

Post-Conflict Peace-Building and Constitution-Making

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Peace-building accomplished through international intervention has had little success in achieving sustainable peace. In February of 2004, Haiti slipped back into chaos and despair, turning ten years of international and Haitian state-building efforts to dust. Liberia is in its second round of international intervention since returning to conflict in 2004 following UN supervised elections in 1997. There is daily violence in Iraq and ongoing instability in Afghanistan. Kosovo remains under UN administration, with an uncertain future and ongoing undercurrents of conflict.

Theories abound for the lack of success in peace-building. Some focus on operational limitations and the unintended negative consequences of international aid, while others focus on institutional lacunae.¹ Increasingly though, it is accepted that the most critical problems involve a lack of knowledge of how to rebuild states and an associated failure of state-building strategy.² This Article focuses on one of the key elements of post-conflict peace-

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¹ The recent United Nations High-Level Panel on Threats, Challenges and Change highlighted the lack of a unit within the UN responsible for peace-building and advised the creation of a new body to fill this institutional lacuna. United Nations, *A More Secure World: Our Shared Responsibility*, Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change, UN Doc A/59/565 at 69, ¶¶ 263–64 (2004).

² See, for example, Francis Fukuyama, *State-Building: Governance and World Order in the 21st Century* (Cornell 2004); Kirsti Samuels and Sebastian von Einsiedel, *The Future of UN State-Building: Strategic and Operational Challenges and the Legacy of Iraq*, Intl Peace Academy (2004), available online at <<http://www.ipacademy.org/Publications/Publications.htm>> (visited Oct 24, 2005); Roland Paris, *At War's End: Building Peace After Civil Conflict* (Cambridge 2004); Center for Strategic and International Studies and Association of the US Army, *Play to Win: Final Report of the Bi-Partisan Commission on Post-Conflict Reconstruction* (2003), available online at <<http://www.csis.org/media/csis/pubs/playtowin.pdf>> (visited Oct 24, 2005); Paul Collier, et al, *Breaking the Conflict Trap: Civil War and Development Policy*, World Bank Policy Research Rep (World Bank and Oxford 2003); Conflict, Security and Development Group, *A Review of Peace Operations: A Case for Change: East Timor* (King's College 2003), available online at

building: the role of constitution-making in the political and governance transition.

It is widely acknowledged that the provision of security is the sine qua non of peace-building, and increasingly that the building or rebuilding of public institutions is key to sustainability; however, the fact remains that a successful political and governance transition must form the core of any post-conflict peace-building mission. As we have observed in Liberia and Haiti over the last ten years, conflict cessation without modification of the political environment, even where state-building is undertaken through technical electoral assistance and institution- or capacity-building, is unlikely to succeed.³ On average, more than 50 percent of states emerging from conflict return to conflict.⁴ Moreover, a substantial proportion of transitions have resulted in weak or limited democracies.⁵

The design of a constitution and its constitution-making process can play an important role in the political and governance transition.⁶ Constitution-making after conflict is an opportunity to create a common vision of the future of a state and a road map on how to get there. The constitution can be partly a peace agreement and partly a framework setting up the rules by which the new democracy will operate.

An ideal constitution-making process can accomplish several things. For example, it can drive the transformative process from conflict to peace, seek to transform the society from one that resorts to violence to one that resorts to political means to resolve conflict, and/or shape the governance framework that will regulate access to power and resources—all key reasons for conflict. It must also put in place mechanisms and institutions through which future conflict in the society can be managed without a return to violence.

<http://www.jsmp.minihub.org/Reports/otherresources/Peace4Timor_10_3_03.pdf> (visited Oct 24, 2005). See also [INSERT CITATIONS FOR OTHER UN REFORM SYMPOSIUM ARTICLES].

³ For a general discussion of these interventions, see Chetan Kumar, *Building Peace in Haiti*, IPA Occasional Paper (Lynne Rienner 1998); Adekeye Adebajo, *Building Peace in West Africa: Liberia, Sierra Leone, and Guinea-Bissau*, IPA Occasional Paper (Lynne Rienner 2002).

⁴ There is a 39 percent risk that peace will collapse within the first five years and a 32 percent risk that it will collapse in the next five years. Paul Collier and Anke Hoefler, *Conflicts*, in Bjorn Lomborg, ed, *Global Crises, Global Solutions* (Cambridge 2004).

⁵ See Thomas Carothers, *The End of the Transition Paradigm*, 13 J Democracy 5, 13 (Jan 2002).

⁶ For the purposes of this Article, a constitution is defined as a system which establishes the fundamental rules and principles by which a state is governed. The constitution can be unwritten, or can be codified in one or more documents, such as a peace agreement.

I. THE CRITERIA FOR ASSESSMENT: DEMOCRACY AND PEACE

Democracy and peace are adopted in this Article as the two criteria by which the impact of constitutions should be assessed. For countries emerging from violent conflict or facing the threat of violent conflict, the importance of sustainable peace is self-evident. The importance of democracy requires a little more explanation. Despite the fact that transitions to democracy have been shown to be highly destabilizing and conflict prone,⁷ and that democratization without careful understanding of the pressures on the society can create conflict in itself, democratization should still be considered the best governance structure for long-term conflict cessation.

In the immediate post-conflict environment, the adoption of a democratic regime can assist in the resolution of the struggle for power by providing an internationally accepted standard of who is entitled to govern. This standard is based on open and fair competition for power, structured around the popular vote.⁸ Moreover, conflict-mediating structures and increased opportunities for participation should encourage non-violent resolution of conflicts.⁹ As Jock Covey, Deputy Special Representative for the Secretary-General in Kosovo highlights, this is one of the key elements for the creation of sustainable peace.¹⁰

In the longer term, adoption of participatory democratic governance structures is best able to ensure peace and legitimacy. The evidence suggests that in established democracies, ethnopolitical groups are more likely to protest than rebel, minimizing internal violence.¹¹ Other studies have found that autocracies

⁷ Jack Snyder, *From Voting to Violence: Democratization and Nationalist Conflict* 352 (Norton 2000).

⁸ See Sunil Bastian and Robin Luckham, *Introduction: Can Democracy Be Designed?*, in Sunil Bastian and Robin Luckham, eds, *Can Democracy Be Designed?: The Politics of Institutional Choice in Conflict-Torn Societies* 1, 5 (Zed 2003). See also Ted Robert Gurr, *Peoples Versus States: Minorities at Risk in the New Century* 153 (US Institute of Peace 2000).

