REIMAGINING DEMOCRATISATION THROUGH DELIBERATION

Peacebuilding in Cambodia, Timor-Leste and Nepal

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2024

A Thesis Submitted in Fulfilment of the Degree of Doctor of Philosophy at the Australian National University

DECLARATION

This thesis is wholly original and created exclusively by Michael Robin Morison except where indicated otherwise. This research has not been conducted jointly with any other person and all sources have been acknowledged.

Word count: 68,297+*

*Exclusive of footnotes, references and appendices.

ACKNOWLEDGMENTS

For Elle, Susie, Zoe and Annabel.

Many thanks to my principal supervisor and friend Dr Jeremy Farrall and his family for all of their assistance and support. Many thanks also to my other supervisory panel members: the extraordinary Professor Carolyn Hendriks, Emeritus Professor William Maley and for the invaluable advice received from Professor Ron Levy. I will forever be indebted to Elle, Susie, Zoe and Annabel for their love and support on this journey.

ABSTRACT

This thesis brings together the theory and practice of peacebuilding and deliberative democracy. It examines United Nations efforts to build democratic governance in Cambodia, Timor-Leste and Nepal, and argues that these initiatives had varied success in promoting sustainable democratisation because they were imposed by outsiders and were insufficiently responsive to the needs and aspirations of local communities. It contends that future democratisation initiatives should strengthen the inclusive capacity of democratic governance by incorporating the theory and practice of deliberative democracy.

Drawing on first-hand experiences and outcomes in the case study sites, the thesis proposes an original model of deliberative democratisation made up of four elements: the recognition of pre-existing decision-making systems; the introduction of deliberative processes in addition to aggregative democracy; a focus on promoting the capacity or "reach" of public deliberation; and a focus on quality deliberation in a decision-making system.

The proposed model has both analytic and normative functions: it can be used to analyse and evaluate existing peacebuilding processes, and provides a normative deliberative framework around which future peace building initiatives could be reimagined.

Finally, the thesis presents a linked series of recommendations for future democratisation efforts, based on the deliberative model proposed, and grounded in the analysis of the three case studies.

CONTENTS

TABLES AND FIGURES

ABBREVIATIONS

ADB - Asian Development Bank

ANFREL - Asian Network for Free and Fair Elections

ASEAN - Association of Southeast Asian Nations

BTI - Bertelsmann Transformation Index

CAVR - Comissão de Acolhimento Verdade e Reconciliação de Timor Leste

CDD - Centre for Constitutional Development

CDR - Community Driven Reconstruction

CEP - Community Empowerment Project

CGDK - Coalition Government of Democratic Kampuchea

CNC - Cambodian National Congress

CNRP - Cambodian National Rescue Party

CNRT - Conselho National da Resistencia Timorense

CPA - Comprehensive Peace Accord/ Agreement

CPA - Country Programmable Aid

CPN - Communist Party of Nepal

CPN (Unified) - Communist Party of Nepal (Unified)

CPN Maoist - Communist Party of Nepal (Maoist)

