforms that favoured the political elite and oligarchs. Though civil society is pushing strongly for reforms, inclusiveness nevertheless remains weak. Many initiatives for institutional reform are not inclusive, and institutional biases persist.

3. Assessment of Progress

3.1 *Building a Social Covenant to Bridge Divides and Create Common Nationhood*

Building social cohesion was tried through top-down elite pacts and bottom-up social movements. The latter have had greater success; the former have been weak and inconsistent. Most of the time, elites exploited societal cleavages for political gains.

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[71] Laada Bilaniuk and Svetlana Melnyk, "A Tense and Shifting Balance: Bilingualism and Education in Ukraine." *International Journal of Bilingual Education and Bilingualism* 11: 3-4 (2008): 354.

Throughout the transition processes, there has been a lack of consensus among elites to build democracy together.[72] Political competition was an elite grab for power that assured access to resources and impunity for wrongdoing. The corrupt political elites, in collusion with oligarchs, worked against socio-economic cohesion and equal opportunity. The Orange Revolution sought to re-institute democracy. Social cohesion grew but was insufficient to pressure the government to stay on course. The authoritarian government was changed, but reforms did not deliver. People became disillusioned, and social cohesion weakened again. Moreover, the Orange Revolution increased political competition and opened possibilities for instability. After 2004, that competition was increasingly identity based. Language became an important issue, and regional polarisation increased. Parties exploited political divisions, speaking of "two Ukraines," and the divisions were further amplified when, in November 2004, a conference of eastern Ukrainian leaders in Donbass advocated a referendum on the federalisation of Ukraine.[73] It was the eastern political elite's bargaining move to counteract the Orange Revolution.

On initiative of outgoing President Leonid Kuchma and facilitated internationally, roundtable talks were held between the two Viktors, Yanukovych and Yushchenko, that reached a pact to change the constitution to require the president to cooperate more with parliament. This assured a balance of power between the government and opposition and created incentives to cooperate. But while the agreement altered the social contract, it did not contribute to a wider social covenant. Instead of working together to bridge divisions, elites again tried to maximise political gains by exploiting the regional divisions. The political divide was confirmed in the 2006 presidential election, as Yushchenko won 80 per cent of votes in the west, while Yanukovych won 75 per cent of votes in the east. Yanukovych's Party of Regions won a majority of seats in subsequent early parliamentary elections, and he became prime minister under Yushchenko, a "necessary compromise between regional political forces."[74] A Pact of National Unity that promised a referendum on NATO accession, Ukrainian as sole official language and free usage of Russian had potential to improve social cohesion, but elite commitment was lacking.

Yanukovych disregarded the elite pacts and returned to zero-sum political competition after his 2010 election as president. He changed the constitution to strengthen the presidency and cracked down on the opposition with selective justice processes against key leaders. He showed his geopolitical affinity by extending Russia's lease at Sevastopol and abandoning NATO integration. Political polarisation grew and frustration increased in the west. Following the 2012 elections, a radical right party entered parliament for the first time. In addition, Yanukovych's government was increasingly seen as corrupt, and his refusal to sign a treaty bringing Ukraine closer to the EU, in the wake of a faltering economy, was the trigger for Euromaidan. The protests started in November 2013 and lasted through February 2014.

Euromaidan was a grass-roots social movement that united liberal and illiberal civil society groups. Radical right groups protested together with civil society actors who wanted to create civic identities and made claims to restore democracy and uphold human rights. The main aim was to change the system. Efforts were focused against Yanukovych, who personified the ruling class, but Euromaidan was also a social revolt against perpetual elite power struggles that deprived the people of equal opportunity. It alienated many Russians and Russian speakers, however, because it favoured a pro-European path at the expense of ties with Moscow. Radical right actors within Euromaidan reignited Ukrainian ethno-nationalism. Citizens in the east were concerned and organised protests in support of Yanukovych. Battle lines were drawn between east and west to a point of physical division.

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[72] Bohdan Harasymiw, "Elections in Post-Communist Ukraine, 1994–2004: An Overview." *Canadian Slavonic Papers* 47: 3-4 (2005): 191-239.

[73] Kataryna Wolczuk, "Whose Ukraine? Language and Regional Factors in the 2004 and 2006 Elections in Ukraine." *European Yearbook of Minority Issues* Vol. 5 (2005-6): 521-547.

[74] Vicki L. Hesli, "The 2006 Parliamentary Elections in Ukraine." *Electoral Studies* 26 (2007): 507-533.

A new elite pact between government and opposition, attempted under international mediation, failed to increase social cohesion. As protests continued, Yanukovych fled to Russia. Pro-Russian armed supporters then installed a government in Crimea, and Russian troops occupied the peninsula. In March 2014, Crimea declared independence and held a referendum, without recognition from Ukraine or the international community, that led to Russian annexation. Moscow-instigated secessionist groups in the Donbass brought Ukraine to the brink of civil war.

Ukraine faced its biggest security and political crisis since independence, but the threat reinforced the social cohesion Euromaidan created. The escalating armed conflict in the east and Russia's military intrusion galvanised social unification. Petro Poroshenko and his party won presidential elections in May 2014 and parliamentary elections in October. Poroshenko's victory was a landslide in all regions under Kiev's control. With a sense of urgency, people voted to maintain territorial integrity and end the violence. The other parties that did well also supported full territorial integrity, opposed the Russian intervention and strongly favoured closer EU relations. The post-Euromaidan political elite showed similar values and outlooks, and their cooperation has significantly improved. However, it is unclear whether they have the political will to implement the substantial reforms needed.

Regional divisions seemed less relevant, but there was no voting in Donbass and Crimea. Ukraine has increased social and political cohesion at the expense of losing Crimea and having armed conflict in Donbass. Divisions over geopolitical affinities remain, though there is a significant pro-Western majority in parliament.

3.2 *Adopting Inclusiveness as a Guiding Principle in Policymaking*

Exclusion has been a main principle, first to favour the elites, secondly to reinforce the main societal cleavage.

Process of Economic Reforms – While most of the population preferred the Soviet welfare state, the political elite opted for radical market reforms in the post-authoritarian 1990s transition. However, basic free market conditions (private property and rule of law) were absent, public institutions were weak, and dependence on post-Soviet markets was high. The USSR's collapse brought strong economic decline and high inflation. According to the World Bank, GDP fell from $71.8 billion in 1992 to $31.2 billion in 2000. In the early 1990s, about half of all industrial transactions were barter. The shadow economy gave rise to informal and patronage networks. Corruption was rampant, and shady privatisation created many oligarchs. The majority of the population was impoverished and deprived of basic social services, causing a rise in emigration and human trafficking.

Despite limited economic progress (1999-2008), the gap between the oligarchs and the new political class on the one side and the people on the other did not decrease. Many public investments catered to the oligarchs and the political class. Citizens came to believe policymaking favoured only oligarchs and politicians. Social frustrations mounted and fuelled the 2004 Orange Revolution. More protests came during the Euromaidan in 2013-2014.

GDP dropped 14 per cent after the 2009 economic crisis, and the economy collapsed completely following Euromaidan. The International Monetary Fund (IMF) extended $18 billion to save Ukraine from bankruptcy, demanding in return austerity, devaluation and cuts in gas subsidies. At the same time, Russia increased the gas price by 80 per cent. Ordinary people were hit hardest, and nothing indicates that socio-economic exclusion or income inequality are decreasing.

In addition, the structure of the economy is changing, from industrial conversion and exports to Russia to diversified trade with the EU and energy imports. Industrial production is declining and the agricultural sector growing. In response, regional divisions are increasing. The east, especially the Donbass, was the industrial centre; the west was more agricultural. That the east's economy now suffers as the West profits, increases regional differences.

Language Policy – The Ukrainian and Russian languages are very similar. Mother tongue often indicates ethnic belonging, but not always primary usage. Many people are bilingual. A 2005-2006

study found that 38 per cent of Ukrainians used only Ukrainian, 30 per cent only Russian and 31 per cent used both.[75] Language usage is politically relevant. During the Soviet era, Russian was the primary language, regarded as the language of the elites, while Ukrainian denoted backwardness. For many, primary use of Russian meant Ukraine would remain under the cultural domination, if not political hegemony, of Moscow. Ukrainian was made primary in 1989, though the policy was not implemented. In 1996, the first constitution proclaimed Ukrainian the only official language and demoted Russian to minority status. Language became politicised: parties seeking support in east or west used the issue to build support, especially after the Orange Revolution.[76]

In 2012, Russian was made the official language in courts, schools, and regional and local government in eastern regions, where the majority of Russian-speakers live. Nationalist politicians objected fiercely, viewing the law as undermining Ukraine's integrity and re-introducing Moscow's cultural dominance and political hegemony. An initiative to repeal the law was submitted in the post-Maidan interim assembly in 2014, but the interim president, Oleksandr Turchynov, refused to sign the bill.

Language policy became a tool to support greater independence but also increased ethno-linguistic and regional divisions. Thus, in 1991, Ukrainian was the first language of instruction in 45 per cent of schools and Russian in 54 per cent. In 2005, 78 per cent used Ukrainian, 21 per cent Russian.[77] Ukrainian was mainly used by the administration, especially at the national level, and more frequently used in education in the west. Eastern regions continued to use Russian in administration and education. No substantial efforts were made to integrate the languages or promote bilingualism. In 2005-2006, 10.4 per cent of schools had classes in both languages.[78]

Education – There was an increased emphasis in education following independence on Ukrainian history and literature, as part of a broader effort (including promotion of new values and geopolitical orientation) to strengthen identity. Education became a policy area for continuous institutional efforts to maintain language-constructed identities. Though history lessons provided a way to build social identities, "opposing attitudes over the past, prevent[ed] [a] common vision for the nation and shared meaning of identity building."[79] For example, there were contested views on the role of the Organisation of Ukrainian Nationalists (OUN) and the Ukrainian Insurgent Army (UPA) during World War II, and on whether the Great Famine in the 1930s was deliberately caused by the government in Moscow or by ecological and natural factors.

History textbooks were rewritten three times: first, after the Soviet Union's fall; secondly, after the Orange Revolution; and thirdly, after Yanukovitch returned to power in 2010. The first revision gave a balanced view; the second showed Russia as an alien state and promoted Ukraine's ethnic history; the third gave a pro-Russian view. Over time, mutually exclusive historical narratives developed: pro-Ukrainian (more in the west); pro-Russian (more in the east); and multicultural (in the centre).[80] They supported intra-school segregation and regional differences. The pro-Ukrainian narrative insisted nation-building should be based on Ukrainian ethnic nationalism and the Ukrainian language; the pro-Russian narrative considered this an imposition and insisted on the commonalities between Ukraine and Russia. The multicultural narrative showed history as complex and multi-layered and asserted that ethnic groups are equal. After Euromaidan, pro-Ukrainian historical narratives have become more prominent and primary usage of Ukrainian in schools more assertive. Pro-Russian views of history and Russian as a language of instruction are diminishing, and the multicultural narrative remains marginal.

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[75] Bilaniuk and Melnyk. "A Tense and Shifting Balance." 346.

[76] Wolczuk. "Whose Ukraine?"

[77] Bilaniuk and Melnyk. "A Tense and Shifting Balance." 352.

[78] Ibid., 352.

[79] Karina Korostelina, "Constructing Nation: National Narratives of History Teachers in Ukraine." *National Identities* 15:4 (2013): 404.

[80] Ibid.

3.3 *Strengthening Mechanisms to Enforce Political Commitments and Reduce Bias in Institutions*

Institutional reforms were slow and shallow, failing to decrease biases towards elites and capture by special interests. The constitution made ethnic Ukrainians the titular nation, and the electoral and party system favoured the ruling elite and oligarchs. Before Euromaidan, equality under the law was a serious challenge, and decentralisation did not serve the interests of the people. Subsequently decentralisation has been used more often as a conflict resolution tool than a process to improve local governance. The rule-of-law reforms do not fully address widespread corruption.

The Constitution and Its Changes – The Soviet constitution was in force until Ukraine's first constitution was promulgated in 1996. The enduring Soviet legacy allowed the impression of social cohesion to linger in the early years. Ukraine allowed equal access to citizenship in 1990 and introduced a non-ethnic notion of political community but did not address ethnic and linguistic diversity to engender a common sense of nationhood. Instead, it expected Soviet-era "comrades" to become democratic citizens automatically, which many saw as continued dominance and cultural colonisation by Moscow. The first constitution catered to desires to assert dominance of the ethnic Ukrainian identity and give prominence to the language. It states that Ukraine is the country of "the Ukrainian people – citizens of Ukraine of all nationalities"; however, this choice of words hints that ethnic Ukrainians are the titular nation.[81] The constitution gave collective rights to national minorities (Articles 10, free usage of Russian, and 53, mother-tongue education) and implied that Russians were a minority. This created a hierarchy of identities and deconstructed the assumed Soviet social cohesion. Constitutional changes in 2004, 2010 and 2014 dealing with checks and balances and lowering or increasing the president's power did not remedy this. Splits in the social fabric were left unaddressed, and the elites worked against creation of social cohesion.

Electoral and Party System – Frequent elections and electoral system changes made it difficult for parties to institutionalise. After Euromaidan, the majority of them and deputies were elected to parliament for the first time. Parties focused on leaders instead of building an organisation or committing to a program. Until 1998, voting was for individual candidates. When proportional representation was introduced, regional divisions surfaced as the main electoral cleavage, and leader-centred parties exploited them to mobilise support. The Orange Revolution's polarisation cemented these divisions, which deepened further after the 2006 parliamentary polls. Though it was possible to vote for individual candidates in 2012, regional divisions remained the basis for mobilisation, and the degradation of social cohesion seemed irreversible. Most parties are either led or sponsored by an oligarch; the "Petro Poroshenko Bloc" is the most recent prominent example. This makes parties less accountable to their electorate and encourages cronyism and clientelism. The electoral and party systems assure that the interests of the political elite and oligarchs are represented and maintained but do not necessarily reflect the popular will or produce democratically elected institutions.

The Rule of Law – Access to justice and equality before the law have been serious challenges. People with wealth and/or political connections are advantaged. Corruption is rarely prosecuted, and the judicial system is widely perceived as highly compromised. Rule of law reached a low point with the political imprisonment of Yulia Tymoshenko and Yuriy Lutsenko in 2010, clear indications that President Yanukovych used the system to persecute the opposition. As Euromaidan protests gained force, persecution extended to other activists. Two demands protestors presented in November 2013 referred to foreign policy; the third underlined the need for rule-of-law reforms.

The post-Euromaidan government made such reforms a top priority and established a council for the purpose. New laws sought to improve the judiciary: "On Restoring the Trust in the Judicial System of Ukraine"; "On the Judiciary and Status of Judges"; and the Lustration Law. Horizontal, cross-institutional cooperation mechanisms were set up to foster the reform process. The National

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[81] In Ukrainian, *natsiia* denotes ethnic identity, whilst *narod* denotes a civic identity. The wording of the constitution thus favoured ethnic identities over civic ones.

Reform Council received a project management office; 24 deputies from different parties created a "Platform for Reforms," and a Reform Support Centre was established by the Cabinet of Ministers. The Anti-Corruption Bureau was strengthened, and civil society organisations have become more heavily involved in the process. However, most changes are paper only. Rule-of-law reforms in the first two democratic transitions had been incremental and shallow. Euromaidan reforms were more far-reaching but also shallow. Despite enthusiasm and formal changes, most practices remained unchanged. Political will, essential for building institutions that function effectively and equally across society, is still missing, as the head of the Anti-Corruption Bureau charged when he resigned. Lack of institutional capacity is a reason, but more important is that corruption and patronage networks are socially embedded. Post-Euromaidan political elites are interested in government reforms but seem less willing to engage in robust rule-of-law reforms.

Decentralisation – Ukraine's territorial organisation principles are substantially unchanged from Soviet times. It has 24 regions ("oblasts"); Crimea was proclaimed an autonomous republic in 1991. Region heads are nominated by the central government and appointed by the president. Local councils are elected directly, but voter turnout is low, and elections are often marred with irregularities. Local governments suffer from poor accountability, and lack of clarity regarding responsibilities between levels of government allows abuses to flourish. Local government is also fully dependent financially on the central government. This creates ineffective local governance, with weak administration and low-quality services. Regions are power bases for oligarchs, who are often appointed to govern them, and/or the national government.

Decentralisation was not a reform of the first two democratic transitions, but more attention has been paid after Euromaidan. There are two variants of reform, one directed towards decentralisation as a process to improve local governance and services, and one towards decentralisation as a conflict-resolution tool. The majority in a region expect and need the former, but external threats and internal instability dominate the discussion and outcomes, since decentralisation reforms are seen as a possible solution to reintegrating frozen-conflict areas.

The 2015 Minsk agreement reached by Moscow and Kiev with French and German mediation provides for decentralisation through constitutional reforms and permanent legislation to give special status to areas in the Donetsk and Luhansk regions. Ukraine enacted temporary legislation to allow local elections in the conflict regions, but an Organisation for Security and Cooperation in Europe (OSCE) mission concluded they were not democratic and not consistent with the Minsk Agreement's spirit. Political control of the frozen-conflict areas remains in the hands of armed secessionist groups. Nonetheless, President Poroshenko proposed, pursuant to Minsk, a law for self-governance and special status for cities and villages in frozen-conflict areas in 2015.

3.4   *Summary of General Progress*

Progress in building a social covenant has been minimal. Regional divisions and ethno-linguistic differences were sharpened following Euromaidan and the Russian armed intrusion. Though social cohesion has increased among the Ukrainian majority, a unifying, common sense of nationhood is not in sight. Inclusiveness has been moderate, limited to the involvement of civil society actors in policy reforms. However, embedded income inequalities and structural exclusion, perpetuated by language policies and the education system, discourage wider inclusion of all segments in society. There has been paper progress in strengthening mechanisms to reduce institutional bias and hold elites accountable. For example, rule of law and decentralisation reforms have been given priority. It is unclear, however, whether political will can be amassed to sustain them or exclusionary politics will prevail. Oligarchs have supported and benefited from the latter, and their interests are a significant obstacle to achieving democratic reform.

4.   How the Three Building Blocks Interact

Elites made pacts and top-down attempts to create social cohesion that were short-lived. Elite-level agreements led to constitutional changes for power sharing that slightly altered the social contract but applied only to the elites, and implementation was weak due to frail institutions and lack of accountability mechanisms. No attempts were made to build a social covenant, and conditions to sustain the pacts were unfavourable. The EU and the "West" merely facilitated elite negotiations and did not offer support or incentives to sustain them, while Russia was disruptive.

Lack of elite commitment to build social cohesion impacted policymaking principles. Exclusion was preferred to inclusion. It had negative effects for social cohesion but was positive for political and electoral support in the divided society. For example, the exclusionary approach on language policies and education impeded creation of a common sense of nationhood. Insisting on the primacy of Ukrainian, failing to promote bilingualism, and maintaining divergent historical narratives secured the strong position of pro-Russian politicians in the east. Exclusive policymaking impaired institutions from being independent or able to function equally for all. Hampered by lack of capacity and widespread corruption, they were controlled by the political elite and oligarchs, whose interests the electoral and party systems primarily served and who were not accountable to the rule of law.

Similarly, decentralisation did not improve local governance or services but facilitated oligarchs' and central government's power bases. Dysfunctional institutions intensified social inequalities and increased social frustration and alienation from the state, spurring growth of social movements and protests. Degradation and dysfunction of institutions thus had an unintended, positive impact on social cohesion, which grew at the grassroots level, at least among the ethnic majority, as things became worse, Public institutions' inefficiency helped drive the Orange Revolution and Euromaidan, as a sense of existential crisis fuelled demand for change.