⁹ See Gurr, *Peoples Versus States* at 153 (cited in note 8). See, for example, Matthew Krain and Marissa Edson Myers, *Democracy and Civil War: A Note on the Democratic Peace Proposition* (1997), in Harvey Starr and Randolph Siverson, eds, 23 *International Interactions* 109, 114–15 (Gordon and Breach 2003); Christian A. Davenport, “Constitutional Promises” and Repressive Reality: *A Cross-National Time-Series Investigation into Why Political and Civil Liberties Are Suppressed*, 58 *J Politics* 627 (1996).

¹⁰ Covey states that peace will only become durable when parties seek to achieve their goals through peaceful means in a legitimate competition for power. Jock Covey, *Making a Viable Peace: Moderating Political Conflict*, in Jock Covey, Michael J. Dziedzic, and Leonard R. Hawley, eds, *The Quest for Viable Peace: International Intervention and Strategies for Conflict Transformation* 99, 114 (US Institute of Peace 2005).

¹¹ Gurr, *Peoples Versus States* at 162 (cited in note 8). The Polity data set was used to compare data on ethnopolitical conflict in four categories of nations in 1985–1998: twenty-seven old democracies, thirty-three new democracies established between 1980 and 1994, thirty-two transitional regimes

are less stable (more prone to regime change) than democracies.¹² Thus, democracy is both the most stable and the least conflict-prone regime type.¹³

The importance of democratization is implicitly recognized, although it is often not explicitly stated, in the UN peace-building approach.¹⁴ Nonetheless, in practice, the political and governance elements of state-building have proven particularly difficult. Even in those instances where security has been established, state-building has largely resulted in cosmetic political change and created weak, unstable, or even criminal states. In the former President of Liberia's words, "The state we produced turned out to be a criminal state, legitimized by elections."¹⁵ As we saw in Liberia, the recreation of a predatory, shadow, or authoritarian state is likely to lead to a return to conflict.¹⁶ This is

(mixture of autocratic and democratic features or had attempted a transition to democracy after 1970 and had not consolidated), and twenty-six autocracies. Id at 154.

¹² Havard Hegre, et al, *Toward a Democratic Civil Peace? Democracy, Political Change, and Civil War*, 1816–1992, 95 Am Pol Sci Rev 33, 44 (2001). See also Christian A. Davenport, *Freedom under Fire: State Repression, Conflict and the Fragility of Domestic Democratic Peace* (2005), forthcoming paper from the ISA Convention on Dynamics of World Politics: *Capacity, Preferences, and Leadership* (March 2005).

¹³ Hegre, *Toward a Democratic Civil Peace?* at 44 (cited in note 12).

¹⁴ For instance, the official mandate for the United Nations Transitional Administration in East Timor ("UNTAET") stresses the need to "carry out its mandate effectively with a view to the development of local democratic institutions." Security Council Res No 1272, UN Doc S/RES/1272, ¶ 8 (1999). This was most clear in the later reports of the Secretary-General emphasizing that the holding of democratic elections was "no doubt, the most important, since it entails the establishment of a political system that is responsive to the citizens and a political leadership that is responsible in its decisions." United Nations, *Report of the Secretary-General on the United Nations Transitional Administration in East Timor*, UN Doc S/2000/738, § VIII(69) (2000). Note also that the role of elections and democratization as an alternative to violence to produce a "just and durable settlement" of a conflict has been emphasized by the Security Council and Secretary-General. See, for example, Security Council Res No 745, UN Doc S/RES/745, preamble (1992) (Cambodia); Security Council Res No 957, UN Doc S/RES/957, ¶ 3 (1994) (Mozambique); Security Council Res No 1159, UN Doc S/RES/1159, ¶ 16 (1998) (Central African Republic); Security Council Res No 1497, UN Doc S/RES/1497, ¶ 12 (2003) (Liberia). See also Boutros Boutros-Gali, *An Agenda for Democratization*, UN Doc A/51/761 (1996); General Assembly Res No 50/185, UN Doc A/RES/50/185 (1996); United Nations, *Report of the Secretary-General: Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies*, UN Doc A/51/512 (1996).

¹⁵ Interview with Dr. Amos Sawyer, former President of the Interim Government of National Unity in Liberia and Associate Director and Research Scholar in the Department of Political Science at Indiana University, in New York, NY (Mar 28, 2005) (on file with author).

¹⁶ Michael Bratton, *State Building and Democratization in Sub-Saharan Africa: Forwards, Backwards, or Together?*, Afrobarometer Working Paper No 43, 8 (2004), available online at <<http://www.afrobarometer.org/AfropaperNo43.pdf>> (visited Oct 25, 2005). This conclusion is also consistent with the finding of the State Failure Task Force that partial democracies are seven times more likely to fail than full democracies or autocracies. Jack A. Goldstone, et al, *State Failure Task Force Report: Phase III Findings* vi (Science Applications Intl 2000).

why a carefully designed and managed political and governance transition to democracy is integral to any state-building strategy.

II. THE ROLE OF PARTICIPATORY CONSTITUTIONAL PROCESSES

Initiating changes to the political culture of a society is one of the most difficult aspects of any post-conflict transition. It requires substantial changes to behavior as well as to expectations and norms. These sorts of societal changes require long-term strategies involving large segments of society. They require extensive education and sensitivity campaigns as well as dialogue and consensus-building within society. These more intangible aspects of peace-building are frequently overlooked in favor of more technical rebuilding and assistance. Nonetheless, they are essential to long-term change.

One opportunity for societal dialogue that arises in most UN managed peace-building is the adoption of a participatory constitution-making process. It is increasingly recognized that *how* constitutions are made, particularly following civil conflict or authoritarian rule, impacts the resulting state and its transition to democracy. The process of constitution-building can provide a forum for the negotiation of solutions to the divisive or contested issues that led to violence. It can also lead to the democratic education of the population, begin a process of healing and reconciliation through societal dialogue, and forge a new consensus vision of the future of the state.