CPN UML - Communist Party of Nepal - Unified Marxist Leninist

CPP - Cambodian People's Party

CRP - Community Reconciliation Process

DA - District Administrator

DK - Democratic Kampuchea

DPPA - United Nations Department of Political and Peacekeeping Affairs

DPKO - United Nations Department of Peacekeeping Operations

EAD - United Nations Electoral Assistance Division

ECN - Election Commission of Nepal

EMB's - Electoral Management Bodies

ETTA - East Timor Transitional Administration

FRELIMO - Frente de Libertação de Moçambique

FRETILIN Frente Revolucionária de Timor-Leste Independente

FSS – United Nations Department of Field Support

HIPPO - Report of the High-Level Independent Panel on Peace Operations

ICCPR - International Covenant on Civil and Political Rights

ICESCR - International Covenant on Economic Social and Cultural Rights

ICNRD - International Conference of New and Restored Democracies

IDEA - Institute for Democracy and Electoral Assistance

IFES - International Foundation for Electoral Systems

IMF - International Monetary Fund

INTERFET - International Force East Timor

JICA - Japanese International Cooperation Agency

KDP - Kecamatan Development Program

KHUNTO - Kmanek Haburas Unidade Nasional Timor Oan

LSE – London School of Economics

LLRC - Local Level Restructuring Commission

MDG's - Millennium Development Goals

NC - Nepali Congress NC

NCC - National Consultative Council

NEC - National Electoral Commission

NGO - Non Government Organization

OECD - Organisation for European Economic Cooperation and Development

PD - Partido Democrático

PLP - Peoples Liberation Party

PRK - Peoples Republic of Kampuchea

PRPK - People's Revolutionary Party of Kampuchea

SDG's - Sustainable Development Gaols

SPCBN - Support to the Participatory Constitution Building in Nepal

TVDP - Tribhuvan Village Development Program

UDHR - Universal Declaration of Human Rights

UDS - Unified Democracy Scores

UNAMA - United Nations Assistance Mission in Afghanistan

UNDEF - United Nations Democracy Fund

UNDP - United nations Development program

UNIMSET - United Nations Mission of Support in East Timor

UNMIH - United Nations Monitoring Operation in Haiti

UNMIT - United Nations Integrated Mission in Timor-Leste

UNOTIL - United Nations Office in East Timor

UNTAC - United Nations Transitional Authority in Cambodia

UNTAET - United Nations Transitional Administration in East Timor

UNTAG - United Nations Transition Assistance Group

UNV's - United Nations Volunteers

WGI - Worldwide Governance Indicators

WTO - World Trade Organisation

YILab - Youth Innovation Lab

INTRODUCTION

1. The Problem

Post-conflict democratisation is the deliberate restructuring of national political and regulatory institutions by international actors to make them directly accountable to voters in regular free and fair elections, in the aftermath of conflict. In its simplest form democratisation is the assisted creation of infrastructure for the conduct of elections.

This thesis grapples with the problem that while democratisation can bring the swift appearance of new democracy, it has frequently failed to promote sustainable responsive governance and public deliberation over the long term. The focus of this thesis is global, but with particular attention to democratisation processes conducted in Cambodia, Timor-Leste and Nepal.[1] It seeks to analyse some of the overarching deficiencies of the various programs which have operated in those country contexts, with a view to drawing lessons for the construction of a proposed model which may be more successful in the future. Specifically, the thesis seeks to break new ground by proposing a form of deliberative democratisation as a constructive way for democratisation to move forward from its currently stalled state.

The three case studies were also chosen because, in addition to the fieldwork conducted for this thesis, the writer has substantial working experience in democratisation in Timor-Leste and other countries in the region, has lived in Cambodia, and has conducted fieldwork for this thesis in all three case study sites. These countries saw democratisation processes led by the United Nations (UN) in 1993, 2000 and 2007 respectively. They now cross a political spectrum, with authoritarian Cambodia at one extreme and Timor-Leste and Nepal maintaining brittle democracies.

Democratisation is usually one component of a peacebuilding mandate, peacebuilding being defined as a set of actions designed to solidify peace and avoid a relapse into conflict.[2]

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[1] Cambodia: UNTAC (1992-3), Timor Leste: UNTAET, UNIMSET, UNMIT (1999-12), Nepal: UNMIN (2007-11).

[2] *Preventive Diplomacy, Peacemaking and Peace-keeping: Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992* UN Doc A/47/277, S/24111 (17 June 1992) 16.