The Orange Revolution was the first bottom-up attempt to re-institute democracy. However, the social cohesion it created was short-lived; the process failed to provide inclusive policymaking and improve institutions. As the political system again increasingly disengaged and impoverished people, a grassroots social movement united civil society and increased social cohesion during Euromaidan. The loss of Crimea and the armed conflict in the east was the second galvanising moment. War served as a catalyst for the majority population to rally behind Poroshenko. The existential danger of the Russian intrusion created urgency and triggered increased social action. Counter-intuitively, the lowest point in modern history was the highest point of social cohesion, at least among ethnic Ukrainians. The increased social cohesion, however, did not encompass regional divisions or ethno-linguistic differences. On the contrary, it drove them deeper. While rallying against Russia is a new point of social cohesion, a significant portion of the Russian minority and Russian-speaking Ukrainians is alienated, especially in the east, and there is no clear policy for addressing internally displaced persons (IDPs), most of whom are Russian-speaking, or dealing with frozen-conflict areas and Crimea. More positively, the Kiev political elite is unified, and civil society is more included in reforms. People expect real change benefiting their lives will be forthcoming.

Conditions are present for Ukraine to embark on a vicious cycle of transition again. Institutions largely remain dysfunctional and inefficient, especially those dealing with security and governance in the south east. The lost territory and frozen conflict imply long-term consequences and future ambiguities. The social cohesion that has increased is majoritarian, one continuing to exclude and show hostility towards the Russian minority and Russian-speaking Ukrainians. Russia's disruptive role obfuscates the importance of internal reconciliation. If attempts to improve social cohesion are not made, exclusionary practices may become embedded in parts of Ukraine. As a consequence, institutions may become permanently impaired, functioning to deliberately maintain and increase biases.

The Euromaidan transition also features conditions for a virtuous circle. A sense of nationhood has significantly increased. The new political elite in Kiev shares similar values, ideas and interests.

The government is reform-oriented, with a stable majority in parliament. Wide political and social commitment exists to sustain decentralisation and promote rule-of-law reforms. Also, institutional change is opening opportunities to make policymaking more inclusive, in turn enhancing social cohesion. Civil society is reinvigorated and continues to push strongly for substantial democratic reforms. The high level of volunteerism and increased civil society involvement following Euromaidan signal very high social cohesion. Several civil society initiatives are involved in the reform process (e.g., VoxUkraine, Reanimation Package of Reforms (RPR) and Nova Kraina (New Country). It remains to be seen whether such inclusive policymaking will be sustained and translate into substantial institutional reforms.

IDP integration is an important measuring stick for the sustainability of social cohesion in policymaking and for the health of democracy in Ukraine proper, and closely related to reintegration of the frozen-conflict areas and Crimea. Strong social cohesion for the majority came at the expense of minority populations' inclusion. Though such social cohesion may aid institutional reforms short-term, it may also impede formation of a social covenant and obstruct creation of a common sense of nationhood, both necessary to sustain democracy long-term.

If one argues that the process of social contract formation has improved, one assumes Crimea and the Donbass will never be reintegrated in Ukraine. However, it can be argued that the process has substantially deteriorated. Society is physically divided along the main cleavage lines, and a seemingly inclusive policy process wherein the government cooperates with civil society does not translate to robust and sustainable institutional reforms.

5. Other Relevant Conclusions

Russia is an important factor in Ukrainian transitions. Kiev has had to maintain a balance between close Russian ties and Euro-Atlantic integration. Moscow's influence has been strong in politics and culture, but also over the security sector. Oddly, Russia was never considered a threat in strategic documents or security analysis prior to its military intervention. When the conflict escalated, military leaders were in disarray; some even joined the secessionist armed groups in Donbass. Even if this issue is now being addressed, Russia will remain a significant factor for the outcome of democratic transition.

Relations depend to a great extent on who holds power in the two countries. Ideally, they would be democratically oriented, seeking to ease tensions and support democratic transitions in both. In the absence of such leadership, international actors can work to create a favourable environment. Western engagement with Russia should facilitate dialogue with the aim of supporting Ukraine's democratic transition. This entails Western support for Kiev's reforms and incentives to sustain them, but also a constructive Russian role.

MACEDONIA

An independent Macedonia emerged with the dissolution of Yugoslavia. Potential drivers of conflict the state needed to address involved a mix of internal and external factors. Internally, it needed to develop democracy and a free market economy, while ensuring inclusion of minorities. Precarious regional stability and preventing conflict spillovers were external challenges. In the first decade of independence, it had less success with the latter than the former. The state was not responsive to minorities' demands (notably those of Albanians), which led to escalation of inter-ethnic conflict in 2001. Opportunities were created subsequently to improve minority inclusion and advance democracy, with the international community playing an instrumental supporting role. In the second decade, Macedonia addressed internal challenges, but its path to EU and NATO membership was blurred by an unresolved dispute with Greece that adversely affected democratic governance and amplified the internal drivers of conflict.

1.   Starting Conditions

Main Societal Cleavages – The ethnic gap between ethnic Macedonians and ethnic Albanians, increased by religious and linguistic differences, is the main societal cleavage. Throughout the history of Yugoslavia, Albanians suffered discrimination, and their position has improved only gradually in independent Macedonia. An increase in their demands and their mounting frustrations led, under favourable external conditions, to an armed inter-ethnic conflict in 2001. In the post-conflict transition, the distance between the ethnicities decreased but was not bridged. The depth and salience of the gap remains a crucial factor for stability and the future of the democratic transition.

Equity of Policies – Social equity is an ongoing problem. Faulty privatisation coupled with a trade embargo has produced large-scale unemployment, poverty and social deprivation. In 2010, income inequalities were Europe's highest. Minority communities, the Roma in particular, face social exclusion and structural discrimination. Many people in rural areas have sub-standard living conditions and lack access to basic utilities (water, sewage systems, roads) and services (health and education).

State of Institutions – Institutions lack capacity and resources to provide services efficiently and work equally for all. Above all, Macedonia has suffered from lack of political will to reform institutions. In the 1990s, elites were more interested in political control over public entities, including rule-of-law institutions, to assure impunity and politicisation of public administration. Robust institutional reform was initiated when the EU and NATO accession processes accelerated. International support was also instrumental for assuring sustainable institution building.

Other Key Issues – Precarious relationships with neighbours have created challenges for building a common national identity and institutions. Bulgaria has challenged the ethnic Macedonian identity, Serbia has challenged the Macedonian Orthodox Church's independence, and Greece objects to the country's very name. In 1993-1994, Athens imposed an embargo that hampered the economic transition, and since 2008 it has conditioned progress towards EU and NATO membership upon resolution of the name dispute. Albania and Kosovo are supportive of their ethnic kin.

2.   Overview of Main Transitions

There have been two transitions. The first, a relatively smooth democratic one, followed Yugoslavia's dissolution in the 1990s; the second, in 2001 and the main focus of this chapter, was affected by the end of the Kosovo conflict in 1999. In January 2001, many ethnic Albanians from Macedonia who had fought in the Kosovo Liberation Army regrouped and started an armed struggle with the Macedonian security forces as the National Liberation Army (NLA). It was resolved that August, when – under the president's auspices and facilitated by EU and US envoys – the main political parties brokered the Ohrid Framework Agreement (OFA), a peace deal that ended the conflict and provided for greater minority inclusion. OFA implementation changed the social contract and policymaking and established new institutions. Success or failure of the transition depended substantially on the extent to which the OFA's undertakings were met.

OFA implementation also became a key criterion for EU and NATO accession, a widely-supported strategic priority since independence that gained further traction. The EU process helped structure and expedite reforms, especially in key areas such as public administration and rule of law. Ethnic biases also decreased. When membership prospects decreased, however, democratic reforms were downgraded, ethno-nationalist political mobilisation resurfaced, and political polarisation led to zero-sum competition. Abuse of power, state capture and clientelism again became serious, and discrimination based on political party affiliation increased.

3. Assessment of Progress

3.1 *Building a Social Covenant to Bridge Divides and Create Common Nationhood*

Steps to bridge ethnic divisions and create a common national identity came through the constitution, OFA and elite cooperation and competition practices. The OFA and elite cooperation were positive for social cohesion; elite competition was negative.

The Constitution and Ohrid Framework Agreement – Though every resident was granted legal access to citizenship in 1990-1991, the preamble of the first democratic constitution restrictively defined a country of Macedonians and the national minorities living therein, wording that led to an Albanian backlash. The OFA in 2001 made that wording more inclusive of minority communities and stipulated changes to increase minority rights on use of national symbols and minority languages, equitable representation in public administration, voting procedures in parliament and decentralisation. A liberal reading of the OFA was that it allowed for better representation and protection of diversity, thus nurturing a spirit of commonality, though the new rights were restricted to groups over 20 per cent of the population, which meant only Albanians could benefit from them on the national level. A narrow, nationalist reading was that the OFA institutionalised ethnic identities and gave ethnic politicians incentives to mobilise their groups. The OFA redefined the state and opened possibilities to forge a new nation, but political will was needed for implementation. Because OFA implementation was at the top of the EU and NATO accession agendas, there were strong external incentives as long as there were good prospects to join the Euro-Atlantic bodies.

Elite Cooperation and Competition – An early example that significant inter-ethnic cooperation among elites increases social cohesion came in 1992, with creation of the first multi-ethnic coalition government. The Social Democratic Alliance (SDSM), reformed Communist Party and Party for Democratic Prosperity (PDP, Albanian moderates) held power until 1998. The coalition's rationale was that it would ensure stability by including ethnic Albanians and pave the way for democracy and a more cohesive society. It abided by an unwritten rule that the junior partner, then and in future governments, must be a party representing ethnic Albanians. A second example of successful inter-ethnic cooperation among elites was during the 2001 crisis, when it helped establish peace. Post-conflict OFA implementation was a third example. These practices show that inter-ethnic cooperation is possible and beneficial for peace and democracy in Macedonia. Tolerance of diversity and support for multi-ethnic coexistence can and did create conditions for social cohesion.

By contrast, the political competition that arises from mobilisation of populations based on pre-existing ethno-national divisions can be detrimental for social cohesion. This was strongly so throughout the 1990s, as ethnic Albanians demanded more, and ethnic Macedonians responded with nationalist repression. As divisions deepened, any efforts to create a common sense of political nationhood were thwarted, and inter-ethnic conflict became almost inevitable.

Increased competition based on ethno-nationalist political mobilisation was a recurrent problem in the post-conflict period. During OFA negotiations, there was divergence between the main ethnic Macedonian parties, the left-leaning SDSM, and the right-leaning Internal Macedonian Revolutionary Organisation – Democratic Party for Macedonian National Unity (VMRO-DPMNE). The first was more sympathetic to defending the status and rights of minorities; the second was against it. In opposition (2002-2006), VMRO-DPMNE objected to implementing the OFA on an ethno-national basis, for example organising a referendum to overturn decentralisation, arguing that key OFA policy jeopardised sovereignty and territorial integrity. It failed, but VMRO-DPMNE support grew. Using ethno-nationalist rhetoric, the party won a majority of ethnic Macedonian votes in 2008, 2011 and 2014, resulting in increased ethno-national Albanian mobilisation. Though it formed coalition governments with Albanian parties, it did not try to bridge the divide. Instead of having a unified government with a common platform to increase public good, Macedonia had a government of separate ethnic parties that primarily cared for their own. Social cohesion weakened because cooperation was thin across groups.

State capture and authoritarian tendencies also became more prominent. As corruption and clientelism became widespread, democracy and rule of law deteriorated. Political discrimination and selective justice were recurrent problems. Zero-sum competition increased political polarisation. The opposition, citing fraud, rejected the results of the early 2014 parliamentary elections and boycotted parliament. Political crisis engulfed the country, as social mobilisation against the regime mounted, including among ethnic Albanians who again felt treated as second-class citizens. In 2015, the opposition revealed wire-taps that evidenced gross abuse of power and high-level corruption. A special public prosecutor was set up to investigate, but the president pardoned the 56 incriminated politicians and associates in 2016. In response, daily protests were held in Skopje and several other cities. The growing protest movement – dubbed the "Colourful Revolution," because protesters threw paint at new, expensive neo-baroque government buildings and statues, and because it was multi-ethnic and multi-lingual – showed increased social cohesion as it tried to bridge ethnic divisions. This ultimately led to the election in 2016 and installation in 2017 of a new, multi-ethnic coalition government.

3.2   *Adopting Inclusiveness as a Guiding Principle in Policymaking*

Macedonia used the post-conflict democratisation and peacebuilding environment as an opportunity to establish inclusive policies. Inclusion was essential for security and stability. The OFA set guidelines, and EU and NATO integration perspectives provided external incentives for inclusive policymaking. Parliament amnestied all NLA combatants not involved in war crimes, and the NLA became a political party, the Democratic Union of Integration (DUI), a government coalition partner. Its inclusion in politics was controversial for some, as it fuelled recurrent ethno-nationalism, which, with elite interest to keep power, justified exclusionary policymaking.

Language – The constitution was changed in 2002, pursuant to the OFA, to allow use of minority languages by 20 per cent of the population. In 2008, a law for such usage was passed. Local municipalities often use different languages, sometimes two or more. Nationally, Albanian is widely used in parliament and public administration, but Macedonian remains the only official language.

Education – During the post-conflict transition, inclusive education was envisaged as a way to overcome ethnic division and sustain confidence-building measures. With OSCE support, a strategy for integrated education was prepared in 2004, but due to recurring ethno-nationalism, the ruling parties lacked will to implement it. Schools are segregated by language, widening the ethnic gap. Bilingualism is seldom promoted, and history textbooks focus on the majority narrative. Efforts to publish a Macedonian encyclopaedia deemed offensive to Albanians were halted in 2011.

Economic Reform Policies – Macedonia failed to produce a model of growth that ensured social equity. The lagging economic transition, accompanied by external shocks and non-transparent privatisation, created a few oligarchs, many losers and massive social mobilisation. In 2001, brief growth was ruptured by violent conflict. Macro-economic stability, fiscal prudence and modest growth were re-established by 2006, but the short, very unequal growth the neo-liberal economic model resting on foreign direct investment and cheap labour created was followed by the 2008 economic crisis. By 2010, Macedonia had the highest income inequality in Europe. Elaborate public spending and social transfer policies targeting vulnerable groups were designed not to improve the everyday lives of the people, but to create patronage networks to solidify the ruling party's voter base.

Nepotism, clientelism and corruption have been the primary means for securing power, with severe economic implications. Examples include a faulty privatisation process that favoured party-affiliated businesspersons (1995-1998); minority employment in public administration only for party loyalists (2001-2016); and access to public tenders and social transfers based on party membership (2010-2016). Exclusion enables elites to maintain power and protect sources of wealth; inclusion, as a principle, seeks to change the status quo and faces resistance from elites.

3.3 *Strengthening Mechanisms to Enforce Political Commitments and Reduce Bias in Institutions*

While political elites took over weak institutions for their own interests, changes to the electoral system after external incentives shifted improved diversity representation. After the 2001 conflict, the desire to join the EU and NATO was an incentive for adopting difficult institutional reforms. EU support thus was crucial for introduction of multi-ethnic community policing. Albanians in the police force increased, and even ex-NLA were integrated into the security sector. This was beneficial for stability and also improved accountability in the sector. However, when Greece vetoed Macedonia's entry into NATO in 2008, it was clear NATO and EU membership depended on resolving the name dispute, not merely on internal reforms. Rather than starting an inclusive dialogue to that dispute with Greece, the ruling elite reinvigorated ethno-nationalism and reinforced exclusionary political practices. Since EU and NATO accession seemed blocked, the ruling elite chose to build an authoritarian, kleptocratic regime rather than to continue pushing for rule of law and decentralisation.

Electoral System – Macedonia held majoritarian elections for individual candidates in 1990 and 1994, changed to a mixed electoral system in 1998 and converted to a closed-list proportional system after 2002 so as to increase ethnic diversity in legislative and executive bodies. Proportional representation also gave incentives for the multi-ethnic electoral coalitions – ethnic Macedonian parties in cooperation with parties representing smaller ethnic communities – that have since been standard. These coalitions maximise voter support, secure diverse ethnic representation and increase inclusion of ethnic minorities in policymaking. With the institutionalisation of political parties and stabilisation of competition, voters have a clearer choice. However, the closed-list proportional system gives more authority to party leaders who determine the candidates. Most parties thus remain leader-oriented, which leads to party cronyism and clientelism.

On the other hand, OFA implementation strengthened ethnic identities and created incentives for ethnic entrepreneurship. Ethnic divisions became embedded in political representation. Multi-ethnic coalitions can create a strong ruling majority in parliament and stable governance but at the expense of social cohesion. Also, political competition in the ethnic camps has increasingly become a zero-sum game. The state is not seen as a product of all for all. Ethnic and political segments have motives to maximise their own gains, not to contribute jointly to a common good.

Decentralisation – Decentralisation was envisaged in the OFA and implemented in 2004. Municipalities were reduced from 134 to 84 but their responsibilities increased. The OFA's minority rights section was supposed to be applied also on the local level. Empowering the municipalities made local institutions more accountable, and more local self-governance was given to minority communities. Challenges to the process included recurring ethno-nationalism, lack of institutional capacity, debt and poor finances and exclusionary political practices. Empowerment of minority groups to self-govern drew an ethnic Macedonian nationalist backlash. VMRO-DPMNE, the national ruling party until 2017, won the support of most municipalities in the 2009 local elections, and local governance became another instrument for growing the authoritarian regime. Exclusionary political practices soon high-jacked the decentralisation agenda and turned it from a process meant to benefit all people equally to one benefitting only the ruling political elite.

The Rule of Law – Rule-of-law reforms, in line with OFA implementation, were a top condition for EU accession. Constitutional and legislative changes (2005-2014) included major policy innovations such as self-governing councils for the judiciary and public prosecutors and a training academy for judges and prosecutors. Weak institutional capacity was strengthened through financial and material support from international actors (e.g., the US Agency for International Development and the EU). Most pending cases were resolved, the courts became more efficient, and access to justice improved. However, this momentum was not sustained due to exclusionary political practices. Political control of the judiciary, a problem in the 1990s, has been a renewed challenge since 2011. Most judges from the communist period remained in place in the 1990s, and the ruling majority elected judges and prosecutors to parliament. A brief interlude of judicial independence began in

2005. Judges and prosecutors were elected by an independent council, but its majority was controlled by the ruling party. Up to 20 per cent of all judges were replaced in 2010-2011, and the trend has continued.[82] Political affiliation and party obedience became primary criteria for a judgeship. A wiretapped discussion between high-level VMRO-DPMNE officials, the interior minister and the secret police's second-in-command, which surfaced in 2015, revealed their full control over election and promotion of judges.[83] The US State Department's human rights reports confirm existence of selective justice against the political opposition.[84] There are growing perceptions among Albanians of discrimination in the court system.[85] In sum, the judiciary has been used to suppress political opposition. Rule-of-law reforms brought policy innovation and technical advancement but failed to uphold judicial independence and integrity.