Until recently, constitutional theory tended to focus on constitutions in stable political contexts rather than the importance of constitutions during periods of political change. A realist approach in political theory views constitutions as reflections of the balance of power at their time of drafting and thus does not consider them to have any particular role as agents of change or in transitions.¹⁷ The idealist perspective recognizes their foundational role, and considers them to provide a break with the old regime and act as the foundation of the new political order.¹⁸ However, it is “transitional constitutionalism,” or “new constitutionalism,” that best recognizes the multifaceted role of such

¹⁷ For a general discussion, see Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (Yale 1984). See also Guillermo O'Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (Johns Hopkins 1986).

¹⁸ Bruce Ackerman, *The Future of Liberal Revolution* 61 (Yale 1992). See also Bruce Ackerman, *Constitutional Politics/Constitutional Law*, 99 *Yale L.J.* 453, 456 (1989).

constitutions.¹⁹ As Tietel points out, constitutionalism is “inextricably enmeshed in transformative politics”—it codifies the prevailing consensus and also transforms it.²⁰ Constitution-making must be recognized as a process “or a forum for negotiation amid conflict and division.”²¹

The content of a constitution, and the extent to which it sets up a democratic process rather than merely divides the spoils between political elites, will impact the state’s chances of long-term peace and the quality of the democracy created. A recent study by the International Institute for Democracy and Electoral Assistance (“IDEA”), explored twelve cases of constitution-building undertaken during times of transition from civil conflict or authoritarian rule²² and emphasized the complexity of these processes and the wide variety of factors that affect their outcome. Nonetheless, some interesting trends can be identified in the cases.²³

In the study, the more representative and more inclusive constitution building processes resulted in constitutions favoring free and fair elections, greater political equality, more social justice provisions, human rights protections, and stronger accountability mechanisms.²⁴ In contrast, processes

¹⁹ The concept of “transitional constitutionalism” refers to constitutional developments that occur immediately after a period of substantial political change. See Ruti Teitel, *Post-Communist Constitutionalism: A Transitional Perspective*, 26 Colum Hum Rts L Rev 167, 168 (1994).

²⁰ Ruti Teitel, *Transitional Jurisprudence: The Role of Law in Political Transformation*, 106 Yale L J 2009, 2076 (1997).

²¹ Vivien Hart, *Constitution-Making and the Transformation of Conflict*, 26 Peace & Change 153, 154 (2001).

²² Carolyn McCool, *The Role of Constitution-Building Processes in Democratization: Afghanistan Case Study* (Intl IDEA 2004); A.A. Mohamoud, *The Role of Constitution-Building Processes in Democratization: Bahrain Case Study* (Intl IDEA 2005); J. Esteban Montes and Tomás Vial, *The Role of Constitution-Building Processes in Democratization: Chile Case Study* (Intl IDEA 2005); Iván Marulanda, *The Role of Constitution-Building Processes in Democratization: Colombia Case Study* (Intl IDEA 2004); Randall Garrison, *The Role of Constitution-Building Processes in Democratization: East Timor Case Study* (Intl IDEA 2005); Jill Cottrell and Yash Ghai, *The Role of Constitution-Building Processes in Democratization: Fiji Case Study* (Intl IDEA 2004); Roddy Brett and Antonio Delgado, *The Role of Constitution-Building Processes in Democratization: Guatemala Case Study* (Intl IDEA 2004); Andrea Mezei, *The Role of Constitution-Building Processes in Democratization: Hungary Case Study* (Intl IDEA 2005); Edward Schneier, *The Role of Constitution-Building Processes in Democratization: Indonesia Case Study* (Intl IDEA 2005); Jill Cottrell and Yash Ghai, *The Role of Constitution-Building Processes in Democratization: Kenya Case Study* (Intl IDEA 2004); John Simpkins, *The Role of Constitution-Building Processes in Democratization: Nigeria Case Study* (External Perspective) (Intl IDEA 2004); Priscilla Yachat Ankut, *The Role of Constitution-Building Processes in Democratization: Rwanda Case Study* (Intl IDEA 2005). All case studies are available online at <<http://www.idea.int/conflict/cbp>> (visited Oct 24, 2005).

²³ The Author participated in the study as an external consultant and prepared the final analytical study. These comments are derived from the Author’s analysis of the case studies.

²⁴ The cases of Kenya, Guatemala and Colombia show that a participatory process can have a substantial impact on the content of the document produced. The broad participatory process in

dominated by one interest or faction tended to result in constitutions favoring that interest or entrenching power in the hands of certain groups.²⁵ Moreover, the more participatory processes initiated a dialogue and began a process of democratic education in societies that had not had political freedom or the chance to shape the governance of their state in the past.²⁶ The participatory processes seem to have empowered the people.

“Pacted”²⁷ democratic transitions in Latin American and Southern Europe show similar trends. While the pacted democracies in Venezuela, Colombia and Brazil did survive the authoritarianism of the 1960s and 1970s, they undermined social and economic equality and empowered actors for whom democracy was not a priority.²⁸ The experience in Spain, in contrast, was largely positive, resulting in a consolidated democracy.²⁹

Encarnación has argued that the key difference between the two outcomes is the question of who participated in the bargaining cartel.³⁰ In Venezuela, Colombia, and Brazil the pact-making was elite-driven and secretive with few

Kenya resulted in the inclusion of provisions addressing issues of social and economic justice, as well as issues of corruption and the failure of political elites to act responsibly. See Cottrell and Ghai, *Kenya Case Study* at 26–27 (cited in note 22). In Colombia and Guatemala, the participatory and inclusive process resulted in strongly reformed constitutions that expressly provided rights to those groups who had not up to then gained political protection or recognition. See Marulanda, *Colombia Case Study* at § 24–25 (cited in note 22); Brett and Delgado, *Guatemala Case Study* at 48 (cited in note 22).

²⁵ A draft written by one faction or one dominant interest results in a document that tends to be biased towards that interest. For instance, the 1980 Pinochet constitution in Chile sought to entrench a military control and exclude the left from political power. It resulted in years of oppressive dictatorship. See Montes and Vial, *Chile Case Study* at 5–9 (cited in note 22). The 1990 Fiji constitution sought to entrench military and indigenous Fijian power and has been the source of increasing tensions. See Cottrell and Ghai, *Fiji Case Study* at 8, 34 (cited in note 22). The Nigerian and Bahrain constitutions, which were imposed by authoritarian bodies, include provisions that dilute popular control of the legislature and the executive. See Simpkins, *Nigeria Case Study* at 2–3 (cited in note 22); Mohamoud, *Bahrain Case Study* at 20 (cited in note 22).