Within that democratisation is usually classified under the "governance" label, alongside programs such as those dealing with the promotion of the rule of law. Democratisation will not usually begin until well after settlement of a conflict has been negotiated. The outline of a process of democratisation may form part of the settlement itself.[3]

As noted above, democratisation is a component of the liberal peace building project which involves the attempted replication or strengthening of Western style democracy in developing or post-conflict states. It is an important and valuable process because, despite its shortcomings, it retains the potential to increase levels of participation by citizens in decisions which affect them. The work of the UN and other democratisers in Cambodia and Timor-Leste has been promoted as an example of successful post-conflict democratisation. Both held their first post-conflict democratic elections in 1993 and 2001 respectively, and both were lauded as "free and fair" by UN Security Council determination.[4]

However, since the 1993 UN withdrawal from Cambodia the country has reverted to a one-party state, led for most of the intervening period by an increasingly despotic former Khmer Rouge cadre called Hun Sen, his family and the dominant Cambodian People's Party (CPP).[5] Cambodia's executive, judicial and security apparatus are closely tied to the CPP. [6] Intimidation, electoral fraud, human rights violations and corruption are endemic throughout the country.[7] Sorpong Peou has observed that the country has settled into an "authoritarian peace" which has facilitated economic development while seriously eroding the process of democratisation.[8]

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[3] Ibid 19.
[4] SC Res 880, UN Doc S/RES/880 (4 November 1993) ('*UNSC Res 880 (UNTAC Withdrawal 1993)*'); SC Res 1825, UN Doc S/RES/1825 (23 July 2008).
[5] Lee Morgenbesser, 'Cambodia's Transition to Hegemonic Authoritarianism' (2019) 30(1) *Journal of Democracy* 158; Lee Morgenbesser, 'Misclassification on the Mekong: The Origins of Hun Sen's Personalist Dictatorship' (2018) 25(2) *Democratization* 191; Lee Morgenbesser, 'The Failure of Democratisation By Elections in Cambodia' (2017) 23(2) *Contemporary Politics* 135; Simon Springer, 'Violence, Democracy, and the Neoliberal "Order": The Contestation of Public Space in Posttransitional Cambodia' (2009) 99(1) *Annals of the Association of American Geographers* 138; Ronald Bruce St John, 'Democracy in Cambodia — One Decade, US$5 Billion Later: What Went Wrong?' (2005) 27(3) *Contemporary Southeast Asia* 406; Sorpong Peou, *Intervention and Change in Cambodia: Towards Democracy?* (Silkworm Books, 2000).
[6] *World Report 2015: Events of 2014* (Human Rights Watch, 2015) 133–138.
[7] Ibid 133–138.
[8] Sorpong Peou, 'The Limits and Potential of Liberal Peacebuilding for Human Security' (2014) 2(1) *Asian Journal of Peacebuilding* 37, 43.

In post-UN Timor-Leste, a reluctance to prosecute crimes committed during the Indonesian-sponsored militia violence of 1999 and an overly pragmatic approach to relations with former oppressor Indonesia has left unhealed wounds and contributed to a culture of impunity in politics and daily life.[9] Many younger Timorese believe that despite the historical and cultural importance of the dominant political party *Frente Revolucionária de Timor-Leste Independente* (FRETILIN), monopolisation of the parliament by an increasingly wealthy Portuguese-speaking minority in the form of the "1975 Generation" who led the resistance, is not a result that justifies the lives lost during the 25 year struggle for independence.[10] However, Timorese politics is beginning to draw on new political parties comprised of an emerging group of younger internationally educated women and men, such as the Peoples Liberation Party (PLP) led by Prime Minister Taur Matan Ruak and London School of Economics educated Fidelis Magalhaes and the Khunto party.[11]

Ongoing multilateral democratisation efforts in Nepal offer greater promise. Early efforts were made to introduce deliberative elements into the drafting process for the nation's first post-conflict constitution and the first two parliaments (Constituent Assemblies) which emerged within the framework of that process. A Maoist movement in the mid 1990's and the collapse of the royal dynasty triggered a period of unrest which led to international involvement in the form of a UN mission beginning in 2007, which included a prominent electoral component. The country devised an innovative consultative process for the development of its constitution which has helped to reinforce a period of relative (if fragile) political stability through a series of major natural disasters. A set of deliberative provisions have been integrated into its constitution and its process of decentralisation is tangibly moving ahead, albeit slowly and not without teething problems. While the future of its democracy remains fragile, the Nepalese experience could represent a baseline upon which to build a model for use in future initiatives.[12]