3.4   Summary of General Progress

The work to build a social covenant was moderately successful. The social contract was altered to ensure greater equality and inclusive dialogue, inclusive policies began to sustain momentum, and a robust institutional reform process was put in place. A clear Euro-Atlantic perspective and significant international support provided needed external impetus, but once EU and NATO membership became less likely, many reforms were side-lined. Recurrent ethnic-nationalism increased political polarisation and exclusionary politics gave rise to authoritarian tendencies. Institutions were overtaken, inclusiveness declined, and societal divisions increased. There was more will to build an authoritarian regime than democratic reform. However, the crisis of democracy also increased social mobilisation against the regime, which an inclusive, crosscutting social movement challenged, demanding more equity, inclusion and independent institutions.

4.   How the Three Building Blocks Interact

Ethno-nationalism has prevented formation of a common sense of political nationhood and kept social cohesion weak. Lacking a unifying political identity, political leaders have sought dominance within their ethnic camp, for which enforcing exclusionary politics in policymaking has been more useful than following inclusion as a guiding principle. While inclusion would ultimately widen the policymaking process and help overcome ethnic divisions, it tends to go against the current interests of the political elite. Institutions, therefore, do not work equally for all, but cater primarily to the clientele of the ruling parties.

In the post-conflict transition, a robust process of institutional reform broke the vicious cycle and created relative democratic success. The reform agenda was clear in values (commonness) and principles (inclusion) and initiated crucial processes (language usage, decentralisation and rule of law). Former combatants were included in politics and government. The OFA brought changes to the constitution and introduced an institutional framework for inclusion and protection of minorities. Opportunities for inclusion and social cohesion grew, but a common national identity remained elusive. For example, with implementation of the OFA's equitable representation principle, the number of Albanians and other minorities in public administration grew. Members of different ethnic groups could make policies together and contribute jointly to institution building. But OFA implementation also revealed that certain ethnic identities are assured certain rights and opportunities, like public sector jobs; this, had a negative effect on the building of a common sense of na-

[82] "The Former Yugoslav Republic of Macedonia." EU Department General European Neighbourhood Policy and Enlargement Negotiations (DG NEAR). https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/former-yugoslav-republic-of-macedonia_en (accessed December 20, 2016).

[83] Joanna Brendt, "Macedonia Government Is Blamed for Wiretapping Scandal." *New York Times*, Europe. June 21, 2015. https://www.nytimes.com/2015/06/22/world/europe/macedonia-government-is-blamed-for-wiretapping-scandal.html?_r=0.
"Project: The Truth About Macedonia", Social Democratic Union of Macedonia (SDUM) (accessed December 20, 2016). http://arhiva.sdsm.org.mk/default.aspx?mId=55&agId=5&articleId=11786 (accessed December 20, 2016).

[84] "Macedonia 2013 Human Rights Report." US Department of State. https://www.state.gov/documents/organisation/220516.pdf (accessed December 20, 2016).

[85] "Analysis of Independence of the Judicial Council of Republic of Macedonia – Aspirations and Challenges." Institute for Human Rights (IHR). http://www.merc.org.mk/Files/Write/Documents/01236/mk/Analiza_ICP.pdf (accessed January 25, 2017).

tionhood. While it was positive that political leaderships on both sides of the multi-ethnic government were committed to democratic reforms, their commitments lacked the support of more robust instruments that could ensure sustainability of institutional reforms. The reform process was elite driven, and the reinforcing instruments were weak. Civil society, for example, was a constructive partner but lacked real leverage over the reform process.

The EU and NATO accession processes guided reforms and incentivised elites to support them. Membership was conditioned on building independent public institutions functioning equally for all, maintaining an inclusive policy dialogue and nurturing political dialogue. While the bulk of international attention was on building institutions and improving equity in society, it also had positive social cohesion effects. The political elite seemed unified in expediting reforms to enter the EU and NATO, and that goal was popular. Macedonia was declared an EU candidate in 2005. However, while internationals gave the necessary financial and technical support to overcome lack of institutional capacity, they could not make up for the lack of political will and local ownership needed to ensure the institutions would function properly. Once the membership incentive was gone, a greater political will emerged to corrupt and control the institutions.

OFA implementation made clear Macedonia was no longer a state of ethnic Macedonians alone, but of many communities. This, as discussed, opened opportunities to increase social cohesion but also created a backlash from majoritarian ethno-nationalists, who raised objection to bridging ethnic divisions and creating a common nationhood early in the peace talks. Ethnic Albanians agreed in advance on a common platform, but the ethnic Macedonians could not. There was divergence between the left-leaning SDSM (more supportive of multi-ethnic democracy) and the right-leaning VMRO-DPMNE (more supportive of majoritarian democracy). The OFA was signed under international pressure, but value-based polarisation grew during implementation (2002-2006) and hampered transformation and endangered democracy after 2008.

The inability to maintain social cohesion and obstructions to building common nationhood burdened institutional independence and social equity, beginning a vicious cycle in the post-conflict transition. First, an already weak sense of common political nationhood eroded. Macedonian ethno-nationalists called for redefinition of the nation on ethnic terms. In their narrative, the OFA was fundamentally detrimental for the state and its institutions and should not include former combatants. Secondly, exclusionary policymaking began. History was re-interpreted to enhance ethnic divisions. Thus, since 2008, the government has invested over $650 million in the "Skopje 2014" project, monuments and buildings put up in the capital's centre to symbolise the connection between the modern "Macedonian nation" and ancient Macedonia, an exclusionary definition of the nation highly offensive to ethnic Albanians and other minorities. Thirdly, institutions became biased as a result of the reinterpretation of nationhood and exclusionary policymaking, further deepening ethnic divisions and strengthening their political salience.

For Macedonian ethno-nationalists, multi-ethnic governing coalitions are not to assist a common political identity or induce inclusive policymaking, but a necessary evil to secure a stable majority in parliament. Ethno-nationalists became government partners, dividing the spoils and partners in political criminality. Ethnic identity strengthened, and party access to public resources became a norm. Social disintegration prevailed. Exclusionary political practices dominated, leading to biased institutions. This is most visible in rule-of-law failures and flawed pubic institutions providing public sector jobs and public services to party clients.

The conjunction of ethno-nationalism and exclusionary politics obstructed the first democratic transition in the 1990s and is responsible for the erosion of democracy since 2008. However, the context has changed. In the 1990s, it was mainly the ethnic Macedonian majority elite that favoured ethno-nationalism and exclusionary politics; the ethnic Albanian minority was in an unfavourable position. After the conflict in 2001 and OFA implementation, the ethnic Albanian elite reaped extensive profit from ethno-nationalism and exclusion. Since 2008, colluding ethnic Macedonian and ethnic Albanian elites have captured the state, as democracy erodes. A newly elected

multi-ethnic reformist government elected in 2017 has the chance to chart a more constructive course.

5.   Other Conclusions

Neighbours have not been equally supportive of the transition process. Albania has been helpful, though not consistently so, in combating Albanian ethno-nationalism, but Serbia and Bulgaria have challenged facets of the ethnic Macedonian identity, keeping alive the fears that feed ethno-nationalism. Greece has had the most disastrous effect, first, with the 1990s trade embargo, more recently with its 2008 NATO veto. The first action impaired the economic transition, the second changed Macedonia's outlook on Euro-Atlantic integration. The name dispute re-invigorated Macedonian ethno-nationalism and prevents formation of a unified national identity.

The US and the EU have supported democratic transition, especially post-conflict. During the first transition they were hardly present, but when the 2001 crisis erupted, it was concerted international efforts that brought about a peaceful resolution. The OFA negotiations opened an inclusive process that improved social cohesion, and its implementation provided a road map to sustainable peace and democracy. Integration processes gave the EU and US leverage and means to support democratic reforms. The EU called for OFA implementation, inclusive policymaking and institutional reforms and gave Macedonia candidate status in 2005 and visa liberalisation in 2011. The US recognised the constitutional name of Macedonia days before the 2005 decentralisation referendum, a clear sign it considered the post-conflict transition was on the right path, defusing rising ethno-nationalism and allowing successful decentralisation. Institutional reforms (2002-2008), though slow, were primarily enacted on international insistence.

The external incentives changed in 2008, when Greece vetoed NATO membership and indicated EU accession faced the same obstacle. This was an opportunity to increase social cohesion and open an inclusive dialogue, as well as jointly agree on how to solve the name dispute, but also an opportunity to reinvigorate ethno-nationalism and reinforce exclusionary practices. The ruling elite chose the latter, and democratic transition successes deteriorated. The ruling elite called early elections in 2008 to cement power and begin building an authoritarian, kleptocratic regime. It reinforced ethnic divisions, increased exclusionary political practices and captured institutions to manipulate them. The wiretap materials (2015) show gross abuses of power: using the secret police for "Stasi-like" surveillance, electoral fraud, complete control of public administration and the judiciary and widespread corruption.[86]

Conclusion: Comparative Analysis

Both Ukraine and Macedonia had democratic transitions in the 1990s and Ukraine a second in 2004. Both have experienced post-conflict transitions: Macedonia after 2001, while Ukraine's is ongoing. Macedonia's armed conflict resulted from internal tensions. Ukraine's was due to a military intrusion.

The two cases show that though different paths may be taken in transitions to start a virtuous cycle, challenges are often the same. Macedonia began institutional reforms via OFA implementation, which started a process that made policymaking more inclusive, in turn improving social cohesion. In Ukraine, increased social cohesion, triggered by social mobilisation, resulted in more inclusion in policymaking. Maintaining institutional reforms and creating self-enforcing mechanisms have been the main problems in both. The common experiences show that democracy cannot be adequately sustained with weak institutions that do not work equally for all.

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[86] "The Former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on Systematic Rule of Law Issues Relating to the Communication Interception Revealed in Spring 2015." DG NEAR. https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf (accessed on January 15, 2017).

More importantly, their experiences show how failure to build a social covenant can easily disrupt transitions and put democracy's viability in question. Ukraine's majoritarian social cohesion justified exclusive policymaking and biased institutions. Macedonia's nationhood was reinterpreted to excuse exclusionary policymaking that led to biased institutions. Even minority inclusion in parliament and government did not change the outcome in Macedonia, indicating that if there is no sense of commonness across groups, each will work to maximise its own benefits by exploiting exclusionary policymaking and investing in biased institutions.

Ukraine and Macedonia draw attention to conditions common to post-conflict transitions. However, the post-conflict transition is not over in Ukraine. The Donbass conflict is frozen, and Russia has annexed Crimea. Many open-ended issues remain as to how to resolve the conflict and produce reconciliation and internal integration, but they have not received the required attention, certainly not in public debate. After Euromaidan, there was relatively high social cohesion among the Ukrainian majority, but at the expense of sovereignty and territory and with exclusion of the more Russified parts of the country. Macedonia has had better results in post-conflict transition. The conflict's geopolitical dynamics and intensity are less complex, and neighbours' interference has not involved military intrusion. Given its small size, Macedonia is more open to international influence, and its clearer path to EU and NATO membership has influenced norms and incentives. All these contextual conditions have supported democratic reforms.

Internally, the countries have undergone similar transformation processes. They share some successes and failures, and there are many similarities in the underlying conditions that have supported or obstructed the reform processes. The tables below give an overview of the attempted institutional and policy transformations and their outcomes.

Table 1. Proposed Institutional and Policy Transformations in Macedonia

Thematic Area	Attempted Transformations	Impact
Elite dialogue	Agreement on multi-ethnic government; embracing inclusive policies for diversity management	*Partial success:* Multi-ethnic governments at expense of inclusiveness
Social movements	Crosscutting social mobilisation demanding democratic reforms and increased equity	*Minimal achievement:* Social cohesion increased, but impact on policies and institutions was weak
Constitution	Preamble changes to make all ethnic groups equal and other changes to increase minority rights	*Success:* Constitutional changes in place; minority inclusion and social cohesion increased
Electoral representation	Electoral system is changed to closed list political representation to allow wider representation in the post-conflict period	*Partial success:* Descriptive political representation improved; stable competition provided clear voter choice; more incentives for multi-ethnic coalitions; however, parties remain leader-centric
Education	Integrated education strategy to overcome ethnic divisions, create common historical narratives	*Minimal achievements:* Intra-school segregation persists; ethnic groups have divergent historical narratives
Language policies	Constitutional and legal changes to allow wider minority language use on national and local levels	*Partial success:* Minority language use improved, mainly Albanian; recurring demands to make Albanian second official language
Economic development	Introduction of free market economy to spur equitable growth	*Minimal achievements:* Unsuccessful privatisation left many worse off; income inequalities increased

Thematic Area	Attempted Transformations	Impact
Decentralisation	Strengthening local governance to give more political control to local communities and improve quality of public services	*Partial success:* Municipalities empowered, minority self-governance improved; institutional capacity still underdeveloped; ruling party extends control over local government
Rule of law	Establishment of new institutions to increase independence of judiciary and strengthen rule of law	*Partial success*: Institutions in place and capacities increased, but political control grew stronger

Table 2. Attempted Institutional and Policy Transformations in Ukraine

Thematic Area	Attempted Transformations	Impact
Elite dialogue	Power-sharing agreements between elites	*Minimal achievements:* Agreements short-lived; commitment issues persist
Social movements	Unification of social movements demanding significant democratic reforms	*Partial success:* Authoritarian governance changed and social cohesion increased, but institutional reforms remain weak
Constitution	Changes to promote Ukrainian ethnic identity and language	*Minimal achievements:* Regional and ethno-linguistic divisions increased
Electoral representation	Electoral system changed to mixed system to secure parliamentary majority during increased polarisation of 2012	*Minimal achievements:* Institutionalisation of parties faced challenges; high turnover of deputies strengthened conditions for leader-centric parties and heavy influence of oligarchs
Education	Increased emphasis on Ukrainian history and literature to support common sense of nationhood	*Minimal achievements:* Frequent changes in history textbooks produced divergent narratives and strengthened divisions
Language policies	Constitutional and legal changes to give more prominence to Ukrainian language and support minority languages	*Partial success:* Inconsistent implementation did not capitalise on widespread bilingualism; language usage became polarising issue
Economic development	Transition to free market economy, equitable development policies	*Minimal achievements:* Shady privatisation created economy's "oligarchisation"; inequalities, regional disparities arose
Decentralisation	Implementation of conflict-resolution tool to reintegrate frozen-conflict areas into Ukraine proper	*Minimal achievements:* Lack of secessionists' commitment; interference from Russia; minor public service quality improvement
Rule of law	Prioritisation leading to legal changes, cross-institutional cooperation mechanisms	*Partial success:* Expedient reforms, civil society actors included; but substantial results remain unseen

The transitions reveal different pathways to democratic outcomes. Macedonia was more successful in fostering elite dialogue and converting elite agreements into constitutional and institutional changes, at least regarding the ethnic conflict. It was helpful that an elite agreement for multi-ethnic governments was made in 1992, OFA negotiations were inclusive, and OFA was implement-ed. These processes changed the social contract. Ethnic groups were more equal under the law, and social cohesion increased, though a common national identity remained elusive. Electoral rep-

resentation and policymaking became more inclusive, decentralisation and rule of law stronger. International help importantly fostered elite dialogue, especially during crises. As for Ukraine, its power-sharing agreements mostly had international facilitation, but commitment to uphold them was lacking. Agreements mainly addressed elite relations and constitutional checks and balances. Short-term incentives to improve elite cooperation were the primary outcome of a dialogue that did not make policymaking more inclusive or impact institutional reforms. Constitutional changes only helped increase ethno-linguistic inequality and regional divisions.

Ukraine succeeded in fostering democratic reforms via social mobilisation. The Orange Revolution and Euromaidan showed how social movements can create democratic change. Social revolt and protest ousted the authoritarian government in both. Social cohesion increased, civil society was empowered, and there was a learning curve. Euromaidan resulted from failed institutional reforms. Civil society demanded inclusive policymaking and robust reforms to increase public institution independence and efficiency. Social mobilisation increased demands for quality public services and socio-economic equity, but greater social mobilisation may have hurt social covenant construction. Ukraine's majoritarian social cohesion increased at minority inclusion's expense. In Macedonia, by contrast, social mobilisation was more successful in generating crosscutting support for democratic changes and more inclusive social cohesion.

Ethno-nationalism has impeded democratic reforms in both countries, precluding creation of a wider social covenant. Elites manipulated and mobilised support in both based on the main cleavage issues. This became more pronounced in Ukraine after 2004 and contributed to physical division. In Macedonia, ethno-nationalism has been a recurring problem.

Both countries have had partial success in rule of law reforms, reducing institutional bias to some extent and introducing mechanisms to increase inclusiveness. Rule-of-law reforms – slow and weak in previous transitions, with lack of supportive political will – were partially successful in the post-conflict transition phase. Corrupt elites relied on deficient institutions to support exclusionary policies. The post-conflict urgency needed a process of state reconfiguration, however, and both countries turned to the rule of law as its basis. Domestic and international agendas came together to support the reforms, and civil society and the wider population called for improved access to justice and equality before the law. Elites faced a dilemma: they wanted to keep the status quo but also needed to respond to international expectations and prioritisation of institutional reforms and maintain rule of law during the crisis. For Ukraine, motivation was tied to escalation of armed conflict; for Macedonia, reforms were preconditions for EU and NATO candidacy. Though such membership is less attainable for Ukraine, both contexts show that increased EU involvement and support can positively impact institution building and rule of law.

Both countries have had partial success on language policy. Constitutional and legal provisions for free use of minority languages are in place, though consistent implementation is a challenge. Since ethno-linguistic differences are the main societal cleavage in both, language is highly politicised and limits the building of a common national identity. Policy reforms thus are an opportunity to increase inclusiveness. Allowing native language usage has increased the visibility and belonging of minority groups. However, clear institutional and legal frameworks, consistent implementation and institutional capacity to deal with bilingualism are still needed. Promotion of bilingualism in Ukraine should be more straightforward, since Russian and Ukrainian are similar. It has been more successful in Macedonia, however, despite recent conflict and the fact that Macedonian and Albanian are completely different.

Both have had minimal success integrating education and providing equitable growth. Historical interpretations have been taught along ethno-linguistic lines, increasing divisions and reducing social cohesion. Divergent narratives have also been used for political mobilisation, to fuel polarisation and increase tensions. Educational institutions were weak, initiatives to change the system lacking. Economic development achievements are similarly minimal. Growth is not equitable, and there is limited equity in access to opportunity, more pronounced in Ukraine, where oligarchs rule the economy. In Macedonia, privatisation failure left many worse off. In both, rising income ine-

quality fed social revolt. Mass protests occurred when authoritarian, kleptocratic governance was highest, in 2013 for Ukraine, 2015 for Macedonia. Mass social movements have increased social cohesion and present an opportunity to build a social covenant. Civil society groups are pushing to increase policymaking inclusiveness. This is an entry point for civil society to foster institutional reforms and contribute to building a social covenant.

The regional context and the international community's role can also make a difference for transitions. EU and NATO membership incentives were key for success in Macedonia, while Ukraine lacked such external incentives and faced a disruptive Russia. The Greek veto of NATO membership adversely affected Macedonia's transformation, but Albania's support indicated that a neighbouring ethnic-kin state can assist democratic transition.

Macedonia is a partial success, while Ukraine much less so, but both show the need for sustained international involvement and greater synergies between facilitating elite level agreements and their translation to institution building. In both cases the latter suffered from lack of political will to support the democratic reforms, as a consequence of elites' interests to build a regime in which they are at the apex of power and unaccountable.