²⁶ Popular consultation certainly brought about public support for a Rwanda constitution, as it did in South Africa—another country with a highly participatory process. See Ankut, *Rwanda Case Study* at 17–18 (cited in note 22); Simpkins, *Nigeria Case Study* at 16 (cited in note 22). In contrast, the people have strongly rejected the constitutions in Nigeria and Bahrain, which were not at all participatory for the very reason that they were imposed on, rather than made by, the people. See Simpkins, *Nigeria Case Study* at 2–3; Mohamoud, *Bahrain Case Study* at 20–21 (cited in note 22).

²⁷ A political pact is defined as “an explicit, but not always publicly explicated or justified, agreement among a select set of actors which seeks to define (or, better, to redefine) rules governing the exercise of power on the basis of mutual guarantees for the ‘vital interests’ of those entering into it.” O’Donnell, *Transitions from Authoritarian Rule* at 37 (cited in note 17).

²⁸ Id at 42.

²⁹ See Omar G. Encarnación, *Do Political Pacts Freeze Democracy?: Spanish and South American Lessons*, 28 W Eur Pol 182, 189 (2005).

³⁰ Id at 197.

powerful actors, including the outgoing regime, whereas in Spain the bargaining group included practically the whole “ideological spectrum.”³¹ Thus, negotiations that involve a small number of elite participants, seek to impose long-term power divisions, restrict the policy agenda, and limit government accountability to the broader population, should be avoided as they undermine the quality of the democracy created in the long-term.

The cases reviewed in the IDEA study also emphasized that frequently the conflicts resulted from, or were exacerbated by, stark elite-population divisions. Thus, any chance of long-term resolution of such conflicts would require the sort of dialogue and negotiation that was rendered possible by the participatory national dialogue processes. This is consistent with Hart’s writings emphasizing that the people must be included in the search for solutions to conflict, rather than being a “division of the spoils” between factions. Hart points out that “[w]here conflict is essentially over governance by, and respect for, a diversity of people and peoples, those people and peoples must be heard in the process of constitution making.”³² Power is not “solely an inter-elite matter, and limited to purely geo-ethnic and institutional aspects.”³³ For sustainable peace, the governance framework will have to be more inclusive and “build up broader stakes of participation in the peace-building process.”³⁴

The IDEA cases did not provide evidentiary support for the concern that participatory processes will have a divisive effect, or be dominated by radical extremist views, in highly divided societies or societies emerging from traumatic conflict. The participatory element did not increase divisions or provide warlords with greater power. In Afghanistan, for instance, the participation process was managed in a careful fashion to prevent the warlords or Islamic extremists from dominating the process. Nonetheless, such divisive impacts are a possibility if the participatory and consultative process is not carefully designed.

The use of more participatory and inclusive processes does appear to broaden the constitutional agenda and prevent the process from degenerating into a mere division of spoils between powerful players. However, at the same time, such constitutions tended to threaten the established power structures,

³¹ Id at 192. Spain adopted many different forms of pacts: a secret pact between Franco’s democratic opposition that set up the democratic transition based on a series of compromises; followed after the elections of 1977 by policy-making pacts such as the Moncloa pact which addressed economic reform, salary regulation, and incorporated extensive redistributive policies. For a discussion of the different Spanish pacts, see id at 187–92.

³² Hart, *Constitution-Making* at 160 (cited in note 21).

³³ J. Bayo Adekanye, *Power-Sharing in Multi-Ethnic Political Systems*, 29 *Security Dialogue* 25, 32 (1998).

³⁴ Id at 33.

which frequently reacted by undermining them—amending them, preventing them from being adopted, or preventing their enforcement. Thus, a key challenge becomes how to address the opposing requirements of creating incentives for the powerful players to participate, without abdicating a genuine consultative process that fosters political dialogue and empowers the people. There is no simple answer to this dilemma, which requires careful weighing of the surrounding circumstances and options for implementation of the constitution, including the degree of outside enforcement capability and the degree of internal popular activism.

III. THE ROLE OF CONSTITUTIONAL ENGINEERING

Creating sustainable democratic institutions is a second key challenge in peace-building. The design of the constitution seeks both to create new democratic institutions and to assure their protection in the longer term. Unless they are carefully designed and implemented, democratic institutions can ferment conflict in sharply divided societies.³⁵ A poor governance framework will undermine the sustainability of the peace. It can exacerbate fault lines, divisions, and tensions in society; entrench conflict-generating electoral or governance models, or provide a basis for contesting the government.

In Haiti, for instance, the 1987 Constitution continues to undermine sustainable peace. The majoritarian structure has encouraged tyranny of the majority and reinforced Haiti's winner-takes-all political culture. Uncertainty in the constitutional provisions on elections has also provided a flash point for violence following the 2000 elections, the results of which were contested by the opposition. Moreover, the dissolution of the army was never constitutionally ratified and contributes to the ongoing instability and the former army members' sense of frustrated entitlement.³⁶

Nonetheless, an appropriate governance framework may not be able to ensure sustainable peace and democracy. Any attempt to change basic system rules in society through constitutional or institutional reform faces considerable implementation challenges, including path-dependency, political transaction

³⁵ Frances Stewart and Meghan O'Sullivan, *Democracy, Conflict and Development—Three Cases*, in Gustav Ranis, Sheng-Cheng Hu, and Yun-Peng Chu, eds, 1 *The Political Economy of Comparative Development into the Twenty-First Century: Essays in Memory of John C.H. Fei* (Edward Elgar 1999); Bastian and Luckham, *Can Democracy Be Designed?* at 1 (cited in note 8).

³⁶ See Stephen Temple, *UN Troops Launch Offensive Against Former Haitian Soldiers as Country Prepares for Elections*, *World Market Analysis* (Mar 25, 2005); Jane Regan, *Haiti: Despised and Disbanded, a Blood-Stained Army Returns*, *IPS-Inter Press Service* (Sept 7, 2004).

costs, and inertia. Moreover, there is an emerging consensus that formal institutions will only be effective when they do not conflict with informal ones.³⁷

Therefore, constitutional reform alone will not overcome long-entrenched informal and institutional practices unless there is substantial domestic support for the changes. When accompanied by appropriate incentives, the design of new rules can set a new agenda, change the rules of the game, and begin a process of reform; however, to do so they must be integrated with the sort of transformative societal processes discussed above.