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[9] Douglas Kammen, 'Timor-Leste' (2015) 27(2) *The Contemporary Pacific* 537, 540.
[10] Volker Boege et al, 'Building Peace and Political Community in Hybrid Political Orders' (2009) 16(5) *International Peacekeeping* 599, 607.
[11] 'BTI 2022 Timor-Leste Country Report', *BTI 2022* <https://bti-project.org/en/reports/country-report?isocode=TLS&cHash=81d38ac874fc4c30cd6da26a18d3454d>.
[12] 'Oli's Power Grab Endangers Nepal's Fragile Democratic Transition', *Crisis Group* (25 January 2021) <https://www.crisisgroup.org/asia/south-asia/nepal/olis-power-grab-endangers-nepals-fragile-democratic-transition>.

2. Argument

The central argument of this thesis is that efforts to promote democracy in Cambodia, Timor Leste and Nepal have had very mixed success in fostering the emergence of norms and institutions that are genuinely democratic. The thesis also proposes that deliberative techniques could be incorporated into democratisation in order to promote the emergence of democratic norms and institutions. The proposed approach does not advocate for a complete replacement of existing aggregative electoral processes with those of a deliberative nature. It is offering deliberation as a complement to those processes. The predominant international approach to democratisation has historically been technocratic and has focused heavily on elections as a statebuilding mechanism, to the point where they have been used as an exit strategy for international actors in post-conflict situations such as Cambodia and Timor-Leste.[13] The history of democratisation in Chapter 3 of this thesis and the case studies found in Chapters 4 to 6 illustrates this in more detail. International assistance in the area of democratisation has also focused on short-term efforts directed towards political processes such as institution building, resulting in superficial and unsustainable outcomes prone to manipulation by domestic elites.[14]

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[13] Simon Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (Oxford University Press, 2004) 204.

[14] Guillermo A O'Donnell, Philippe C Schmitter and Laurence Whitehead, *Transitions from Authoritarian Rule: Prospects for Democracy* (Johns Hopkins University Press, 1986); Barry Gills, Joel Rocamora and Richard Wilson (eds), *Low Intensity Democracy: Political Power in the New World Order* (Pluto Press, 1993); Stephanie Lawson, 'Conceptual Issues in the Comparative Study of Regime Change and Democratization' (1993) 25(2) *Comparative Politics* 183; Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve* (Carnegie Endowment for International Peace, 1999); Thomas Carothers, 'The End of the Transition Paradigm' (2002) 13(1) *Journal of Democracy* 5; Sunil Bastian and Robin Luckham (eds), *Can Democracy Be Designed? The Politics of Institutional Choice in Conflict-Torn Societies* (Bloomsbury Publishing, 2003); Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (W.W. Norton, 2003); John Harriss, Kristian Stokke and Olle Törnquist (eds), *Politicising Democracy: The New Local Politics of Democratisation* (Palgrave Macmillan, 2004); Edward Newman and Roland Rich (eds), *The UN Role in Promoting Democracy: Between Ideals and Reality* (United Nations University Press, 2004); Nicolas Guilhot, *The Democracy Makers: Human Rights and the Politics of Global Order* (Columbia University Press, 2005); Jeroen de Zeeuw, 'Projects Do Not Create Institutions: The Record of Democracy Assistance in Post-Conflict Societies' (2005) 12(4) *Democratization* 481; Thomas Carothers, 'The Backlash Against Democracy Promotion' (2006) 85(2) *Foreign Affairs* 55; Hilary Charlesworth, 'Building Democracy and Justice after Conflict' (Academy of the Social Sciences in Australia, 2007); Aurel Croissant, 'The Perils and Promises of Democratization through United Nations Transitional Authority - Lessons from Cambodia and East Timor' (2008) 15(3) *Democratization* 649; Nehal Bhuta, 'Democratisation, State-Building and Politics as Technology' in Brett Bowden, Hilary Charlesworth and Jeremy Farrall (eds), *The Role of International Law in Rebuilding Societies After Conflict* (Cambridge University Press, 2009); Thomas Carothers, 'Democracy Assistance: Political vs. Developmental?' (2009) 20(1) *Journal of Democracy* 5; Steven Levitsky and Lucan Way, *Competitive Authoritarianism: Hybrid Regimes After the Cold War* (Cambridge University Press, 2010); Jaap De Wilde, 'The Mirage of Global Democracy' (2011) 19(1) *European Review* 5; William Maley, 'Democracy and Legitimation: Challenges in the Reconstitution of Political Processes in Afghanistan' in Brett Bowden, Hilary Charlesworth and Jeremy Farrall (eds), *The Role of International Law in Rebuilding Societies After Conflict* (Cambridge University Press, 2009); Thomas Carothers and Diane De Gramont, *Development Aid Confronts Politics: The Almost Revolution*