As seen, a stable, supportive regional context and favourable external incentives aided social contract formation in both countries. Elite dialogue and, even more, commitments to implement agreements helped that process. Robust institutional reforms, principally in rule of law, also produced conditions conducive for strengthening the social contract, which likewise was strengthened when social movements demanded greater social equity and democratic reforms, and all groups were perceived as equal and enjoyed equal public expression. Macedonia's constitutional changes and laws for usage of minority languages in both countries were critical.

Several conditions weakened and to an extent ruptured the social contract. Ethno-nationalism and exclusionary policymaking are recurring problems in both countries. Socio-economic exclusion and corruption are manifestation of this, as are political control of the judiciary and clientelism in public administration. Institutional reforms provided a path to break the vicious cycle, but exclusionary policymaking prevented them. When the reforms were possible, as in Macedonia's post-conflict period, inclusiveness was also promoted. It was possible to use decentralisation as a conflict resolution and integration mechanism, but it had to be done with an aim to reconcile the communities. Macedonia had a clear agenda. Decentralisation needed to work to empower the local communities and increase their stake in the country. Ultimately, it was the institutional reforms that improved inclusion and were positive for social cohesion. The take on decentralisation is different in Ukraine, where the conflict is frozen, reconciliation is not being pursued, and, due to context, Russia's involvement is crucial.

Finally, zero-sum political competition has increasingly halted reforms in both countries, as cause and effect of the exclusionary policymaking that leads to poor governance. Systems were rigged to satisfy elites' interests, and civil society responses were similar. Grassroots movements build social cohesion and potentially a social covenant, but, to succeed, their plan for overcoming social divisions needs to be clear from the start. Macedonia's protest movement was deliberately multi-ethnic and multi-lingual. Ukraine's included ethno-nationalists and civil society but did not appeal to the Russian minority or Russian speakers, so did not guarantee transition outcomes would benefit all equally. Building a social covenant is an arduous but essential task for achieving sustainable democracy.

7. Transitions in South Asia: Sri Lanka and Nepal

By Shobhakar Budhathoki and Aruni Jayakody

This chapter discusses challenges in the transitions of two ethnically and religiously divided countries: Sri Lanka through its transition in 1994-2004 and Nepal through its transition from 2006 to the present. The chapter focuses particularly on the need for stronger social cohesion across groups and a common overarching nationhood, while also addressing issues related to inclusive policymaking and institution building. It examines peace processes, strategies developed to address social cleavages and attempts to ensure sustainable peace and justice. Though the root causes of their conflicts are very different, both countries underwent vicious cycles of violence, costing many thousands of lives and billions of dollars in infrastructure. Nepal's conflict ended peacefully with negotiation and without formal international mediation; Sri Lanka's ended militarily in 2009, despite many international attempts at mediation. Both countries still struggle to create an inclusive, pluralistic national identity and political order that promotes social and economic justice; and to deal with inclusiveness challenges across all levels of society and all peacebuilding efforts.

SRI LANKA

From 1994 to 2004, as Sri Lanka tried to negotiate an end to civil war and build relations across the Sinhala and Tamil communities, it had two governments: the People's Alliance (PA) of President Chandrika Bandaranaike Kumaratunga (1994-2001) and the United National Front (UNF) of Prime Minister Ranil Wickremasinghe.[87] The latter was a co-habitation government, with opposing parties holding the executive and legislative branches. Efforts to build a social covenant ultimately failed, in part due to lack of an inclusivity principle to guide the reform process. Both Kumaratunga and Wickremasinghe sought to build a social covenant via elite-level talks between the government and the Liberation Tigers of Tamil Eelam (LTTE), but they were unable to articulate a sufficiently multi-ethnic vision of the national identity. The LTTE clung to a vision of separate nations. Efforts to address inequality among citizens by reforming state institutions, restoring rule of law and redressing past human rights abuses thus were largely piecemeal and poorly implemented. Failure to articulate a more inclusive political vision laid the groundwork for the rise of nationalist actors opposed to compromise, who moved from political margin to the mainstream, reversing any progress.

1.   Starting Conditions

Tamils are the largest minority, divided into Sri Lankan Tamils and Indian-origin Tamils, and constituting 15 percent of the population. The former are predominantly Hindu and trace their origins on the island back two millennia; the latter came in the colonial era, when the British imported labourers to work on plantations. A Tamil-speaking Muslim community is 9 per cent of the population. The Sinhalese majority (75 per cent) mostly observes Theravada Buddhism.

   Since independence, two dominant Sinhala parties, the left-leaning Sri Lanka Freedom Party (SLFP) and right-leaning United National Party (UNP), have dominated politics. "Ethnic outbidding," whereby Sinhala politicians create platforms to outbid opponents and demonstrate anti-minority credentials, is a consistent electoral trend.[88] Such activity has been influenced in part by Buddhist

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[87] Peace talks continued through 2006, but changes in government made the efforts after this date less substantial.
[88] Neil Devotta, "Sri Lanka Political Decay: Analysing the October 2000 and December 2001 Parliamentary Elections." *Commonwealth and Comparative Politics* 41, no. 2 (2003): 115–42, 115.

clergy narratives that Sri Lanka has always been the exclusive home of Sinhala Theravada Buddhists. There is a similar ethnic dynamic within the Tamil community.

Successive Sinhala governments adopted policies designed to marginalise the Tamil minority, which was perceived to have had disproportionate access to positions of power, dating from the colonial era. In 1948, the Ceylon Citizenship Act made 700,000 Indian-origin Tamils stateless, to ensure that Sinhala politicians won elections in the plantation sector. In 1956, the Sinhala Only Act formally replaced English with Sinhala as the sole official language. It was changed in 1987 to include Tamil as an official language, but that policy remains poorly implemented. In the 1970s, the government implemented a standardised university entrance scheme that restricted Tamil access to tertiary institutions. That discriminatory policy deprived a generation of access to higher education and job opportunities. Around the same time, the government initiated development programs that in effect allowed Sinhala farmers to colonise traditionally Tamil-majority areas, permanently altering the demographics of the north and east.

In response to increased marginalisation, Velupillai Prabhakaran founded the militant group that became known as the LTTE. Its July 1983 attack on an army checkpoint in Jaffna sparked a nationwide pogrom against the Tamil community that left thousands dead and more than 100,000 displaced in Colombo. These "Black July" events marked the start of the civil war. By the late 1980s, the LTTE was one of the most lethal terrorist groups in the world and demanding a separate state, based on what it deemed to be the traditional Tamil homeland in the north and east of the country. By the 1990s, it had expelled more than 100,000 Muslims from Jaffna and established its own administrative structures in the north, including police and a court system.

In 1978, the UNP, with President Jayewardene as its leader, initiated market reforms that resulted in significant growth but, in combination with corrupt institutions, also widened inequality and marginalisation; many rural and working-class people were unable to access the benefits of the open economy. The government also introduced political reform, the centrepiece of which was a new constitution that established an ultra-powerful executive president, a unicameral legislature, weak checks and balances between branches of government, and a unitary, centralised administrative structure.[89] While it enumerated a number of rights and freedoms, the constitution gave the executive significant discretion to curtail them. The ease with which a state of emergency could be declared resulted in almost continuous suspension between 1983 and 2009.[90] Together, these provisions facilitated a culture in which state institutions, including the judiciary, privileged executive convenience and the rights of state functionaries over citizens' rights.

2. Overview of Main Transition

The main transition occurred between 1994 and 2004, when Bandaranaike Kumaratunga was president. The first of two key phases was from 1994 to 2000, when the People's Alliance (PA), a coalition led by her SLFP, controlled parliament. The second, from 2001 to 2004, occurred when the United National Front (UNF), a coalition led by the UNP's Wickremesinghe, won parliament. Kumaratunga's election ended 17 years of UNP rule and brought together a cross section of society, including opposition parties and human rights activists, united in favour of political change due to the many human rights violations during the second JVP insurgency (an unsuccessful Marxist youth rebellion that took place in 1987-89; the first took place in 1971), not necessarily by desire to end the ethnic conflict with the Tamils. Her efforts to end the civil war by negotiation collapsed, and the government and LTTE resumed fighting. The government pursued a "war for peace strategy" to contain the LTTE militarily, while simultaneously pursuing constitutional reforms that would devolve power to Tamil-majority areas. The heightened violence, security crackdowns and media restrictions paved the way for a deeply polarised political environment. Under Kumaratunga's pres-

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[89] Rohan Edrisinha, "Sri Lanka: Constitutions Without Constitutionalism A Tale of Three and a Half Constitutions." In *Essays on Federalism in Sri Lanka*, edited by Rohan Edrisinha and Asanga Welikala, 7-58. Colombo: Centre for Policy Alternatives, 2008.
[90] Asanga Welikala, *A State of Permanent Crisis: Constitutional Government, Fundamental Rights and States of Emergency in Sri Lanka*. Colombo: Centre for Policy Alternatives, 2008.

idency, the first parliamentary elections were held in October 2000. She won but was unable to keep the confidence of her ruling coalition and was forced to call for fresh parliamentary elections in December 2001.

The UNP, led by Wickremesinghe, won a major victory with 109 seats but needed 113 for a majority, so relied on support of the Tamil and Muslim parties to form a government. The leftist and nationalist JVP won 16 seats, signalling a strong backlash against both major parties' reform proposals. The co-habitation government was marked by bitter acrimony between the presidency on one hand, and the prime minister and cabinet, which the legislature chose, on the other.

3.　Assessment of Progress

3.1　*Building a Social Covenant to Bridge Divides and Create Common Nationhood*

The most significant initiative to build a social covenant across the Sinhala and Tamil communities involved efforts to negotiate an end to the civil war. Both the Kumaratunga and Wickremesinghe governments came to power with a mandate to achieve the latter with the LTTE. Kumaratunga's reform efforts were qualitatively different from those of previous governments: for the first time, the state sought to explicitly acknowledge society's multi-ethnic character; she was also the first leader to publicly acknowledge Tamil grievances and characterise the civil war as an "ethnic conflict."[91] Moreover, unlike any leader before her, she was willing to expend political capital to build a public narrative about the need for a political solution to the conflict. Her commitment to addressing Tamil grievances was reflected in the first-ever, official state apology, which she offered herself, as a response to the "Black July" pogroms.

The LTTE welcomed President Kumaratunga's early confidence-building measures, and a short-lived ceasefire resulted from January to April 1995. The government's strategy once the war resumed worsened relations between Sinhala and Tamil communities, as well as within broader society. The escalation of hostilities, including particularly the LTTE's suicide bombing campaign, drained any southern support for compromise with the insurgents. Heavy civilian casualties in conflict-affected areas and state discrimination against Tamil civilians outside conflict areas reduced minority communities' support for the government, including that of the president's Tamil and Muslim coalition partners.

The government proceeded with its constitutional reform secretively, without consulting the LTTE. Members of civil society were selectively consulted on specific issues, and Tamil parliamentarian Neelan Tiruchelvam advised the government on the Tamil leadership's priorities. However, the lack of early support for the drafting process proved fatal: the final bill failed in parliament, as the government was unable to secure the required two-thirds majority.

Upon Wickremesinghe's election, the government returned to peace talks with mediation assistance from Norway. These resulted in a ceasefire, as well as six rounds of direct talks with the LTTE. In a communiqué signed in Oslo, the LTTE for the first time appeared willing to step away from its demand for a separate state and agreed to "explore" a political solution based on federal principles.[92] This was a milestone, the first time the LTTE and government had jointly agreed to a formulation that addressed many of the substantive constitutional issues that would need to be negotiated to provide a lasting solution.[93] However, the talks did not progress much further, owing to LTTE intransigence. The ceasefire held, despite multiple violations on both sides, but the direct talks did not resume after the LTTE withdrew.

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[91] Jehan Perera, "An Analysis of the Breakdown of Negotiations in the Sri Lankan Ethnic Conflict." In *Negotiating Peace in Sri Lanka Efforts Failures and Lessons Vol I (2nd ed)*, edited by Kumar Rupesinghe, 223-239. Colombo: The Foundation for Co-Existence, 2006; Loganathan, Ketheshwaran. "An Analysis of Thimpu Talks (1985) and the PA-LTTE Talks (1994-95)." In *Essays on Federalism in Sri Lanka*, edited by Rohan Edrisinha and Asanga Welikala, 180-205. Colombo: Centre for Policy Alternatives, 2008; Rajanayagam, P. "Govt-LTTE Negotiations 1994/1995: Another Lost Opportunity." In *Negotiating Peace in Sri Lanka Efforts Failures and Lessons Vol I (2nd ed)*, edited by Kumar Rupesinghe, 165-222. Colombo: The Foundation for Co-Existence, 2006.

[92] *Oslo Communiqué July 2002*. Oslo: 2002.

[93] Rohan Edrisinha et al. *Power-Sharing in Sri Lanka Constitutional and Political Documents 1926-2008*. Colombo: Centre for Policy Alternatives and Berghof Foundation for Peace and Support, 2008, 642.

Under the UNF and for the first time, the peace process facilitated the Muslim community's substantive participation. In the aftermath of the ceasefire, the Sri Lanka Muslim Congress leader, Rauff Hakeem, and the LTTE leader reached an agreement in direct talks on the return of northern Muslims, disputed land issues and LTTE taxes in the east. The agreement was short-lived, and violence flared up again in the east. The government also gave the Muslim community a participatory role, thereby indirectly acknowledging its conflict-related grievances.

Unravelling of the peace process reinforced ethnic and religious cleavages and further fragmented minority groups.[94] Spoilers emerged in the south in the form of nationalist parties that capitalised on anxieties created by direct talks with the LTTE and the prospect of "splitting the country" at the behest of a Western Christian country (Norway). In particular, the UNP's closeness with Western donors and its liberal economic reforms weakened its credentials as a Sinhala nationalist party and created the perception that it was undermining the state's sovereignty.

The period also saw creation of the first political party led by Buddhist monks, the Jathika Hela Urumaya (JHU), which vociferously opposed Norway's involvement. In the past, the two dominant Sinhala parties had relied on minority parties – either the Tamil CWC or the Muslim SLMC – to form governments. Following 2004, they became less important, while Sinhala hardliners, such as the JVP and JHU, gained direct access to power. The electoral response to the peace process thus signalled entry of ultra-nationalist sentiments into mainstream politics.

The peace process also had the unintended effect of fragmenting Tamil and Muslim communities. Divisions arose within the LTTE when its eastern commander, Karuna Aman, broke away with thousands of cadres and declared his independence. This was a significant loss for the LTTE's control of territory, financial resources and strategic advantage. Karuna later allied with the Rajapaksa government (Mahinda Rajapaksa became prime minister in 2004 and president in 2005). Within the Muslim community, factions questioned the primacy of Rauf Hakeem and the SLMC in the peace process, causing the party to fragment further and giving impetus for new nationalist actors to make more strident demands for Muslim self-rule in the east.[95] The LTTE, which claimed to be Tamils' sole representative, coerced many Tamil leaders, including elected leaders, to take extreme positions that kept them marginalised during the peace process.

3.2   *Adopting Inclusiveness as a Guiding Principle in Policymaking*

President Kumaratunga was elected in 1994 with a mandate to address the gross human rights abuses that had occurred under the previous UNP regime. The government set up commissions to investigate alleged enforced disappearances,[96] torture[97] and past instances of communal violence.[98] However, they produced no sustained legal or policy changes.[99] Once elected, Prime Minister Wickremesinghe showed no willingness to pursue accountability for abuses that had taken place under his party's watch. Moreover, efforts to provide redress for past human rights violations were undermined by the "war for peace strategy." Within the conflict zone, civilian casualties increased to unprecedented levels. Outside it, security agencies increased checkpoints and routinely

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[94] Gunnar Sørbø, Jonathan Goodhand, Bart Kelm, Ada Elisabeth Nissen and Hilde Selbervik, *Pawns of Peace Evaluation of Norwegian Peace Efforts in Sri Lanka, 1997-2009*. Oslo: Norwegian Agency for Development Cooperation, 2011, 49-50.

[95] See *Oluvil National Declaration*. 2003.

[96] See *Final Report of the Commission of Inquiry into the Involuntary Removal or Disappearances of Persons in the Central, North, Western, North Central and Uva Provinces, Sessional Paper No VI*. Colombo: Government of Sri Lanka, 1997; *Final Report of the Commission of Inquiry into the Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces*. Colombo: Government of Sri Lanka, 1997; *Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces, Volume I, Sessional Paper No. V*. Colombo: Government of Sri Lanka, 1997; *Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces, Volume II, Sessional Paper No. V*. Colombo: Government of Sri Lanka, 1997; *Final Report of the Commission of Inquiry into Involuntary Removal and Disappearance of Certain Persons (All Island)*. Colombo: Government of Sri Lanka, 2001.

[97] *Report of the Commission of Inquiry into the Establishment and Maintenance of Places of Unlawful Detention and Torture Chambers at the Batalanda Housing Scheme*. Colombo: Government of Sri Lanka, 2000.

[98] *Report of the Presidential Truth Commission on Ethnic Violence (1981-1984)*. Colombo: Government of Sri Lanka, 2002.

[99] For a summary of the changes that were implemented, see: Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices 2001: Sri Lanka*. Washington DC: Department of State, 2002.

targeted Tamil civilians for arbitrary arrest and detention. The LTTE responded by targeting civilians in urban areas, including an attack that left the president blind in one eye.

With Wickremesinghe's election and declaration of a ceasefire, the human rights situation on the ground temporarily improved.[100] The UNF allowed the state of emergency to lapse, temporarily limiting the extraordinary powers of law enforcement agencies. Arbitrary arrests and detention of citizens in the north and east decreased significantly, though sporadic violence continued between Muslim and Tamil communities in these areas. Notably, the government granted citizenship to 100,000 Indian-origin Tamils deemed stateless as a result of earlier policies.

Structural economic reforms created new disenchanted groups during this period. President Kumaratunga tried to address the fiscal imbalance the UNP left behind by cutting spending and privatising underperforming state enterprises. However, by the time Wickremesinghe came to power in 2001, the country faced negative economic growth and a severe fiscal crisis, requiring significant spending cuts and urgent market reforms. The reforms were expected to have a trickle-down effect and improve the living standards of ordinary citizens. However, growth and poverty reduction remained uneven, and despite overall economic improvement, income inequality increased. Urban centres continued to profit from growth in sectors such as tourism, finance, and garments, while the agricultural sector experienced few benefits. From 1990 to 2002, urban poverty fell by half, rural poverty by less than 5 per cent.[101] Economic growth and poverty reduction correlated with the provinces that had better access to infrastructure and connectivity to markets; provinces that had lower levels of accessibility continued to lag.

Uneven growth was felt most in Tamil-majority areas. Owing to lack of access to basic infrastructure and structural constraints, the plantation sector – dominated by Indian-origin Tamils – experienced the lowest levels of both poverty reduction and economic growth. The conflict-affected areas that were also Tamil-majority were often under LTTE control and not included in government statistics but were deprived of even the most basic infrastructure, such as electricity, roads, telephones and hospitals.[102] These conditions worsened as the conflict escalated during the first phase of the transition. Even the new welfare benefits scheme the PA government introduced did not operate in the Tamil-majority districts of Jaffna, Mannar and Killinochi, which were dependent on humanitarian aid and poorly implemented special reconstruction programs.[103] Following declaration of the 2002 ceasefire, economic activity in them increased, but they remained behind the rest of the country.

Analysts attribute the UNF's loss at the 2004 parliamentary elections to failure to implement effective poverty reduction measures.[104] A negotiated end to conflict can alienate hardliners and be polarising. To reduce the threat from opponents, past governments used tools such as welfare grants to buy support for more controversial aspects of their reform agenda. Instead of expanding the existing welfare program, however, the UNF government tightened benefits, alienating the southern working class and rural voters.