IV. THE CHOICE OF CONSTITUTIONAL MODELS

The search for institutional structures that encourage moderate behavior is a crucial aspect of governance structures in post-conflict environments, and is widely viewed as a key to preventing the return to conflict. The pure majoritarian democratic model is generally considered unsuited to conflict-prone and highly divided societies.³⁸ As the Carnegie Commission on Preventing Deadly Conflict points out:

[I]n societies with deep ethnic divisions and little experience with democratic government and the rule of law, strict majoritarian democracy can be self-defeating. Where ethnic identities are strong and national identity weak, populations may vote largely along ethnic lines. Domination by one ethnic group can lead to a tyranny of the majority.³⁹

Incentives in the form of power-sharing structures and electoral rules have long been used to shape democracy to address division and to encourage moderation. These structures and rules generally take the form of variations on the consociational power-sharing and integrative governance models, which are the two main alternatives to the pure majoritarian democratic model. Consociational power-sharing involves power-sharing between cooperative but autonomous groups,⁴⁰ whereas integrative governance aims to transcend group

³⁷ Adekanye, *Power-Sharing* at 29 (cited in note 33); Michael Bratton and Nicolas van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective* (Cambridge 1997); Ian S. Spears, *Africa: The Limits of Power-Sharing* 13 *J Democracy* 123, 130 (July 2002).

³⁸ Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* 32–33 (Yale 1999).

³⁹ Carnegie Commission on Preventing Deadly Conflict, *Preventing Deadly Conflict: Final Report* 100 (Carnegie Commission 1997).

⁴⁰ See Ulrich Schneekener, *Making Power-Sharing Work: Lessons from Successes and Failures in Ethnic Conflict Regulation*, 39 *J Peace Research* 203 (2002).

differences by encouraging groups to cooperate around common political goals.⁴¹

There remains much uncertainty surrounding the impact of different governance choices in post-conflict environments. This is partly because such governance structures involve a complex interaction between various institutions and processes and a particular historical and cultural environment. It is also the result of the highly polarized nature of the debate over consociationalism. As Timothy Frye points out, “one gets the sense that the original combatants have settled in for a long period of trench warfare.”⁴²

A. EXECUTIVE POWER-SHARING

A recent study by International Peace Academy (“IPA”) provides some interesting insights into the medium-term impact of constitutional choices in conflict-prone environments.⁴³ The study focuses on how the constitutional rules and political institutions adopted in six countries following violent conflict impacted on the broader democratization process and peacefulness in each state.⁴⁴

Putting aside the question of power-sharing during periods of transition immediately after conflict (when it is often the only option to stop the violence), the study investigates the impact of such structures in the medium-to-long-term.⁴⁵ Overall, the cases support the view that formal executive power-sharing⁴⁶ leads to a fragile peace, often without violence but also without reconciling the parties or addressing the underlying tensions. Moreover, while all societies investigated already had longstanding deep divisions, these appeared to have

⁴¹ I adopt terminology from Robin Luckham, Anne Marie Goetz, and Mary Kaldor, *Democratic Institutions and Democratic Politics*, in Bastian and Luckham, eds, *Can Democracy Be Designed?* 14, 45 (cited in note 8).

⁴² Timothy Frye, *Presidents, Parliaments and Democracy: Insights from the Post-Communist World*, in Andrew Reynolds, ed, *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy* 81 (Oxford 2002).

⁴³ Kirsti Samuels, *State Building and the Consequences of Constitutional Choices in Conflict-Prone Environments: Bosnia and Herzegovina, Fiji, Lebanon, Northern Ireland, South Africa and Uganda* (IPA Policy Paper, forthcoming 2005) (on file with author).

⁴⁴ The six case studies that form the basis of that study were prepared for IPA by the following experts: Sumantra Bose, *Bosnia and Herzegovina Case Study for IPA*; Jill Cottrell and Yash Ghai, *Fiji Case Study for IPA*; Paul Salem, *Lebanon Case Study for IPA*; Adrian Guelke, *Northern Ireland Case Study for IPA*; Paul Graham, *South Africa Case Study for IPA*; Miria Matembe, *Uganda Case Study for IPA*. Case studies are on file with author; their publication is forthcoming.

⁴⁵ Samuels, *State Building and the Consequences of Constitutional Choices*, IPA Policy Paper (cited in note 43).

⁴⁶ Bosnia and Herzegovina, Lebanon, and Northern Ireland each adopted formal power-sharing to end civil conflict. Fiji adopted formal power-sharing to avoid civil conflict.

become even more entrenched and radicalized during the power-sharing phase. Voluntary power-sharing along non-ethnic lines,⁴⁷ in contrast, did achieve inclusive governments in the cases considered, and even seem to have lessened the ethnic divisions.

The cases highlight the fragility of a power-sharing government and the degree to which it is reliant on genuine commitment by the political leadership. A power-sharing government is vulnerable to collapse when parties pull out or threaten to do so. Working through consensus requires substantial commitment and compromise, which is difficult to achieve in highly divided societies.

Unsurprisingly, under these conditions the power-sharing governments have been repeatedly immobilized by the clauses intended to ensure moderation and consensus (for example, Lebanon, Northern Ireland, and Fiji).⁴⁸ In Lebanon, for instance, Salem points out that the “decision making is complex, slow and often paralyzed. Prime ministers that come in with a clear agenda find themselves unable to form a cabinet fully responsive to them nor to implement the policies they are proposing.”⁴⁹

In all of the cases where a power-sharing agreement was successfully implemented, it did provide an alternative to violent conflict (Lebanon, Northern Ireland, Bosnia Herzegovina, and South Africa). However, implementation has been a key difficulty. Such agreements generally represent none of the parties’ preferred outcomes.⁵⁰ Moreover, there is a large trust deficit. As Bose points out in relation to Bosnia and Herzegovina, there is a “deep sense of injury, betrayal and distrust that continues to dominate mutual perceptions and relations between the Bosnian communities in the post-war phase.”⁵¹ The

⁴⁷ South Africa and Uganda adopted voluntary inclusive government models.