Throughout this period, both Kumaratunga and Wickremesinghe failed to make inclusivity a systematic, guiding principle of the transition. Kumaratunga, in her first term, tried to articulate a more inclusive view of citizenship but eventually lapsed into the tradition of Sri Lankan leaders who seek support by appealing to the electorate's majoritarian impulses. Wickremesinghe, who often preferred elite collaboration to mass mobilisation, similarly failed to present a vision that sufficiently acknowledged the state's multi-ethnic character. As a result, the main concerns of a whole range of sectors experiencing persistent inequity and inequality remained unaddressed throughout the transition. Access to education, for instance, was significantly lower in conflict-affected and rural

[100] S*ri Lanka Country Report Countries at Crossroads*. Freedom House, 2004. Accessed March 2017. https://freedomhouse.org/report/countries-crossroads/2004/sri-lanka.

[101] *Sri Lanka Poverty Assessment Engendering Growth with Equity: Opportunities and Challenges*. Colombo: World Bank, 2007, ix.

[102] Venugopal, Rajesh. "Democracy, Development and the Executive Presidency in Sri Lanka." *Third World Quarterly* 36:4 (2015): 670-690, 682.

[103] Ibid.

[104] Sunil Bastian, *Economic Agenda and the Peace Process 2000–2005.* Colombo: The Asia Foundation, 2005, 39.

areas than urban ones, especially in the Sinhala south. Moreover, curriculums continued to advance majoritarian views that presented a biased view of history, further angering minorities. Similarly, media outlets, including state-owned ones, consistently reflected ethnic ownership and provided biased, ethnocentric reporting. Coverage in all three languages was strongly state-centric, to the exclusion of broader development or human rights issues.[105] Despite formal inclusion of Tamil as an official language in 1986, little progress was made during the transition to put a multilingual policy into practice.

3.3   Strengthening Mechanisms to Enforce Political Commitments and Reduce Bias in Institutions

The most promising institutional reform initiative for building relations across communities involved constitutional reform. Between 1994 and 2000, the PA government released four documents outlining proposals, including a principles document, two legal drafts and a bill introduced in parliament.[106] The proposals sought to replace the 1978 constitution and devolve power to regional governments. There was public support to reform the executive presidency and strengthen fundamental human rights, but significant opposition to devolution. When the final bill was tabled, the president was unable to garner the votes to enact constitutional change.

The PA government did enact other institutional reforms, but no substantive contributions were made to improve relations across ethnic groups. The most notable achievement was the 17th constitutional amendment, limiting executive power by establishing a constitutional council to recommend to the president key appointments to public service and other state institutions. Initially, it was fully functional, and a number of appointments were made, but Kumaratunga rejected the election commission nominee in 2001, sparking a constitutional crisis.[107]

The PA government also established commissions on bribery[108] and national human rights.[109] The latter made modest progress investigating detention conditions. The former could not fully discharge its duties, owing to lack of resources and investigative authority. The 17th amendment, with these new institutions, had potential to facilitate modest improvements in relations between the ethnic communities by helping reduce bias and institutional corruption. For example, appointments under it held potential to address chronic issues, such as racial profiling by law enforcement agencies and systemic discrimination in basic services by state institutions. But in practice these reforms had little substantive impact in remedying inequity.

State institutions were weakened during this period by increased violence within and outside the conflict areas that worsened relations between the main communities. Despite security agency abuses, the military and police were perceived to be under civilian control.[110] In one instance, more than 1,200 civilians, mostly Tamil, were arrested overnight following protests by Tamil politicians against the government's introduction of measures for registering new Tamils in the city.[111] Except for a few isolated incidents, however, the civilian leadership showed no willingness to hold security agencies accountable for wrongdoing.[112] There was, however, an attempt to prosecute those involved with Sinhala disappearances as a result of the JVP insurgency, and over 300 cases were filed against almost 600 security force personnel.

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[105] Sanjana Hattotuwa, *Media and Conflict in Sri Lanka.* Colombo: Centre for Policy Alternatives and U.S. Institute of Peace, 2003.

[106] The four documents include the following: *The Government's Proposals for Constitutional Reform of August 1995; The Draft Provisions of the Constitution Containing the Proposals of the Government of Sri Lanka relating to the Devolution of Power (January 1996)* (Also known as the Legal Draft); *The Government's Proposals for Constitutional Reform of October 1997*; and the *Constitution Bill of August 2000.*

[107] Aruni Jayakody, "The 18th Amendment and the Consolidation of Executive Power." In *Eighteenth Amendment to the Constitution*, edited by Aruni Jayakody and Rohan Edrisinha. Colombo: Centre for Policy Alternatives, 2011, 27-28.

[108] *Commission to Investigate Allegations of Bribery or Corruption Act* No. 19. Parliament of Sri Lanka, 1994.

[109] *Human Rights Commission Act* No.21. Parliament of Sri Lanka, 1996.

[110] *Sri Lanka Country Report Countries at Crossroads.* Freedom House, 2004. Accessed March 2017. https://freedomhouse.org/report/countries-crossroads/2004/sri-lanka.

[111] Ibid.

[112] See, for example, the Krishanthy Kuamraswamy case, wherein the state successfully prosecuted state security agents for the rape and murder of a Tamil schoolgirl in Jaffna.

The culture of impunity worsened when Sarath Silva, a close Kumaratunga ally, was appointed to the Supreme Court. He ruled consistently to limit protection afforded by fundamental rights and sided with the government on political cases.[113] He also used his position on the Judicial Services Commission, responsible for appointing lower-court judges, to control judicial appointments and punish judges by administrative sanctions when they did not act in accordance with his views.

A leading analyst observed that the transition saw a heightened period of "political decay," when intimidation, harassment, and violence to achieve political ends became commonplace.[114] Another noted that it revealed long-term effects of the "politics of anxiety" since independence.[115] Polarisation deepened further, 2002-2004, when president and prime minister were from opposing parties. While the prime minister was on an overseas trip, the president used her powers to assume control of the defence, media and foreign ministries. Acrimony between the executive and legislature ultimately resulted in the fall of the Wickremesinghe government, when the president used her powers to dismiss parliament and call new elections.

3.4 *Summary of General Progress*

Little progress was made in any of the three areas between 1994-2004. Efforts to build a social covenant were undermined by flaws in the process and LTTE intransigence. Both President Kumaratunga and Prime Minister Wickremesinghe succeeded in securing a ceasefire, but neither achieved the coveted goal of negotiating a political solution to the conflict. Relations between ethnic and religious groups arguably deteriorated during the transition.

Despite coming to power on promises to reduce inequities, neither government achieved much in terms of creating more inclusive policies, especially in areas that affected intergroup relations. Textbooks, media and human rights policies all came up short. Despite economic improvements, benefits were distributed unevenly. Areas adjacent to Colombo, the capital, saw greater reductions in poverty, while areas with reduced access to basic infrastructure lagged in growth and poverty reduction. Tamil-majority areas under LTTE control and the Indian-origin-dominated plantation areas continued to suffer from a widening poverty gap.

A number of important reforms were made to state institutions during the transition, including the 17th amendment and establishment of bribery and human rights commissions. However, these modest achievements did little to address the underlying culture of impunity and discrimination within state institutions. As the conflict worsened under the PA government, human rights violations worsened as well, with an increase in civilian casualties and displaced persons and large-scale, arbitrary arrests of (mostly Tamil) civilians.

Reform efforts spawned new spoilers in Tamil, Sinhala and Muslim communities. Within the Sinhala majority, efforts to devolve power to minorities gave birth to a hard-line movement to preserve Sinhala Buddhist hegemony. Within the Tamil community, the LTTE, seeking to suppress alternative voices, resorted to intimidations and killings, eliminating a generation of moderate leaders. Progress in the peace talks laid bare tensions within the insurgency: midway through the Norwegian-backed negotiations, thousands of cadres broke away with Karuna Amman, a key LTTE deputy. The Muslim community's efforts to be included equally within the reform process created new conflicts, resulting in the split of the traditionally dominant SLMC.

4. How the Three Building Blocks Interact

During the transition, the main effort to restore relations involved development of a social covenant to provide a political solution to the conflict via elite negotiations and wholesale constitutional reform. Neither President Kumaratunga nor Prime Minister Wickremesinghe articulated a system-

[113] S*ri Lanka Country Report Countries at Crossroads*. Freedom House, 2004. Accessed March 2017. https://freedomhouse.org/report/countries-crossroads/2004/sri-lanka.
[114] Devotta. "Sri Lanka' Political Decay: Analysing the October 2000 and December 2001 Parliamentary Elections."
[115] Jayadeva Uyangoda, "A Political Culture of Conflict." In *Creating Peace in Sri Lanka*, edited by Robert Rotberg, 157-169. Brookings Institution Press: Washington DC, 1999.

atically inclusive vision for the state, however, nor followed through on promises to improve policies and institutions. Efforts to restore rule of law, redress past human rights violations and reduce poverty were piecemeal and largely ineffective. Many areas that perpetuated inequity, such as education, the media and language policy, remained unaddressed. As a result, no virtuous cycle developed.

Focus on elite negotiations led to neglect of society-level inter-group relations. Once elite-level talks to build a social covenant fell apart, there was no progress upon which to build at the society level. The failure to reform state institutions – which mattered most for improving relations across communities – contributed to further failure to develop a more inclusive political vision, as it undermined faith in the country's leadership. Economic policies that exacerbated inequalities and tightened the welfare regime in turn weakened support for negotiations and reform.

Ultimately, these shortcomings – especially on economic reform – allowed new spoilers to emerge, who steadily eroded any support for reform initiatives and permanently introduced hardliners into mainstream politics. By the transition's end, relations between communities were worse than ever. In addition, the transition fractured the constituencies that initially supported reforms and hardened those that opposed them outright. The Rajapaksa coalition came to power with the support not of traditional allies from the Tamil and Muslim minorities' parties, but of nationalist hardliners, such as the JHU and JVP, that advanced a crude, previously unseen majoritarianism. This led to a vicious cycle that produced all-out war after the transition failed.

Change and Continuity – In May 2009, the Rajapaksa government ended the conflict amid allegations of war crimes, and the conflict-affected areas were put under military rule. President Rajapaksa enacted constitutional change that made the executive presidency even more powerful than under the 1978 constitution. The international community used, for the first time, a multilateral setting to address human rights concerns, passing resolutions in the UN Human Rights Council demanding accountability for wartime atrocities. In 2015, following a period of semi-authoritarian rule, Maithripala Sirisena of the SLFP was elected president, and Wickremesinghe was appointed prime minister. They started a new transition to forge a social covenant across the groups.

There are important differences between the previous and current transitions. Instead of the LTTE, the Tamil community is represented by the TNA – a coalition of parties and factions that are committed to a political solution within a united Sri Lanka. The two main Sinhala parties have formed a unity government and in theory work together to implement a common reform agenda. However, many challenges from the previous transition remain relevant. Despite showing its strong preference for democracy in 2015, the electorate appears averse to more inclusive politics, including any substantial devolution of power to minority communities. State institutions remain deeply politicised and still prioritise executive convenience over citizen rights. Similar to 2001, the government faces a fiscal crisis, requiring market reforms and tightening of expenditures, which might potentially alienate core constituencies whose support is essential for the reform agenda's support.

Efforts to restore rule of law, address past human rights violations and decrease income inequality are piecemeal and poorly implemented. Despite creating commissions of inquiry, the government in more than two years has been unable to successfully prosecute a single individual for gross human rights violations or corruption offences. Despite welcome emphasis on restoring good governance, it has yet to articulate a principled vision acknowledging the state's multi-ethnic character. Many reforms continue to be designed behind closed doors, with little effort to build political capital among the masses for their content. New hardliners and nationalists – this time ex-President Rajapaksa and his allies – have stepped in to spread misinformation and capitalise on the public's anxieties about reform. The new spoilers also engage in ethnic outbidding, arguing the government seeks to split the country, undermine the constitution's unitary character and betray "the war heroes of the country."

5.   Other Conclusions

Sri Lankan governments continue to face the challenge of managing the role of external actors in reform processes. During the earlier transition, the international community, in particular Norway, provided significant assistance and impetus. However, spoilers argued it was acting at the behest of a radicalised, Tamil diaspora or in a conspiracy to undermine the Sinhala Buddhist values underpinning the state. The same arguments have been levelled against the UN Human Rights Council and the member states supporting accountability. Similar to the past, today's government faces a severe financial crisis, requiring macroeconomic reforms to sustain economic growth. The familiar challenge is to ensure market reforms are not perceived as a foreign imposition and do not disenchant rural and working-class voters, whose support is needed for the overall success of the reform process.

NEPAL

Since the end of its civil war in 2006, Nepal has struggled to institutionalise an inclusive democratic system, create functional institutions and address the root causes of armed conflict. Though the social cleavages are nowhere near as stark as Sri Lanka's, relationships across major groups and the government's treatment of certain populations are both less than optimal. With the close of armed conflict, numerous arrangements have been introduced to help end long-standing discriminatory practices in society and ensure marginalised populations' participation in state mechanisms. These have yet to be fully implemented, in part because institutions are weak. Nepal also faces many hurdles to fully implement the 2015 federal constitution, address conflict-related human rights violations through transitional justice mechanisms and properly implement new policies to enhance inclusiveness and social cohesion. Creating a resilient, sustainable economy and addressing security implications of the rivalry of its giant neighbours, China and India, are further challenges.

1.   Starting Conditions

Nepal, diverse in ethnicity, language, geography, culture, religion, and climate, has adopted an inclusive, participatory democratic system. Despite an increase in participation of women and minorities in state mechanisms, however, it remains a feudalistic, patriarchal society dealing with longstanding discrimination related to social practices and economic disparity based on caste, class, gender and access to resources.[116] These practices impair equal access to power and state resources, as well development of a common nationhood.

Class hierarchies and the caste system (which exists only in the Hindu community) are products of feudalism, which remains one of the major factors contributing to entrenched social cleavages. There are significant gaps between the haves and have-nots, and better access and opportunities are afforded to societal elites (political and economic) during decision-making and policymaking processes. Minorities and working people remain isolated from state resources and opportunities. Exclusionary practices have similarly contributed to the promotion of biased perceptions and mindsets among the people and the complexities of ending social cleavages.

Nepal today is a secular and inclusive republic with a federal political system, but there have been numerous phases of political instability, turbulence and change since the beginning, in 1950, of the transition from hereditary monarchy. Affirmative steps have been taken to enhance the rights of minorities and marginalised populations, starting with the constitutional and legal reform process in 1990. Reforms were further institutionalised in the 2006 Comprehensive Peace Agreement (CPA) and the 2007 interim constitution. Social transformations were also significantly advanced by the 2015 federal constitution, which expanded fundamental rights.[117]

In February 1996, during a limited period of democratic practice, the Communist Party of Nepal-Maoists (CPN-Maoists) launched an armed insurgency, the "people's war", demanding abol-

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[116] Gerard Toffin, *Imagination & Realities: Between Past and Present*. New Delhi: Adroit Publishers, 2016, 1-26.
[117] Ibid.

ishment of the monarchy and its replacement by a republic; Constituent Assembly (CA) elections and drafting of a new constitution; and an end to all forms of discriminatory practice and injustice so as to create a more inclusive society. However, the king's authoritarian rule interrupted the social and economic transition, until a peaceful movement ended that rule in 2006.

Nepal is one of the world's poorest countries, with a GDP of less than $750 per capita. The government has failed to provide minimum-level social welfare for the needy. Access to basic needs like education, health and jobs is inadequate, and the disparity between elites and workers is increasing rapidly. The fragile economy is listed 145th in the UN Human Development Index. National growth was as low as 0.77 per cent for fiscal year 2015-2016, and the poverty level is 47.4 per cent, though the economy appears functional due to increasing remittances from migrant workers, which are 31.8 per cent of GDP. Dependency on foreign aid, loans and grants severely affects national growth and sustainable development.[118]

Increasing unemployment and emigration are major obstacles for development, prosperity and social cohesion, contributing in turn to lawlessness, anarchism and political uncertainty. According to the Department of Foreign Employment, 95,193 Nepalese left the country for jobs in the Middle East and South Asia between mid-July and mid-October of 2015, and approximately 66,000 more between mid-November and mid-December, figures that do not include those who went to the Western hemisphere or seasonal jobs in India.[119]

Giant, competitive neighbours, China and India, not infrequently impose themselves. India, interested in natural resources, treats Nepal like a little brother, not hesitating to dictate politics on the national level, and stirs much opposition in doing so. China often but subtly plays the "development card" in pursuit of more hidden interests.

2. Overview of Main Transitions

There have been several transitions. Democracy was established in 1950 at the end of oligarchic rule by the Rana regime, but the first democratically elected government, formed in 1958, was replaced in 1960 by a monarchy with an autocratic political system (Panchayati Prajatantra) that ruled for 30 years, restricting democratic rights and civil liberties. In 1990, a peaceful people's movement, Jana Aandolan I, moved the country from an absolute monarchy with a one-party system to multi-party democracy. With military aid, Gyanendra, who was declared king in 2001 after the mysterious assassination of his predecessor and many close relatives, seized power in bloodless coups, partially in 2002, completely in 2005. The violent conflict the CPN-Maoists launched in February 1996 lasted for almost a decade.

The seven constitutional political parties and the CPN-Maoists began another round of peaceful democratic transition in April-May 2006, with the aim of establishing democracy and peacefully settling the armed conflict. Pursuant to Jana Aandolan II, the monarchy was peacefully deposed in May 2006 and abolished in May 2008. Signing of the CPA in November 2006 brought post-conflict management challenges, including assuring political stability and rule of law; managing ex-combatants; reconstruction; resettlement of conflict-affected populations; CA elections; promulgation of a federal constitution; and ensuring justice for the victims of conflict.

Though it was planned to complete the constitution within two years, the parties failed to present a consolidated draft due to differences over governance, inclusion, representation, electoral system and federalism issues. The constitution was finally declared in September 2015, but without the disputed issues having been properly addressed. While more than 90 percent of CA members approved, Terai Madhesh-centric political parties boycotted the announcement process. Enforcement of the constitution remains a challenge, and demands raised by dissenting groups (such as the Madheshi and Tharu communities) on citizenship, representation, demarcation of provinces

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[118] See Naya Patrika Daily website. Accessed December 2016. www.nayaptrika.com.
[119] See Annapurna Post Daily website. Accessed January 2016. www.annapurnapost.com.

and elections are unsettled, contributing to uncertainty around the constitution's assurances on good governance, rule of law, transitional justice and inclusivity.

3. Assessment of Progress

3.1 *Building a Social Covenant to Bridge Divides and Create Common Nationhood*

Nepal's diversity is an important asset, but also an obstacle for building social covenants and common nationhood. Though its value was increasingly recognised after democracy's introduction in 1990, diversity issues have yet to be addressed effectively in practice. Historically, the country has been defined by its monarchy and Hindu religion, while ruling elites from certain families, castes and groups have used state mechanisms to monopolise political and economic power. Minorities long had almost no role in government decisions and limited access to state resources. In addition to addressing other social cleavages, politicians have been challenged to acknowledge the necessity of ending feelings and perceptions of discrimination, as well as its actuality.

Inclusion became a key issue in the political process with the May 2006 proclamation of the House of Representatives. It was strengthened by the CPA, and the interim constitution's progressive provisions produced a relatively inclusive CA in April 2008 that indicated overwhelming acceptance of public participation in the nation-building process, without gender, ethnic, religious, caste or minority discrimination.

After the signing of the CPA and establishment of democracy, minorities and marginalised populations, including the Madheshi people, had space to express grievances, feelings and perceptions to the state. The desire to do so mainly arose in Terai-Madhesh areas and among ethnic populations in the eastern hills, which seek greater participation in nation-building, proportional representation in state affairs and local ownership of natural resources.[120] The Madheshi population arguably has experienced structural discrimination and intentional isolation from the national integration process through state policies on land rights, education, language, dress code and citizenship. The state was unable to satisfy the aspirations of the (lowland) Madhesh-centric political entities, in particular, and as discontent over the interim constitution grew, the Madheshi Jana Adhikar Forum (MJF) and the UDMF formed a movement demanding greater representation of minorities in state and local authorities and a Terai-Madhesh autonomous region under a federal structure.

The movement turned violent and its leaders lost control, with effects felt throughout the Terai-Madhesh. The CA election was delayed until April 2008, after agreements were reached with Terai-Madhesh political groups and other ethnic groups. The agreements later became instrumental for federalism in Nepal and further enhanced establishment of an inclusive, participatory democracy. However, the state's response to lawlessness, anarchism and crimes that massively increased during the movement – dozens of armed and criminal groups emerged, and extortion, abductions and killings became rampant – was perceived as repressive.

In the eastern hills, the Limbuwan Autonomous Council and several other ethnic groups launched separate movements demanding autonomy and equal representation in state mechanisms. The agreement with the UMDF that smoothed the way for a successful CA election only partially addressed the representation and inclusiveness issues, and insecurity and political chaos remained constant in the Terai-Madhesh and eastern hills for several years.

Feeling threatened to an extent by minorities and fearful of losing their posts and power, ruling elites and members of the main political parties changed their positions somewhat after the CA election. Dialogues between the government and agitated ethnic and political groups (including the UDMF) that sought to increase confidence among political actors helped identify common ground to address grievances over inclusiveness and representation during drafting of the constitution. Nevertheless, mainly due to differences over those issues, the CA failed to finish its work in the given time frame, and a second CA election was needed in November 2013.[121]

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[120] Krishna Hachhethu, *Madheshi Nationalism and Restructuring the Nepali State*. Kathmandu: Tribhuvan University, 2007.
[121] Prashant Jha, *Battles of the New Republic: A Contemporary History of Nepal*. New Delhi: Aleph Book Company, 2014, 184-189.

Talks on inclusiveness and representation continued between political actors and agitated groups from 2008 to 2015, inside and outside the CA. Though numerous understandings and agreements were signed, follow-through has been inadequate, and differences remain. Terai-Madhesh issues, including citizenship, representation, provincial demarcation and electoral process, are still in limbo despite the federal constitution's promulgation. The Terai-Madhesh parties boycotted that promulgation and continue to press their demands on the mainstream parties.

Efforts to develop constitutional arrangements and relevant institutions for building a common nationhood have yet to be effective, owing to inadequate political commitment and other essential institutional mechanisms. These efforts are also affected by limited financial and logistical resources for creation of functional institutions and lack of human capital in state mechanisms.

3.2 *Adopting Inclusiveness as a Guiding Principle in Policymaking*

Citizenship – Citizenship issues continue to be controversial in Nepal because of the inequitable provisions made prioritising men over women. Since the promulgation of the Citizenship Act of 1964, Nepal has offered citizenship through descent and naturalisation processes, with citizenship by naturalisation only being possible through marriage or by application. Though thousands of people have yet to receive citizenship, it remains a highly debated political issue in Terai-Madhesh. Citizenship was assured through one's father or mother through the provisions of the 2007 interim constitution. However, the current provisions are more liberal, allowing citizenship for Nepali men who are married to foreign women, as well as Nepali women who are married to foreign men, and similar complex provisions are included for their children. Similarly, the 2015 federal constitution includes an arrangement whereby non-resident Nepalis may be granted citizenship; this does not include Nepali emigrants residing in SAARC countries.[122]

Legal Reforms – The interim constitution envisaged legal revisions to advance more inclusive policies, and consequential changes have been made to provide for inclusiveness in government mechanisms, including in politics, bureaucratic systems, the security sector and other spheres. A 2007 amendment to the 1993 Civil Service Act became a milestone for better public service representation, facilitating increased participation of women and minorities in policymaking and decision-making and more job opportunities at all levels.[123] The private sector, civil society and internationals have likewise been required to adopt more inclusive policies, further contributing to greater job opportunities for women, minorities and marginalised communities.

Education – As part of the restoration of democracy, the 1990 constitution (Article 18) stated, "each community shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its children". The provision was not made compulsory, but the interim constitution extended the guarantee. The education sector is still being reformed to meet international standards and generate jobs. The federal constitution makes education a priority. Article 31 incorporates advanced provisions, including compulsory and free basic education, free higher education for the physically impaired and poor and braille script for the visually impaired, as well as the right for all to mother-tongue education up to secondary level and the right to open and run schools as provided for by law.[124] However, enforcement of these provisions has yet to be seen in practice.

Dress Code – Due to ethnic and geographic diversity, the Nepalis use many different types of dress in formal and informal settings. However, the autocratic Panchayati regime imposed a dress code (Daura Suruwal for men, Chaubandi Cholo and Faria for women) for public office holders, including senior politicians and bureaucrats, under the banner "One King – One Country: One Language – One Dress". The interim parliament removed the mandatory code once the CPN-Maoists joined

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[122] Ibid., 10-15.

[123] Ganga Datta Abasthi, and Rabindra Adhikary, *Changes in Nepalese Civil Service after the Adoption of the Inclusive Policies and Reform Measures*. Kathmandu: SPCBN/UNDP, 2012.

[124] *The Constitution of Nepal*. Nepal: Government of Nepal, 2015. Accessed December 2016. http://www.lawcommission.gov.np/en/documents/2016/01/constitution-of-nepal-2.pdf.

and also allowed ethnic communities to wear their traditional attire in parliament and for formal state ceremonies. Without an official code, many senior bureaucrats and some politicians choose to wear the previously imposed dress, but the former insurgent leaders prefer Western attire, and ethnic communities feel comfortable in traditional dress.

Language Policy – According to the 2011 census, 123 mother languages are spoken in Nepal, most belonging to Indo-Aryan and Sino-Tibetan families, but Nepali has been the only official language since the country's inception. Responding to ethnic communities' demands, the interim constitution finally accepted ethnic languages as official. During the 1990s, the government allowed them to be taught in primary schools, but textbooks and curriculums were lacking. The federal constitution adopted a multi-lingual policy to ensure use of ethnic languages in the provinces and provided for provincial governments to make translations available. However, it again made Nepali the only official language, though provinces may use one or more additional languages, if a majority of their people speak them. It also outlined that language policy is decided based on the recommendations of a constitutionally-mandated Language Commission.[125]

Religion – In accordance with the 1990 constitution and the 2007 interim one, the federal constitution acknowledges religious freedom and that "nothing shall be deemed to prevent the regulation, by … law, of the operation and protection of religious sites and religious trusts and management of trust properties and lands." It further emphasises that "no person shall, in the exercise of the right conferred by this Article, do, or cause to be done, any act which may be contrary to public health, decency and morality or breach public peace, or convert another person from one religion to another or any act or conduct that may jeopardise other's religion and such act shall be punishable by law."[126] However, it also indirectly recognises Hinduism's supremacy in state mechanisms.

To ensure inclusiveness in state mechanisms, policies must be properly enforced and resources adequately allocated. Though the government says the state does not favour certain groups or regions, resources do not appear to be equitably distributed. Policies are often developed to support the interests of political elites that do not guarantee promotion of inclusiveness. Nevertheless, state efforts have had generally positive results, though enforcement remains challenging. It is thus essential to strengthen enforcement of constitutional and legal mechanisms and establish supplementary, supportive elements.

3.3 Strengthening Mechanisms to Enforce Political Commitments and Reduce Bias in Institutions

Constitutional Reform – Nepal has introduced more than half a dozen constitutions in its nearly 70 years of modern political history. With each political change, there was a tendency to promulgate a new constitution instead of amendments or reforms. The democratic 1990 document promulgated a multi-party system, human rights, democracy and universal adult franchise but was unable to address the country's social, political and economic problems. The majoritarian government's failure to treat such concerns led to political instability, and pushed the country into a decade of violent conflict. Democratic rule was again under threat following the February 2005 royal coup.

As a result, the parliament reinstated by Jana Aandolan II in May 2006 declared the country secular and inclusive, ended Hindu influence in state affairs and allowed the participation of women and marginalised populations in governance. Parliament – and later, Article 4.1 of the constitution – declared: "Nepal is an independent, indivisible, sovereign, secular, inclusive, democratic, socialism-oriented, federal democratic republican state."[127] Inclusiveness was further institutionalised by the interim and federal constitutions. According to Article 3 of the latter, the country has "multi-ethnic, multilingual, multi-religious, and multicultural characteristics and geographical diver-

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[125] Ibid.

[126] Ibid., Article 26.

[127] *House of Representatives Proclamation*. Nepal: Government of Nepal, 2006. Accessed December 2016. http://www.constitutionnet.org/files/2006-05-18-proclamation_of_house_of_representative.pdf.

sities."[128] This constitutional arrangement produced a major shift in feelings and perspectives on a common nationhood.

The interim constitution also introduced power-sharing arrangements, and the concept of consensus politics evolved. This mostly affected resource distribution and failed to address public grievances and social cleavages. The 2015 federal constitution contains the principles of federalism, multi-party democracy, human rights, inclusiveness and a universal adult franchise system – ideally equally accessible to all – but enforcement has not been sufficiently effective.

Electoral Reform – Following democracy's restoration in 1990, a universal adult franchise system was introduced with a two-chamber parliamentary system: a House of Representatives directly elected by constituencies and an Upper Assembly elected by the lower house and nominated by the king. However, it did not truly accept inclusiveness. Though it guaranteed a minimum quota for women candidates (5 per cent), it could not ensure their representation in parliament.[129] Similarly, the 1999 Local Self Governance Act reserves 20 per cent of seats for women at ward levels of locally elected bodies, but local elections have not been held for two decades.

With the increased participation of women and minorities in armed conflict – in political leadership and as combatants – women's representation increased dramatically in the 2007 interim parliament. The federal constitution now guarantees women's representation (one third) and that of various minorities (a formula based on population ratios).

The electoral process was recently shifted from a directly-elected parliamentary system to mixed representation: first-past-the-post (FPTP) for 40 per cent of seats and proportional for 60 per cent of seats. Though women were assured FPTP candidacies, they won no CA seats that way in 2008. However, the proportional system boosted their participation and minorities' in the 2008 and 2013 CA's. The federal constitution changed percentages to 60 (FPTP) and 40 (proportional), reducing the overall total of seats women are likely to get.

The government has constantly amended electoral laws, depending on the political system and circumstances surrounding the election period. Demarcation of constituencies is ongoing, and other relevant election laws tend to be freshly introduced or amended. Regulation, supervision and enforcement of these laws is essential, since they provide accountability for electoral crimes and irregularities. In recent years, voter education and awareness campaigns have been widely introduced, helping to increase both voting and election of minorities by FPTP.

Security Sector – Security forces are commonly seen as repressive because of their association with the ruling class. During the 30 years of autocracy, they were required to be loyal to the king, and this loyalty was transferred to prime ministers, home affairs ministers and ruling parties after 1990. In periods of democratic struggle, security forces were mainly used to suppress aspirations for freedom and democracy. The government also used them to suppress the CPN-Maoist insurgency.

Security sector reform was entirely rejected after the CPA, and the government has indicated no willingness to change this. The Nepal Army Act was amended in 2007 to modify the chain-of-command when the country transformed from a monarchy to a civilian executive, but the regulations did not adequately support democratic control and civilian oversight. The paramilitary Armed Police Force is intact with unchanged mandate. The Nepal Police still operate under the 1955 Police Act, and politicians remain influential on transfers, promotions and opportunities. The Intelligence Department continues as one of the most ineffective, dysfunctional sector organisations. In June 2016, the government introduced its National Security Policy, which remains secret, and proper mechanisms have not yet been created for its effective enforcement.

Criminal Justice Reform – Limited institutional and logistical resources hamper the criminal justice system. Some structures have been modified, but overall there has not yet been reform. Most legal arrangements are no longer applicable to current problems. Working patterns are unaltered, but

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[128] Ibid., *The Constitution of Nepal*, 2015.
[129] Ibid.

the government is drafting legislation to better align the system with the federal constitution. The judiciary has become comparatively more proactive and functional and tries to be effective, responsible and accountable. The Supreme Court has been developing plans to change its work patterns for more than a decade. Similarly, the Office of the Attorney General has tried to become more effective by introducing a new strategic plan but continues to face constraints in human, financial and logistical resources and often is neither timely nor efficient. The 1955 Nepal Police Act is outdated, and the Nepal Police, despite overwhelming responsibilities, still face political interference and resource constraints. A process is underway in parliament to replace the more than 150 years-old Civil Code with a Criminal and Sentencing Code.

Anti-Corruption – The institutionalisation of corruption has had a tremendous impact on social cohesion. Parliament demonstrated commitment to deal with the increasing levels of corruption via state mechanisms by creating a Good Governance and Monitoring Committee to address related issues and practices throughout the government bureaucracy. Corruption is categorised as a serious criminal offence, subject to investigation and prosecution. An autonomous Commission on Investigation of Abuse of Authority (CIAA), whose members are appointed via public parliamentary hearings, is mandated to investigate and prosecute any abuses of power, improper conduct or corruption committed by a holder of public office. It is active but highly politicised, and its members frequently misuse their power by acting on behalf of political entities or agendas.[130]

Transparency International put Nepal 130th of 175 countries on its 2016 Corruption Perception Index, according to which politicians and government institutions and officials are the most heavily involved in the practice.[131] The government has introduced legislation, including the Prevention of Corruption Act (2002), Good Governance Act (2007) and Asset (Money) Laundering Act (2008). Any corruption within the judicial system is subject to the Judicial Council, and the CIAA cannot oversee army-related cases. Nepal has made international commitments to curb corruption practices and allowed watch groups, including Transparency International and independent Nepali entities, to monitor corruption trends and practices.

In sum, institutional arrangements put in place to minimise deeply-rooted social cleavages are positive steps, but inadequate due to lack of political will and proper enforcement mechanisms. Nepal still needs to create functional institutions with proper human and logistical resources, including constitutional and legal arrangements and financial and institutional autonomy, so as to minimise social cleavages and ensure adequate representation and inclusiveness of marginalised populations, while respecting their cultures, religions, customs and social values.

4. How the Three Building Blocks Interact

Virtuous Cycle – After the CPA, minorities' and marginalised populations' participation in political decision-making greatly increased, and inclusiveness principles were widely integrated into the constitution and other state political, legal and administrative mechanisms. However, implementation of these principles is unsatisfactory. Enforcement suffers from legal, administrative and financial constraints and challenges, as well as insufficient infrastructure. While recognising transformation often needs considerable time, ongoing processes to establish constitutional and legal mechanisms that assure and institutionalise inclusiveness can be further strengthened by adequate budgets and logistical resources. In the meantime, commitment to social sector, legal, administrative, security sector and judicial reforms ideally should continue.

Power transfers between select elites and marginalised populations have contributed significantly towards minimising social cleavages and creating better social covenants. Similarly, enforcement of constitutionally-mandated policies in the government and public sectors has helped

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[130] Mahesh Sharma Poudel, *A Summary of Anti-Corruption Measures in Nepal*. UNAFEI. Accessed December 2016. http://www.unafei.or.jp/english/pdf/RS_No86/No86_21PA_Poudel.pdf.

[131] *Nepal Corruption Rank*. Trading Economics. 2004-2017. Accessed December 2016. http://www.tradingeconomics.com/nepal/corruption-rank.

create more inclusive institutional structures and increase participation of marginalised populations in policymaking and decision-making, while also creating job opportunities in both the public and private sectors.

Vicious Cycle – Despite more inclusive and participatory policymaking and decision-making, Nepal continues to face political instability and uncertainty as a result of the polarisation caused by individual and party-centric approaches to national issues, including inclusion and representation. This has not only affected the nation-building process, but also pushed back the democratic transition and the process of creating a peaceful, lawful country.

The struggle for consensus solutions is complicated by ever-intensifying identity politics based on ethnicity, language, and region. Other factors include polarisation between ruling elites and the general population and restricted access to energy and other resources. Growing differences between the Pahadi (hill) groups and Terai-Madhesh (lowland) groups based on identities, perceptions, history, emotions and mind-sets present challenges for greater inclusiveness and social cohesion. The tensions adversely politicise the security and administrative sectors, compromising efforts to strengthen security, rule of law, good governance and accountability.

Even with the adoption of new policies and creation of new institutions, social cleavages have yet to be effectively reduced within the mind-sets and perceptions of ruling elites and mainstream political parties. Though social cleavages have been substantially minimised within the public sector, Nepal continues to face cyclical challenges on the ground. Institutions have not been entirely functional or effective, and policies have not been properly enforced.

5.   Other Conclusions

Nepal's transition and efforts to create of social cohesion remain challenging due to ongoing troubles regarding enforcement of its federal constitution, including demarcation of provinces. Though the constitution was adopted overwhelmingly, citizens struggle to abide by its contents or feel its effects. The country faces obstacles to address conflict-related issues properly and ensure transitional justice to victims. The government has constituted some relevant mechanisms, including a Truth and Reconciliation Commission and a Commission of Investigation on Enforced Disappeared Persons, but progress has been slow. Post-conflict reconstruction has yet to be properly addressed.

Social cohesion has also been greatly affected, partly due to the ineffectiveness of reconstruction and resettlement following the 2015 earthquake. Many affected populations struggle to survive and face financial and logistical constraints to rebuilding private housing and public infrastructure, including schools and health facilities. This has significantly deepened social cleavages, affected public livelihoods and engendered distrust towards government institutions.

Conclusion: Comparative Analysis

Nepal and Sri Lanka have both experienced vicious conflict, but the nature and root causes were quite different. Nepal's struggle was mostly over political power and access to state resources. Sri Lanka's mostly centred on the role of identity in the state's functioning and growing demands for ethnic representation in state institutions. The conflicts also ended quite differently: Nepal's through political negotiation, Sri Lanka's through military action. They also have addressed social cohesion and inclusiveness in diametrically different ways. Nepal has approached social cleavages through negotiations; Sri Lanka has mostly depended on top-down efforts led by the state's ethnic Sinhalese leaders. The former has sought to reconfigure state policies and institutions to meet various groups' different demands; the latter has mostly failed to do so.

Nepal has made significant progress developing a virtuous cycle, despite recent setbacks. Political actors have taken a number of steps to promote social cohesion and inclusiveness by using negotiations, constitutional arrangements, legal reform and policy changes. Legal and policy initiatives have modified state institutions, including legislative bodies, the bureaucracy and civil service, as well as political parties and the private sector. However, institutional mechanisms often fall

short and are far from functioning properly. Numerous implementation challenges thus remain, given the scarcity of administrative, financial, logistical and human resources.