⁴⁸ In Fiji, the parties continually frustrate the intention of the agreement despite attempts by the courts to enforce the agreement. There has been a surge of nationalist single-ethnicity parties, and tension and violence continues to grow between the ethnic Fijian and the Indo-Fijian communities. See Bureau of Democracy, Human Rights, and Labor, US State Department, *Country Reports on Human Rights Practices: Fiji* (Mar 4, 2002), available online at <<http://www.state.gov/g/drl/rls/hrrpt/2001/eap/8308.htm>> (visited Oct 11, 2005). In Northern Ireland, even with outside intervention, the power-sharing government has repeatedly fallen apart, leading to a return to direct rule from London. See Encarta Online Encyclopedia, entry for “Ireland, Northern” (Microsoft 2005), available online at <http://encarta.msn.com/text_761571415__1/Northern_Ireland.html> (visited Oct 13, 2005).

⁴⁹ Salem, *Lebanon Case Study for IPA* (cited in note 44).

⁵⁰ In Bosnia and Herzegovina, for instance, partition was preferred by many, and in Northern Ireland half the population seeks integration with the UK while the other half seeks a united Ireland.

⁵¹ Bose, *Bosnia and Herzegovina Case Study for IPA* (cited in note 44).

presence of an outside state, which may be key to enforcement,⁵² can also create tensions, however, as it did with respect to Syria's presence in Lebanon.

Moreover, the formalized divisions of power along identity or ethnic lines appear to entrench the ethnic and divisive positions that have fueled the conflict, rather than ameliorate them. While all societies investigated already had longstanding deep divisions, these appeared to become even more radicalized during the power-sharing phase. In Northern Ireland, Fiji, and Bosnia and Herzegovina there has been a distinct increase in support for more extreme political parties over more moderate parties since the adoption of power-sharing structures.⁵³

South Africa (post-transition) and Uganda also adopted executive power-sharing, but with two key differences: the criterion was not ethnic, racial or religious, and inclusion was a voluntary decision by the dominant party. In South Africa, after the end of the formal power-sharing government during the period of transition, the African National Congress continued to run a power-sharing government on a voluntary basis. While the National Party left the official power-sharing transitional government to stand in opposition in 1996, it recently rejoined this voluntary government of national unity. In Uganda, a unique no-party inclusive government model was adopted by President Museveni after the war. Although the system has become less accommodating to divergent views in recent times, for a decade or more it provided a relatively effective inclusive government.

These voluntary power-sharing models were adopted without outside pressure and were backed up by domestic political commitment. In Uganda and South Africa, the system may have actually lessened the role of ethnicity in politics.⁵⁴ The voluntary nature of these agreements seems important as it

⁵² In Bosnia Herzegovina, the international community continues to play a central role in enforcing the agreement. Syria has been the dominant power-broker in Lebanon since the signing of the Taif agreement, and the UK has played that role in Northern Ireland.

⁵³ In Bosnia and Herzegovina the only significant party with a cross-national ideology is the Social Democratic Party ("SDP"), but even the SDP's support is largely mono-ethnic Bosniac. Bose, *Bosnia and Herzegovina Case Study for IPA* (cited in note 44). The electoral environment in Northern Ireland is dominated by sectarian politics, which is seemingly institutionalized by the requirement that members register as Unionist, Nationalist or Other, and the only cross-confessional party has decreasing support. Guelke, *Northern Ireland Case Study for IPA* (cited in note 44). In Fiji, even though the power-sharing is not formally ethnically based, the elections have favored the newly created more extreme nationalist and ethnically based parties. No cross-ethnic parties have been created and those that were cross-ethnic have split into their constituent parts. Cottrell and Ghai, *Fiji Case Study for IPA* (cited in note 44). Even in Lebanon, which has relied on power-sharing along confessional lines for close to a hundred years, the divisions remain as strong as ever.

⁵⁴ Graham, *South Africa Case Study for IPA* (cited in note 44); Matembe, *Uganda Case Study for IPA* (cited in note 44).

reflects a commitment by the political leaders to an inclusive government of national unity, whereas a formal executive power-sharing agreement is generally seen as an uncomfortable compromise by all parties.

B. ELECTORAL MODELS

In the post-conflict context, elections are highly divisive and can easily undermine the chance of building a sustainable democracy.⁵⁵ Reilly emphasizes the need to design the rules “in such a way as to promote moderate voices over extremist ones, and to facilitate intra-group as well as inter-group competition.”⁵⁶ The aim must be to use the electoral process to transform the competition for political power.⁵⁷

One of the major debates in this field has been whether a list proportional representational (“PR”) model (where the proportion of votes a party receives is reflected in the number of seats it holds in parliament), a preferential model, such as the alternative vote (“AV”) model (where electors rank the parties in order of preference and votes are allocated through these preferences until a winner emerges), or majoritarian model with fixed ethnic quotas, is best able to ensure the required moderation and representativeness.

Empirical studies have demonstrated greater voter participation in PR than in simple majoritarian electoral systems⁵⁸ and have showed that the difference in degree of satisfaction between winners and losers is smaller in consociational models than in simple majoritarian models.⁵⁹ Nonetheless, the impact of electoral systems in a particular political environment is complex, and no simple empirical link between PR systems and higher levels of political support among ethnic minorities can be established.⁶⁰

⁵⁵ Benjamin Reilly, *Democratic Validation*, in John Darby and Roger MacGinty, eds, *Contemporary Peacemaking Conflict, Violence, and Peace Processes* 174, 176 (Palgrave Macmillan 2003).

⁵⁶ Id at 179.

⁵⁷ In addition to electoral structure, the question of the timing of elections is often problematic. Early elections increase division and can entrench the warring parties as the dominant political players, while late elections can entrench the compromise interim solution and may fail to achieve any opening up of the political space, unless the interim process is carefully planned.

⁵⁸ According to a study by Blais and Carty (1990) comparing over five hundred elections across twenty nations as noted in Pippa Norris, *Ballots Not Bullets: Testing Consociational Theories of Ethnic Conflict, Electoral Systems, and Democratization*, in Reynolds, ed, *The Architecture of Democracy* 206, 214 (cited in note 42).

⁵⁹ According to a study by Anderson and Guillory (1997) comparing the satisfaction with democracy among consensual and majoritarian political systems in eleven EU member states. Id at 215.