Sri Lanka has made only limited progress in ending the vicious cycles that have long plagued it. The relationship between the negotiating parties during the transition was strongly affected by weak inclusivity in state institutions and government policies. Such problems are also main reasons for the peace process failure in 2004. Negotiated progress was limited, though the Kumaratunga government made some attempt at institutional reform and stressed inclusiveness as part of its model for peaceful resolution of conflict. The Rajapaksa government firmly rejected its predecessor's attempts at reconciliation and insisted a military solution was the only option. After the war's end in 2009, it made no proper attempt at reconciliation or more inclusive policy. This only changed with the new government elected in 2015, although progress has been very slow, as the old political dynamics hold back substantive change.

Different starting conditions partially explain the outcomes. Sri Lanka has a dominant ethnic group that does not appear to want to compromise and a reasonably strong army that was able, with help from China and elsewhere, to win the war. Nepal is much more splintered and has much weaker national institutions. In the former case, the pre-9/11 balance of power changed in the state's favour. In the latter case, the balance continued throughout the war. The ruling groups could have compromised in Sri Lanka, but it was not necessary. In Nepal, they had a much weaker position (partly because they were themselves divided) and had no choice. Greater cohesion in Sri Lanka is limited, due to the identities of a few groups, which increases sub-national identities and tensions. Limited cohesion among a large number of groups in Nepal creates more fluidity, thus more opportunity to develop bridging mechanisms.

Social attitudes, non-state organisations and democratisation also had strongly determinative roles. While Sri Lanka has a history of mistrust and misperceptions among ethnic communities, the Nepalese easily accept their much greater diversity. Though Nepal resolved its conflict in a top-down fashion, social groups and mobilisation efforts prominently helped identify the key problems affecting minorities and marginalised populations, then encouraged political actors to address the underlying issues. In Sri Lanka, Sinhala social groups and mobilisation efforts often worked to enhance government and military rigidity. Sri Lanka's democracy held back the changes necessary to create a social covenant and a more inclusive social contract; Nepal's democratisation promoted the changes necessary to move both forward. Since inclusiveness was a major goal of the latter's conflict and struggle for democracy, the war's end and introduction of fair elections created great momentum to advance inclusiveness on all fronts.

A common enemy helped bridge cleavages between the parties in Nepal, but a lack of one reinforced divisions in Sri Lanka. The decade-old conflict in Nepal was stalemated – the army controlling urban areas, the Maoists rural areas – when the king sought to sideline parliamentary politics. This helped forge an anti-monarchy alliance between the political parties and the CPN-Maoists, leading to new policies. The huge political change provided an opportunity to bring groups together around promotion of inclusiveness and social cohesion in a way that may not have been otherwise possible. However, once the common enemy was removed, elites became much more reluctant to accept inclusiveness, for fear of losing power and access to resources, which led to more social conflict and frustration.

Presently, both countries are struggling to put post-conflict reconstruction and justice processes in place, as well as policies to assure greater inclusiveness and institutional impartiality. Nepal has successfully led ex-combatants through rehabilitation and reintegration processes. It has also created transitional justice mechanisms, including truth and reconciliation and disappearance commissions, but they have are highly politicised and viewed as ineffective in addressing victims' trauma. The Rajapaksa government in Sri Lanka formed a Lessons Learnt and Reconciliation Commission in May 2010, but mainly to avoid international pressure; a November 2011 report mainly exonerated the military and assigned responsibility to the LTTE for international humanitarian law violations. The current Sirisena government's initiatives for constitutional reform, transitional jus-

tice and good governance might become vital in promoting inclusiveness and social cohesion and addressing the grievances of those affected by military and LTTE abuses, but thus far change has been limited.

Geopolitics and neighbours have also had large effects in each of Nepal and Sri Lanka. Both countries are strongly influenced by India and, to a lesser extent, China. This creates challenges for addressing inclusiveness, representation and social cohesion, and ensuring representation of minorities and marginalised populations in state mechanisms and decision-making. Though Nepal has always been sovereign, its policies are influenced by Indian politics, and Western countries tend to view it through India's eyes. India has frequently expressed attachment to the Terai-Madhesh, because of cultural similarities and family relations, but that attachment has fuelled anti-Indian sentiment in Nepal, particularly in the capital and hill regions. The open border provides both opportunities and challenges. China tries to influence Nepal's politics via development aid and military diplomacy.

Sri Lanka faces limited interference from neighbours because of its geographic location, though India projects itself as a protector and "big brother" to it and the region and expresses an emotional attachment to the Tamil people, who predominantly migrated from its Tamil Nadu state during the British colonial period. China supported the Rajapaksa government's military strategy against the LTTE and gave military help, both arms and tactics. In recent years, it has been trying to bond with Sri Lanka through post-conflict reconstruction activities in war-torn areas. The West plays a lesser role: at present, Sri Lanka is under pressure to allow UN human rights investigations into the death and displacement of thousands during the armed conflict.

Timing is a key factor for improving relationships between groups. There are limited windows for addressing difficult issues effectively. The right context and incentives must be in place, especially when there is risk of backlash from dominant actors who may feel gains would be at their expense. In Nepal, efforts were made after the signing of the 2006 CPA, when there was an overwhelming political consensus for increasing inclusiveness and social cohesion. Voters and leaders prioritised changes. Political compromises were more readily reached. New policies and programs were introduced and necessary budgets allocated. Later, however, when the conflict and peace agreement had become a more distant memory, conditions for effective change were no longer present, and it became much harder to continue. In some areas, there was regression, as traditional elites fought to take back whatever power they had ceded. In Sri Lanka, though ideas of inclusiveness and social cohesion were explored by the Kumaratunga government as part of its attempt to lay the groundwork for negotiations and, eventually, a peace agreement, the impetus was never strong enough or political support among the majority ethnic group significant. Changes remained relatively minor and the successor Rajapaksa government, which saw little need for compromise and sought a military solution, rejected them. Nearly a decade after the conflict, limited progress has been made on building the social cohesion and inclusive policy frameworks the country needs to address its cleavages.

Both cases highlight that, without adequate political commitment – dependent on building support among the population – it is impossible to launch meaningful initiatives for greater social cohesiveness, inclusiveness or institutional representation. Such efforts can only succeed if there is strong backing from leaders and a willingness to openly promote the ideas among the parts of the population that may be opposed to reform. In Nepal, there was sufficient political consensus among major political actors and willingness of key leaders to engage in public discussion because of the relatively favourable situation in the years immediately following the conflict. Despite many differences, leaders agreed to implement a large number of inclusive policies and increase representation through electoral reform and legal amendments that ensured mandatory representation of women, minorities and marginalised populations in state mechanisms, including the CA. Sri Lanka – partly because of its ethnic configuration – has had a shortage of leaders willing to deploy the massive political capital necessary to achieve understanding between social groups and better policies and institutions to address its divided politics. The current Sirisena government has shifted

the direction of its predecessor and prioritised constitutional reform, good governance and transitional justice, but cycles of failed reform attempts risk repeating.

In conclusion, Nepal and Sri Lanka continue to struggle to properly institutionalise and promote agendas of social cohesion and inclusiveness throughout state mechanisms and public spheres. Both continue to suffer from incomplete political commitment and resources to formulate policies that can advance an inclusive agenda. The situation is relatively better in Nepal, which has incorporated parts of the agenda directly into its 2015 federal constitution, and where efforts continue on administrative and legal reform. Progress is mostly unrealised in Sri Lanka, where a longer process of developing political consensus may be required to adequately address the social cleavages.

PART III

CONCLUSIONS AND RECOMMENDATIONS

8. Comparative Analysis: Lessons Learned

Synthesising the case studies yields important conclusions for attempts to form inclusive social contracts in the context of transition processes in fragile and conflict-affected states.

1. **Symbolically important issues sometimes play an outsized role in driving polarisation** by accentuating feelings and perceptions of injustice and exclusion. In some cases, language and culture policies have been the conflict driver, often in combination with the issue of distribution of power and unwillingness to decentralise government (Sri Lanka, Nepal, Ukraine, Macedonia). In others, political systems that excluded certain parts of a country (Colombia, Guatemala) or socio-economic systems that did not provide dignity to large segments (Tunisia, Libya) were the bigger drivers. Overall, state legitimacy has rarely been tied to service delivery. Rather more important has been the degree to which the state reflects group values through symbolic measures and gestures (and how inclusively it operates politically and economically).

2. **Democratisation is not a panacea for overcoming social divisions or advancing social contract formation.** It can be as much hindrance as aid to progress towards an inclusive social dynamic. Sri Lanka's Sinhala majority has repeatedly prevented compromises that would satisfy minority Tamils. Ukraine's elections have repeatedly increased social divisions; the majority has recently organised and voted in ways that strengthen an exclusive narrative, making minority reincorporation problematic. Voters rejected Colombia's peace agreement. Severe social fragmentation has meant that parts of Libya do not agree even on the legitimacy of elected representatives. Democracy has repeatedly failed to empower Guatemala's disadvantaged groups. **Yet, democracy, and its rules for power competitions, have been crucial** for bringing groups together in Tunisia, providing a mechanism to incorporate rebels into peaceful politics in Colombia and empowering civil society to challenge unaccountable politicians in Ukraine.

3. Though often posited as a way to manage ethnic conflict, **decentralisation is hard to implement successfully**, often for political reasons. Decentralisation was key to defusing Macedonia's ethnic conflict, a crucial spur to institutional reform in Colombia and may be a way to distribute power more equitably in Tunisia. Far-reaching decentralisation may be the only way to restore stability to Libya. Yet, even when successful in defusing ethnic divisions, it can bring other problems: corruption, capture by local elites, resistance by central elites and poor implementation capacity (Macedonia, Libya, Nepal, some parts of Colombia). In Sri Lanka and Nepal, dominant groups have been reluctant to cede power. In the latter, it has even been difficult to determine where to draw provincial boundaries (an issue that matters, though less, in the former). Ukraine has been reluctant to substantially decentralise power to its east, partly for fear it will confirm divisions.

4. **Institutions can make or break attempts at social covenant formation or implementation during a transition**. Significant progress bringing groups together, negotiating agreements and building cooperation can easily be reversed if institutions are inadequate. Libya made progress in 2012-2013 until the precarious nature of its institutions was exposed; today, there is neither consensus on a government, nor mechanisms to arbitrate differences. Cronyism, corruption and oligarchs' capture of specific state institutions have repeatedly held Ukraine back.

   In many cases, institutions were so dysfunctional they became not only a stumbling block to progress, but also a force working against it. They have actively torpedoed Guatemala's peace agreement, hurt myriad efforts to move beyond Tunisia's authoritarian past and, in instances, worked against Colombia's peace efforts. Institutions also repeatedly failed to *implement* criti-

cal changes – for example, in Guatemala, Ukraine and Nepal. These failures can be attributed to multiple factors, not limited to poor capacity, inadequate financial resources, bias and institutional capture. In many cases, institutional problems are worse outside capitals and major cities, harming attempts to counter elite domination and social exclusion (Colombia, Guatemala).

5. **Effective social contract formation requires managing latent social cleavages before they exacerbate divisions or foment grievances**. Ukraine is the starkest example. Ukrainian-Russian divisions always existed but assumed a major role in politics (and eventually armed conflict) only over many electoral cycles and as the country faced crucial foreign policy decisions that would determine its long-term trajectory. Macedonia's divisions became existential after independence, but were addressed. Libya did not take its divisions sufficiently into account early enough, leading to them becoming much more severe. In Sri Lanka and Guatemala, divisions were exacerbated over decades of exclusionary policies. In Nepal, both the war and the 2016 protests were products of exclusionary policies and poor management of differences between groups.

6. **Transitions are especially vulnerable when key leaders have a strong incentive to increase their support by creating or deepening social divisions**. There are strong political incentives to do what is popular, at least among supporters. Lustration laws are good examples. They are popular across a wide spectrum of groups but if carried too far can easily create a large group of disgruntled members of a former regime, who can become coup plotters or armed opponents of a new government. Such legislation was a milestone in Libya's downward spiral, while similar legislation was defeated in Tunisia, because politicians took wise but unpopular decisions. Politicians faced similar tough choices in most of the eight examined cases. Only farsighted, inclusive leadership that puts a country's long-term future ahead of short-term gain can ensure a transition stays on course.

7. **Strong national identity can be a crucial resource** when navigating transition challenges. Tunisia's long history as a political unit, relatively homogenous population and broad agreement on core values helped it become the Arab Spring's only success. National identity has played a major role in mobilising Ukraine's society to support reform, but also in the armed conflict, and came partly at the expense of losing Crimea and Donbass. The strong unity it brought positions the country well for the future, but suggests it should not be too anxious to get all its territory back. Absence of an inclusive national identity has been negative in Sri Lanka, Nepal, Colombia and Guatemala, as dominant groups have often excluded others. In Libya, sub-national loyalties have crowded out efforts to build overarching institutions. In places with strong sub-national identities (Sri Lanka and Macedonia), politicians have often outbid each other to promote their group's interests and values by exclusionary policies that undermine broader goals.

8. **Individual or collective leadership can be crucial** to promoting inclusive social contract formation and navigating pivotal moments. Colombia's peace process exists in no small part because of President Santos's choices. Tunisia's progress has repeatedly depended on actions taken or not taken by key politicians on both sides of its secular/Islamist divide. But Sri Lanka often has been held back by top officials' inability to provide effective leadership on inclusiveness, or to show commitment to checking security-force abuse and accounting for past war crimes. Guatemala has been held back by leaders' lack of commitment to supposedly agreed changes. *Coalitions*, thus compromise across groups, have been essential in Tunisia and Macedonia. Where they have been hard to achieve, progress has stalled or reversed (Libya). *Non-state actors* have also been major catalysts for change. Though civil society weakness has held back reform in Guatemala and Libya, Tunisia's revolution was completely bottom-up, and social mobilisation has repeatedly been the main driver of change in Ukraine. Even in Macedonia, where civil society had no major role while the conflict raged, afterward it helped to unify people across groups.

9. **External actors (and anchors) have crucially influenced social contract formation**. In Macedonia, the EU was pivotal for defusing the ethnic conflict and starting work on reforming institutions; when its role diminished, the latter were reversed to an extent. International actors were decisive in Guatemala in supporting the fight for a more equitable society and framing the direction of post-conflict policy, albeit at the cost of weakening national actors' ability to operate on their own. They also have led the only successful reform of the state (through CICIG). But Russia has exacerbated Ukraine's divisions. In Libya, international divisions have played out on the battlefield and in domestic politics. China has enabled Sri Lanka's government to push back on Western human rights concerns.

10. **Certain behaviour patterns repeat through multiple transitions and reform attempts**, showing it is hard to change vicious cycles. In Ukraine, oligarchs' negative influence on institutions and politics stretches across three transitions. Attempts at a permanent settlement to Sri Lanka's ethnic divisions repeatedly have suffered from politicians outbidding each other for the majority Sinhala vote. Weak institutions captured by elite interests have time and again hindered reform in Guatemala. However, at least two cases indicate that the past need not always be prologue. Stronger social mobilisation in Ukraine during its transition and institutional improvements in Colombia since 1991 show that better patterns can be engineered over time.

11. **Economic conditions often shape how transitions evolve** and how leaders' actions and policies are perceived. Sri Lanka's fiscal and economic weaknesses have often reduced its scope for reform. Economic issues spurred Tunisia's revolution; dissatisfaction with the economic status quo plagues its transition. Corruption has been a motive for Ukraine's social mobilisation. Economic inequality, especially horizontally, was relevant to both Guatemala's and Colombia's conflicts. Economic differences across regions, partly a reflection of power distribution, have played a direct role in Ukraine, Nepal, Tunisia, Colombia and Guatemala.

12. **Peace negotiations do not necessarily lead to transformative social covenants**. Nepal made substantial progress towards one after its war, but movement has stalled. Colombia's leadership envisions an inclusive social covenant resulting from its peace deal, but not all parts of society are on board. Guatemala's peace process has had limited effect on social divisions. Macedonia's somewhat tenuous settlement involves a spoils sharing dynamic that promotes separation to some extent, while the majority group still sees the country in ethnic terms. By contrast, Tunisia has succeeded at least partly because – assisted by pre-transition negotiations between the major opposition groups – its myriad groups have worked hard at compromise to ensure the development of an inclusive covenant capable of covering all parts of society.

13. The eight cases consistently demonstrate the **importance of starting conditions**. The more cohesive the country, the stronger institutions and system of rules for organising power and arbitrating disagreements, the more likely a transition can progress. Highly fragmented states (Nepal, Libya) have much greater difficulty than relatively cohesive states (Tunisia). Similarly, institutions make a great difference, as the contrast between Colombia in 1991 and 2016 shows. Other starting conditions significant for transition outcomes include: the impact of external actors (particularly in Eastern Europe); a history of past conflict (Sri Lanka, Libya); weapons proliferation (Libya); the degree of military entrenchment (Sri Lanka, Colombia, Guatemala); non-state paramilitaries or militias (Colombia, Libya); violent extremist groups (Libya); the extent of criminality (Ukraine, Guatemala); and timing (regional and global landscape can vary tremendously, either favouring or complicating transition).

14. The above conclusion points to the **importance of reworking (to the extent possible) such structural factors**. Changes to political norms and sources of government revenue are essential for institutions to work better and actors to be more constructive. This was most apparent in Colombia, where conditions have dramatically improved over a quarter century, making peace

more possible; in Guatemala, where peace brought no change because starting conditions were the same, but where a UN-sponsored institution (CICIG) has positively shifted dynamics; in Macedonia, where external actors have repeatedly proven decisive in whether domestic actors advance a reform agenda; and in Ukraine, where the growth in social mobilisation has been key to progress on reforming governance. Libya, with arguably the worst structural factors among the eight, has been trapped in a vicious cycle that has worsened conditions, making social contract formation and a peaceful resolution to its crisis more remote.

INTERACTION BETWEEN THE THREE BUILDING BLOCKS

The above conclusions underscore why interactions between social covenants (the first building block), deliberately inclusive policies (the second) and institutions that can hold elites accountable (the third) are so important. As noted, the relationship between groups in a society tends to operate in either a virtuous or vicious cycle, with the pattern already well established before a transition begins. The nature of institutions, policies and social interaction determine how the cycle plays out and whether it can be changed. In Sri Lanka, Sinhala-Tamil tensions have a long-established, repetitive pattern, making far-reaching reforms difficult. Longstanding tribal tensions were a prominent feature of Libya's transition, preventing almost all progress. In Guatemala, a vicious cycle of elite domination of politics, corruption of weak institutions yielding racism-based social exclusion and sharpening social cleavages have repeatedly reinforced each other. By contrast, relatively established, constructive relations between key groups were important to Tunisia's transition success.

This points to **the need to strengthen virtuous cycles and weaken vicious cycles**. In Colombia, for instance, a new constitution in 1991 changed enough of the dynamics to start a virtuous cycle that eventually facilitated the 2016 peace agreement. By establishing new institutions to support democracy, decentralising power and imposing an inclusiveness orientation, the constitution provided a platform for innovative policy and legislation that eventually transformed the country. After Santos took office in 2010, further changes deepened the pattern.

This indicates why a focus on **changing key structural factors and institutions is so relevant** to how a particular country can evolve. Only such change can alter incentives and behaviour so as to shift a vicious cycle onto a more virtuous path (and vice versa). The role of external actors in Macedonia and Ukraine and of CICIG in Guatemala are all good examples. It is hard to think of a better way to change a country's structural dynamic positively than establishing some form of external anchor, like the EU and UN are in Macedonia and Guatemala, respectively.

The eight examined cases also show there may be **more scope in the early stages of a transition to achieve symbiosis between how inclusive policy is (the second building block) and the nature of institutions (the third), than to forge a social covenant across groups (the first).** Thus, despite significant progress on policy and institutions, Colombia remains a deeply polarised society, with divisions the 2016 peace plebiscite exposed. Guatemala and Nepal have made halting progress on inclusiveness and institutions, but even less on a social covenant. Ukraine's progress on institutions and policy is at the expense of a social covenant. Only Macedonia has made more progress on a social covenant in the absence of major progress elsewhere. Tunisia is arguably an outlier, because it developed a form of social covenant before its transition and has fewer structural divisions than any of the other seven.

At the same time, **the most important building blocks for development of an inclusive social contract appear to be social covenants and independent institutions,** because of how they influence the capacity of a society to develop a virtuous dynamic built upon inclusion. Social cohesion – the product of multiple factors – affects the capacity of different parts of society to work together, compromise and make unpopular decisions (Tunisia). Its absence starkly influences leaders' choices (Libya, Guatemala, Sri Lanka, Nepal). Institutions affect the capacity of a society to treat all equally

and meet the needs of various groups. Their absence, in some form, was repeatedly visible in all eight countries, affecting attempts to make policies more inclusive (second building block). As such, these two elements significantly determine whether the three building blocks work in a virtuous or vicious cycle.

This conclusion suggests that **much more effort should be invested in these two areas rather than political processes and technocratic polices**. Building social covenants requires developing an overarching identity and healthy working relationship between groups, so cooperation, not zero-sum competition, becomes the norm. Getting institutions right requires prioritising institutional reform early, when there is more political capital for it, so they can play more constructive roles over time, knowing that such reform may become more difficult later (Tunisia, Ukraine, Guatemala). Besides their importance to political dynamics, better institutions are crucial to ensuring that citizens gain from the transition as early as possible, which in turn is crucial to ensuring that the overall change retains enough support to withstand setbacks.

Ultimately, as every country and transition is different, the logical entry points will vary. But knowing where to look is crucial for identifying the best opportunity – the best lever for change.

Individual Building Blocks

Though the countries examined here took a variety of approaches to each of the three building blocks (see table below), some clear patterns were evident.

Social Covenants

Efforts to strengthen relations across groups and build a social covenant were concentrated on crafting and implementing peace accords and strengthening a common sense of nationhood.

Negotiation of peace accords (or elite pacts) was often more successful than implementation. In Guatemala, an exemplary agreement ended the civil war but had little impact on the socio-political dynamics that caused it. Nepal's accord led to substantial changes, but implementation has been mixed, due to weak institutions and changes at the voting booth as the conflict receded from memory. Colombia is implementing its peace deal with the FARC, but there are major warning signs, including a strong opposition that, having won a referendum, could seek to overturn important parts if it takes power. In Ukraine, a pact of national unity was signed by elites but not upheld. By contrast, agreements in Tunisia have generally been kept. In Macedonia, the 2001 Ohrid Framework Agreement was crucial to ending an incipient conflict and has been maintained by elites on both sides. Arguably, it is in Sri Lanka and Libya (no peace accords) and Ukraine (where the Minsk Agreement is floundering) that social cleavages are largest and progress towards social covenants are least established.

New constitutions provided a key opening for recrafting national identity, narrative and institutions to make them more inclusive (for instance, by recognising a country as multi-ethnic and multi-cultural and by increasing representation of minorities in legislatures, ministries and agencies). This had some success in Colombia, Macedonia and Tunisia, but the long drafting process and how it was adopted made Nepal's efforts self-defeating to some extent. Guatemala's peace agreement mandated many constitutional reforms that could have achieved much, but some of the most important were never implemented. Efforts at a new constitution stalled as Libya fragmented. Sri Lanka's government envisions a reformed constitution as a way to bridge historical differences.

Inclusive Policies

Deliberately inclusive policymaking efforts were concentrated in five areas: discrimination, language, gender, decentralisation and the economy.

Many countries sought to introduce policies that ended discrimination in one form or another. Guatemala's new constitution recognised its multi-cultural, multi-ethnic, multi-lingual nature. It was followed by a law against discrimination on the basis of race, ethnicity, religion or gender. Colombia guaranteed legislative seats for certain disadvantaged groups and established institutions to advance minorities' interests. Sri Lanka acknowledged minority rights and grievances for the first time during its transition. Nepal introduced laws to increase minorities' and women's access to public services, participation in the civil service, entry into the work force and so on. Religious freedom was expanded and a mandatory dress code abolished. Yet, discrimination remained significant in many contexts, affecting how institutions worked and officials behaved (Guatemala, Nepal, Sri Lanka).

Many countries sought to address language issues, but implementation was often patchy. Macedonia provided for local usage of the Albanian language (as well as religious and cultural symbols). Nepal provided for greater use of local languages in school and local government. One of five agreements signed as part of Guatemala's peace accords aimed to enhance the identity and rights of indigenous peoples. Yet, implementation has been weak in many cases. Allowing each ethnic group to teach in its own language threatened to accentuate social divides in Macedonia. Many indigenous children in Guatemala do not go to school. Sri Lanka has laws on regional use of Tamil, but many local officials do not speak it. Language became politicised in Ukraine, and policies changed often, as the tilt towards Ukrainian inflamed the Russian minority's resentment.

Many countries used their transitions to promote women's rights, even though the issue had not played an obvious triggering role in their troubles. In Guatemala, though legislation was introduced to reduce gender discrimination and institutions were created to protect women, violence against them has increased in the past decade, as the institutions are poorly funded and laws poorly implemented. Tunisia, Libya and Nepal also tried to improve women's status, though failure to fund and implement has been common. In none of the eight countries did targeted efforts to improve the status of women achieve transformation in and beyond the transition.

Decentralisation policies sought to distribute power more equitably and increase inclusion of previously marginalised regions. Macedonia solved its crisis partly by decentralising power to its Albanian minority. Libya sought to empower local institutions, which are often its most effective. Decentralisation was a prominent element in Colombia's 1991 constitution, which started the virtuous cycle towards peace. Nepal has significantly decentralised a once highly centralised state in order to empower regions and districts. Sri Lanka has decentralised some power in an attempt to defuse ethnic divisions, but disagreement over how much to extend these powers is at the heart of its dispute. Recognising that inland regions have often been excluded from power and economic gains, Tunisia is considering how to decentralise further. Ukraine's leaders recognise that decentralisation is the only way to end its war, but the majority resists.

Most countries also prioritised improving the economy and services, at least partly to reduce inequalities, yet few made substantial progress in the short to medium term. In many places, oligarchic control of institutions and corruption hampered efforts. In Ukraine and Macedonia, postcommunist reforms brought much economic pain, and a few people monopolised the limited gains. Tunisia has consistently sought to improve economic conditions, with little success (partly due to terrorist attacks). Sri Lanka's leaders have often had to compromise on political changes because economic concerns endangered their public support.

Institutions

Efforts to increase the inclusiveness and effectiveness of institutions were concentrated in four areas: legal and judicial systems, security forces, and political institutions.

Many countries sought to improve rule of law and reduce abuse by state institutions. Tunisia's anti-corruption commission has made some progress despite much resistance. Macedonia introduced major policy innovations, such as self-governing councils for judges and public prosecutors and a new foreign-funded training academy, but after foreign influence ebbed, elites undermined these. In Ukraine, social mobilisation has forced the government to introduce reforms to improve the judicial system and combat corruption, but elites resist. Guatemala's reform efforts so failed that it was forced to call on the UN, which set up CICIG. Colombia's institutions improved dramatically after the 1991constitution, but they remain weak in most rural areas and smaller cities. Nepal has sought to improve its judicial system, but progress is slow. Sri Lanka established a number of independent bodies to investigate corruption, torture and human rights abuses, but continuation of the war weakened rule of law.

Reforms to make security forces more accountable and representative were prioritised in many places. Colombia reduced the role of paramilitaries. Guatemala sought (with limited success) to downsize its military, remove it from police work, strengthen civilian control and establish a new inclusive police widely representative and sensitive to local needs. Tunisia tried to hold its security forces more accountable, but corruption remains widespread, and resistance to further reforms is strong. Nepal gradually increased the number of disadvantaged groups in its security forces, though not quickly enough to head off the deep discontent reflected in the 2016 protests. Proliferation of weapons has allowed Libya to split into dozens of groups, each with its own militia. In Sri Lanka, political leaders have been reluctant to confront the powerful military in the aftermath of victory over the LTTE.

Many countries sought to make political institutions more inclusive. Tunisia, the best example, chose an inclusive path and is now ranked as the only free Arab state. Despite myriad problems, Macedonia established a norm of multi-ethnic coalitions that has been crucial for stability. Nepal opened its political system to many more groups, increasing participation of the disadvantaged in voting and the legislature. Though the country is deeply divided and less secure, Libya overturned decades of authoritarianism. In general, though, political parties (or groupings) remain a stumbling block for further change in most cases, either because they are highly unrepresentative (Guatemala), overly leader driven with weak institutionalisation (Macedonia, Ukraine), corrupt (Nepal) or fragmented (Libya). Only Colombia, Sri Lanka and Tunisia have comparatively healthier democracies. In Nepal and Guatemala, their own internal divisions have prevented disadvantaged groups from effectively pressuring governments for change.

Areas Targeted	Sri Lanka	Nepal	Tunisia	Libya	Colombia	Guatemala	Ukraine	Macedonia
Constitutional Reform	✓	✓	✓	✓	✓	✓		✓
Peace Accord or Cross-Party Accord	✓ (failed)	✓	✓		✓	✓		✓
Transitional Justice				✓	✓	✓		
Social Mobilisation		✓	✓	✓		✓	✓	✓
Anti-Discrimination Initiatives	✓	✓			✓	✓		
Language Policy Reform	✓ (un-enforced)	✓				✓	✓ (exclusio-nary)	✓
Expansion of Women's Rights		✓	✓	✓		✓		
Decentralisation		✓	✓ (planned)	✓	✓		✓	✓
Economic Reforms	✓		✓	✓			✓	
Laws Targeting Previous Regime				✓				
Rule of Law Reforms	✓	✓	✓	✓	✓	✓	✓	✓
Reform of Security Forces		✓	✓			✓		
Expansion of Inclusiveness of Institutions		✓	✓	✓	✓	✓		
Expansion of Effectiveness of Institutions	✓	✓	✓	✓	✓	✓	✓	✓

9. Policy Recommendations

This study highlights the importance of an unconventional approach to the challenges fragile states in transition face. Their problems are deeply rooted and rarely solved by mere technocratic fixes and new formal processes, the main focus of many international efforts. In many cases, the same problems occur repeatedly, even though the actors, laws, and formal institutions change. There is need for greater focus on underlying dynamics, especially involving social cleavages. Likewise important is to give greater attention to the nature of institutions and their ability to implement policy inclusively, as well as crosscutting factors such as attitudes, incentives, history's role in shaping behaviour and inter-group relationships. Policies and processes are important but often depend on these dynamics: changing the former but not the latter has limited effect.

With these considerations in mind, the following recommendations arise from this study:

- **Policies should focus on a few core issues (e.g., grievances over horizontal inequalities or crony capitalism) that play an outsized role in determining dynamics**. Certain of these can have a particularly strong impact in reinforcing a sense of exclusion and state illegitimacy: lack of security, especially when created by (or felt to be created by) government; a deficient justice system and lack of mechanisms for fairly resolving conflicts; lack of equal economic opportunities, especially when it affects social integration; and lack of fair representation in government. All, if managed badly, can engender more fragility and violence and undermine state institutions legitimacy, especially if they affect only certain groups.

- **International actors should seek to shape the incentives for local leaders or groups to act inclusively**. Any opportunity for a key group to gain advantage by excluding others needs to be identified and ideally eliminated or re-channelled as early as possible. In parallel, positive incentives for inclusive behaviour (greater stature, more resources, personal financial rewards) need to be developed and promoted. Failure to identify and act on these negative and positive incentives can put a whole transition at risk.

- **Policies should more actively evaluate the level of social and political polarisation in a society and how to address it**. Polarisation usually starts well before a transition stalls or backtracks and plays an outsized destabilising role, making it a good indicator of rising risk. Yet, it is rarely monitored; there are rarely any data sets that track its change over time in fragile and conflict-affected societies. Developing new tools and instruments to assess levels of social and political polarisation and policies to address them should be a much higher priority.

- **Domestic and international actors should consider a wider range of entry points, not primarily or exclusively the central state**. While change can come through a national political settlement, this may not always be the case. National institutions can act to promote inclusion and unity, but may predominantly act in undermining ways. In some contexts and on some issues, facilitating social mobilisation and/or local governments and/or a supportive international body might make better entry points to advance inclusiveness.

- **Policies need to take better account of history, identity, memory, and informal norms** as well as past reform efforts, in order to better forecast problems fragile states in transition will face now or in future. Studying the patterns of behaviour and obstacles is essential to tailoring programs and policies better and avoiding old mistakes. Many countries have multiple transitions and face virtually the same issues each time, as major changes in regime type or conflict status do not necessarily change behaviour patterns or reshape unwritten but longstanding social codes and relationships.

- **Transition programs should emphasise strengthening social cohesion and institutionalisation much more**. These play an outsized role in determining whether peace agreements and any major changes in policy, rules, laws or constitution can be implemented effectively. They determine whether grievances can be addressed, exclusion can be reduced, development outcomes can be improved and the risk of violence reduced.

- **Supportive regional organisations and neighbours should be leveraged to advance the conditions for inclusive social contract formation**. The more capable and willing neighbours are to support inclusive efforts, the more likely a transition will succeed, even if non-coercive incentives may be needed (a potential name change in Macedonia's case). Encouraging regional organisations to be more proactive – for example by helping reduce weapons proliferation and transnational criminal groups' scope, and strengthening protections against money laundering – can all contribute to positive outcomes. But regional organizations are typically underfunded, understaffed and thus underprepared for an ambitious initiative. Much more effort should be invested in changing this.

The eight examined cases also highlight recommendations specific to each building block:

Social Covenants

- **Bring competing groups together before the transition**. Given the perilous nature of many fragile and conflict-affected states, everything that can build trust, cooperation and a sense of common purpose across groups can assist in bridging gaps when needed. The period before a transition is best: pressure is typically lower, the spotlight is absent and there is more time to forge consensus.

- **Create unifying national identities and narratives** that incorporate the values and symbols of different societal groups. This is essential to building social cohesion and countering divisive narratives and to reducing the importance of sub-national identities and the grievances they often produce. Programs, policies and institutions should reflect and reinforce a new national identity with the objective of building social cohesion, while also taking into account fragility-reinforcing risks that could trigger the opposite effect and make a bad situation worse.

- **Address attitudes, including perceptions and narratives, that underlie mistrust and discrimination**. Ending discrimination and exclusion requires much more than new laws and policies. Policies and programs need to target deep-seated attitudes of mistrust and discrimination, so as to foster inclusiveness and social cohesion.

- **Treat latent cleavages seriously**. Ignorance of these fault lines too often allows what might have been a possibly minor dividing force to become something much greater (e.g. Ukraine).

- **Increase social mobilisation to advance a reform agenda that unites people and strengthens institutions**. Social groups can be crucial in promoting change but can also contribute to societal division by undermining institutions' inclusiveness, or even by using violence. It is essential to understand the roles of the most influential ones and to identify those most able to playing a positive role in to uniting people and strengthening key institutions.

Inclusive Policies

- **Ensure that language and cultural issues are addressed sensitively.** These are commonly among the most contentious issues, often sources of bitter disagreement. Promoting inclusion often requires introducing new policies (e.g., recognising and safeguarding minority or indigenous languages and cultures), while ensuring they get the resources and capacity needed for implementation and enforcement. Anticipating and accounting for the backlash such policies may generate from the dominant group is important.

- **Address economic dissatisfaction early.** Almost every transition examined prioritised economic issues, yet few improved livelihoods though these were often pre-transition drivers of grievances. Disappointment at lack of improved economic opportunities narrows political options, undermines confidence in leaders and impedes outreach to disadvantaged groups. Inclusive-oriented leaders do not have the luxury of focusing on social and political issues to the exclusion of "bread and butter" economic ones.

- **Avoid punishing large numbers of lower ranking old regime public servants**. One of the surest ways to create or exacerbate social cleavages is to target large numbers of foot soldiers from a previous government or other outgoing faction. While investigating/prosecuting top officials may be justifiable in a particular transition, anything more poses great risks even if it satisfies popular demands.

- **Promote decentralisation but ensure it does not cause worse problems**. Decentralisation is often essential for resolving conflicts or introducing a more inclusive regime, but a lack of capacity may limit the effectiveness of local institutions or corrupt, local elites may monopolise the gains. Decentralisation should thus be accompanied by an effort to improve how local government works, including through appropriate resource allocation and capacity building at the local level, as well as attempts to enhance the accountability of local government to its constituents.

- **Monitor budgets and policy implementation for whatever inclusive policies are prioritised.** Peace accords, new policies or legislation often are introduced but lead to little change, because money or implementation capacity is lacking. Any measures that promise inclusive-oriented change need to be accompanied by fiscal and other incentives for delivery on promises.

Institutions

- **Introduce external anchors where possible**. Often tied to a regional organisation (e.g., the EU), the UN or a foreign government, these are essential to improve how inclusively institutions work and to produce significant short-term efficiency improvement. They can restrain elites and oligarchies in many countries where domestic institutions alone might be politically or operationally unable to act inclusively and independently.

- **Invest in strengthening political parties that can aggregate identity and interest groups and operate in an institutionalised fashion.** Many contexts are driven by oligarchic interest or strong personalities who encourage corruption, social exclusion and poor policy. Parties based on ethnicity often exacerbate divisions or work only for elites. Weak parties reduce state capacity to address problems, integrate marginalised groups and build social cohesion. Investing in conditions that produce more effective, inclusive national parties is essential.

- **Prioritise security reforms**. Security forces are highly important actors in most countries, with large impact on how the state is perceived. When they are unrepresentative, discriminatory or incompetent, insecurity will persist, and many other problems will be aggravated. Even in relatively secure contexts, discriminatory practices, including targeting certain societal groups, can intensify divisions and hinder progress in other areas.

ANNEX 1: Notes and Acknowledgements

ANNEX 2: Author Bios

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Aruni Jayakody is currently obtaining her PhD in Philosophy, international human rights and international organizations at the Fletcher School of Law and Diplomacy at Tufts University. Prior to this she served as a Senior Researcher at the South Asian Centre for Legal Studies, the Governance Programs Officer at the Afghanistan Research and Evaluation Unit where she worked on rule of law and governance issues. Ms. Jayakody has also researched United Nations monitoring, reporting and fact-finding mechanisms at the Harvard Program on Humanitarian Policy and Conflict Research. In 2010-11 she researched constitutional reform and freedom of expression issues as a researcher at the Legal and Constitutional Unit of the Centre for Policy Alternatives. She received her BA and Bachelors of Law from the University of Queensland and an MA in Law and Diplomacy from The Fletcher School of Law and Diplomacy at Tufts University.

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Monica L. Marks Monica L. Marks is a Rhodes Scholar and Visiting Fellow at the European Council on Foreign Relations (ECFR), completing her PhD dissertation at St Antony's College, Oxford. Ms. Marks specialises on political Islam and democratic transitions in the MENA region, particularly North Africa, Egypt, and Turkey. Her work has appeared in numerous peer-reviewed academic publications and news outlets including *The Guardian*, *The New York Times*, *The Washington Post*, and *Foreign Policy*. She consults regularly and has published widely with think tanks including the

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