⁶⁰ Norris’ study compares the political attitudes and behavior of a range of ethnic minorities to test the consociational proposition that PR systems are more effective at engendering support for the political system among ethnic minorities. She concludes that data from the 1996–1998 Comparative Study of Electoral Systems—comparing political attitudes and behavior among a

In the IPA study, the electoral systems in the six case studies ranged across “majoritarian with quotas” (Uganda, Lebanon), “preferential” (Northern Ireland, Fiji, Republika Skrska), and “list proportional representation” (South Africa, Bosnia Herzegovina).⁶¹ A majoritarian model with fixed ethnic quotas was seen to encourage the election of moderates in sufficiently mixed districts, but not to do so in districts dominated by one ethnic group. In Lebanon, for instance, a candidate running for a Christian seat in a mixed district in Lebanon was also required to appeal to the Muslim community; however, in districts dominated by one ethnic group this moderating impact was not felt.⁶² A disadvantage of the system was that the rigidity resulting from the fixed ethnic or religious quotas froze the divisions at the time the electoral system was adopted. In contrast, reserved seats for women, or other interest groups, appeared to encourage the participation of new actors in politics, but did so without entrenching ethnic or religious divides. In Uganda, for instance, such quotas⁶³ did not entrench religious or ethnic divisions, and in combination with the “no party” system, seem to have refocused the political discourse away from religion and ethnicity.

One of the more concerning results in the study was the unpredictability of the preferential voting models (such as the Single Transferable Vote (“STV”), or Alternative Vote (“AV”)) that have been put forward as encouraging moderation and compromise across ethnic lines. The consociational list PR model, as Horowitz argues, places the focus on post-electoral coalitions, which in his view “no doubt entail compromise over the division of cabinet portfolios, but typically not compromise over divisive inter-ethnic issues.” It does not require candidate parties and coalitions to attract votes across group lines.⁶⁴ In these case studies, however, there is little support for Horowitz’s argument that preferential

diverse range of ethnic minorities in the US, UK and Australia, Taiwan, Ukraine, Lithuania, Poland, Romania, the Czech Republic, Spain, New Zealand and Israel—did not provide evidence for the proposition that PR party list systems engender higher levels of political support among ethnic minorities than majoritarian systems. Id at 233. Note that one of the weaknesses of the study is that it did not differentiate between levels of satisfaction in countries emerging from conflict and levels of satisfaction in states that have distinct minorities within them but have not suffered ethnic polarization or ethnic violence.

⁶¹ See IPA case studies (cited in note 44).

⁶² See Salem, *Lebanon Case Study for IPA* (cited in note 44). In practice, however, in Lebanon, elite collusion has led to the creation of pre-agreed lists, undermining electoral contest.

⁶³ For background on the use of quotas in Uganda, see Sylvia Tamale, *Introducing Quotas in Africa: Discourse and Legal Reform in Uganda*, Intl Institute for Democracy and Electoral Assistance (Nov 2003), available online at <http://www.quotaproject.org/CS/CS_Uganda_Tamale-6-6-2004.pdf> (visited Oct 13, 2005).

⁶⁴ Donald L. Horowitz, *Constitutional Design: Proposals Versus Processes*, in Reynolds, ed, *The Architecture of Democracy* at 15, 20, 22 (cited in note 42).

voting systems such as the AV better promote pre-electoral coalitions since they encourage compromise to attract voters across ethnic lines.⁶⁵

In the cases considered, results were hard to anticipate, and in some cases the system actually funneled votes to more extreme parties. Northern Ireland adopted multi-member district STV, considered one of the most sophisticated electoral systems, which has both a proportional and preferential basis.⁶⁶ While the electoral results under STV were more moderate and balanced in comparison to a simple majoritarian model, the model had a somewhat unpredictable outcome in comparison to list PR.⁶⁷ Even facing the possible defeat of the Good Friday Agreement, pro-Agreement moderate politicians, such as David Trimble, still called on electors to vote for other anti-Agreement Unionist parties rather than the moderate pro-Agreement nationalist SDLP.⁶⁸

Alternative Vote is considered to have the greatest moderating influence of the preferential electoral models. Fiji has adopted AV (although only twenty-five out of seventy-one seats are open seats—the remainder are allocated on the basis of ethnic quotas). It was initially hoped that AV would lead to the development of multi-racial parties or foster preference-deals among moderate parties, but, even the small proportion of open AV seats seem not to have favored moderation. In the 1999 elections, the AV system gave the Indian FLP party a majority of seats even though it only had 33 percent of first choice support. Under a PR system, the FLP would have had to govern with one of the other parties, either Fijian or moderate Indian. The electoral model, and the FLP's reluctance to make a power-sharing government work, may have contributed to the distrust by ethnic Fijians and the coup overthrowing it. In the 2001 elections, the AV system explicitly funneled votes towards more extreme parties.⁶⁹

Republika Srpska experience is similar. The OSCE (which is responsible for all party and election related matters in Bosnia and Herzegovina) experimented with AV for the 2000 presidential elections. In those elections the hard-line Serb candidate won a decisive victory, as the Bosniacs refused to cross ethnic boundaries and gave their second preference to Bosniac parties that had no hope of winning rather than support moderate Serb parties. Additionally, the hard-line Serb parties campaigned on the basis that the electoral changes aimed to undermine them, which seemingly resulted in increased voter support.

⁶⁵ Id at 20.

⁶⁶ Peter Harris and Ben Reilly, eds, *Democracy and Deep-Rooted Conflict: Options for Negotiators* 198–99 (Intl IDEA 1998).

⁶⁷ See Guelke, *Northern Ireland Case Study for IPA* (cited in note 44).

⁶⁸ Id.

⁶⁹ See Ghai, *Fiji Case Study for IPA* (cited in note 44).

According to Bose, the Serb voters realized the aim of the electoral changes and sought to defeat them. The OSCE changed the electoral system back to open list PR in 2002.⁷⁰

A list PR model based on electoral support for parties (rather than for ethnic or religious groups) was seen to have the advantage of providing proportional representation of minorities in parliament, and seemed to provide the greatest opportunity for evolution towards a society less divided along ethnic or religious lines. For instance, the case author suggested that, in South Africa, factors such as class and geography are increasingly playing a role in elections.

Closed list PR models can place large influence in the hands of parties, and can undermine the relationship of accountability between the candidates and the voters. Open list PR systems, which allow voters to choose who on the list will be elected, as recently adopted in Bosnia and Herzegovina, ameliorate these difficulties. A key disadvantage of open list systems—that it can be difficult to implement agreements on women’s participation—may be overcome through the use of reserved seats for women.

V. THE CHALLENGE OF IMPLEMENTATION AND MONITORING

Finally, it is worth discussing the challenges of implementation and monitoring of a governance structure in post-conflict environments. One key difficulty is the dominance of the executive in power-conflict environments. A climate of unregulated power will ultimately undermine the stability and legitimacy of the new state, and in immature democracies, the institutions that have been built are frequently too weak to hold governments accountable, which jeopardizes long-term stability.

The dominance of the executive is often exacerbated by the institutional weakness of parliament and the courts, which play a key role in overseeing and balancing the executive in established democracies. In East Timor, an extreme example, most parliamentarians have no experience in drafting legislation and do not read the language in which the laws are written.⁷¹ Thus parliament is largely bypassed by the executive government. A drift towards authoritarianism will substantially undermine the quality of the democracy, increasing the risk of a return to conflict and may lead to the unraveling of much of the state-building effort.

The inadequacy of traditional checks and balances creates a dilemma for the international community. Clearly, when executive power has been

⁷⁰ See Bose, *Bosnia and Herzegovina Case Study for IPA* (cited in note 44).

⁷¹ See Kirsti Samuels, *Assessing State-Building in Timor-Leste: Peacefulness and Quality of the Democracy at the Five-Year Mark* (IPA Policy Report, forthcoming 2005) (on file with author).

transferred to the domestic government, the international community has much less leverage. One approach could be to put economic and political pressure on the new government to abide by basic governance rules. Ashraf Ghani, one of the most inspired and resolute domestic counterparts in recent state-building missions and a key player in the Afghan transitional government, suggests that the best way to conceptualize the situation is that of a double compact: “A compact between rulers and their people and a compact between the government and the international community. And this must be framed in a context of a series of achievable benchmarks.”⁷²

One of the benchmarks could be the expectation that domestic government will abide by the constitution negotiated as part of the transition. Accordingly, the international community could take a more proactive approach to ensuring that any new government acts in accordance with its constitutional obligations.

International monitoring of elections is already widely accepted. The international community can also play a role in enforcement through the placing of international judges on the benches of constitutional courts. In Bosnia and Herzegovina, for instance, the Court includes three international judges appointed by the President of the European Court of Human Rights to avoid ethnic deadlock.⁷³ Other influences can derive from the requirements for joining economic organizations, or the use of aid policy conditionality.⁷⁴ In Europe, EU pressure and joining standards are considered to have played an important role in shaping the post-communist Eastern European states and encouraging the adoption of human rights standards.⁷⁵

⁷² Ashraf Ghani, *The United Nations High-Level Panel on Threats, Challenges and Change: Assessing the Options and Exploring Reactions to the Report's Post-Conflict Peacebuilding Recommendations*, Speech at a meeting of the Center for Strategic and International Studies (Mar 10, 2005) (on file with author).

⁷³ In Bosnia the nine member court has four members who are selected by the Federation House of Representatives and two members selected by the Republika Srpska National Assembly. To prevent ethnic deadlock in adjudication, the remaining three members of the court must be non-citizens, are selected by the President of the European Court of Human Rights “after consultation with the Presidency,” and cannot be citizens of any neighboring country. Bosnia and Herzegovina Const, art VI, § 1. Two international judges sit on the East Timor Court of Appeal. See *Attacks on Justice 2002: East Timor*, Intl Commission of Jurists (Aug 27, 2002), available online at <http://www.icj.org/news.php?id_article=2657&lang=enIMG/pdf/easttimor.pdf> (visited Oct 13, 2005).

⁷⁴ This view is also supported in the article by Stewart and O’Sullivan, *Democracy, Conflict and Development* at 355 (cited in note 35).

⁷⁵ Marina Ottaway, *Democratization and Ethnic Nationalism: African and Eastern European Experiences* (Overseas Development Council 1994). See also, Ekaterini Papagianni, *European Integration and Eastern European Nationalism: A Comparative Study of Minority Policies in Estonia, Latvia, Romania and Slovakia* (2003) (PhD Dissertation, Columbia University) (on file with author).

VI. CONCLUSION

The design of a constitution and constitution-making process is an integral part of the political and governance transition in peace-building. However, it is also a particularly difficult aspect, both because there is little understanding of the impact of constitutional processes and constitutional designs in post-conflict states, and because these decisions must be made in highly charged, divided, often violent environments. Moreover, as Rothchild points out, “the short-term security concerns of the bargaining parties may be at odds with the long-term institution-building needs of the society.”⁷⁶

In relation to constitution-making process, the more participatory and inclusive processes were seen to broaden the constitutional agenda and avoid the process degenerating into a mere division of spoils between powerful players. At the same time, such constitutions tended to threaten the established power structures. The key dilemma is therefore how to ensure both that the powerful players participate and are committed to the process, and yet also ensure that the process fosters political dialogue and empowers the people.

In relation to constitutional design, this Article has shown that there is an urgent need for the development of new approaches to executive power-sharing. The cases support the view that formal executive power-sharing leads to a fragile peace that is free of violence but does not affect underlying tensions. Power-sharing agreements were seen to be susceptible to deadlock and collapse, to require extensive international intervention, and to risk both entrenching and radicalizing underlying divisions. Yet there are few ready alternatives. If power-sharing can be achieved on a voluntary basis, this seems to produce a more effective inclusive government, although the majority party leadership required for such a model is rare.

This Article has also shown that the electoral model chosen can impact the outcome of elections, but the cases illustrate that designing electoral models to promote moderation or facilitate intra-ethnic compromise is not straightforward. A key concern results from the unpredictability of the preferential voting models, which have been put forward as encouraging moderation and compromise across ethnic lines. In the cases considered, results were difficult to anticipate, and in some cases the system actually funneled votes to more extreme parties.

Finally, this Article highlights the difficulties that arise from the likelihood that the courts and parliament, traditional checks and balances, will be

⁷⁶ Donald Rothchild, *Settlement Terms and Postagreement Stability*, in Stephen John Stedman, Donald Rothchild, and Elizabeth M. Cousens, eds, *Ending Civil Wars: The Implementation of Peace Agreements* 117–118 (Lynne Rienner 2002).

disproportionately weak in a post-conflict environment, and the need to develop alternative mechanisms of constitutional enforcement.