No society in which the international community seeks to intervene is a t*abula rasa* in political terms. Systems of decision making, justice, dispute resolution, participation and representation are all in existence in some form prior to international involvement. Pre-existing systems often have cosmological, religious or communitarian dimensions beyond the superficial political domain.[15] Future democratisation efforts could account for the possibility that those tools may exist within the recipient cultures. This thesis proposes that greater success could be achieved by the introduction of deliberative techniques to complement traditional forms of peacebuilding, combined with a more comprehensive understanding and use of pre-existing socio-political forms of representation and consultation.

Existing measures (or indicators) of democratic performance are also limited, in that they continue to assess the quality of democracy at an institutional level and are overwhelmingly quantitative in their outcomes, rather than providing a qualitative assessment of participation in decision-making, especially amongst minorities and others typically shut out of such processes. While the measurement and evaluation of any form of development is notoriously difficult, none more so than the assessment of governance programs, better indicators are needed to assess levels of citizen engagement in decision making. Those will be discussed both Chapters 1 and 2.

(Carnegie Endowment for International Peace, 2013); Bekim Sejdiu and Murat Önsoy, 'Unveiling the Unknown Face: The Role of the United Nations in Promoting Democracy' (2014) 19(2) *Perceptions* 33; Amitai Etzioni, 'The Democratisation Mirage' (2015) 57(4) *Survival* 139; Lee Morgenbesser, *Behind the Façade: Elections Under Authoritarianism in Southeast Asia* (State University of New York Press, 2016); Lee Morgenbesser and Thomas B Pepinsky, 'Elections as Causes of Democratization: Southeast Asia in Comparative Perspective' (2019) 52(1) *Comparative Political Studies* 3.

[15] Boege et al (n 10); John Braithwaite, 'Deliberative Republican Hybridity Through Restorative Justice' (2015) 59(3) *Raisons Politiques* 33; Caroline Hughes, Joakim Öjendal and Isabell Schierenbeck, 'The Struggle Versus the Song - The Local Turn in Peacebuilding: An Introduction' (2015) 36(5) *Third World Quarterly* 817; Hanna Leonardsson and Gustav Rudd, 'The "Local Turn" in Peacebuilding: A Literature Review of Effective and Emancipatory Local Peacebuilding' (2015) 36(5) *Third World Quarterly* 825; Joakim Öjendal and Sivhouch Ou, 'The "Local Turn" Saving Liberal Peacebuilding? Unpacking Virtual Peace in Cambodia' (2015) 36(5) *Third World Quarterly* 929; Thania Paffenholz, 'Unpacking the Local Turn in Peacebuilding: A Critical Assessment Towards an Agenda for Future Research' (2015) 36(5) *Third World Quarterly* 857; Elisa Randazzo, 'The Paradoxes Of the "Everyday": Scrutinising the Local Turn in Peace Building' (2016) 37(8) *Third World Quarterly* 1351; Elisa Randazzo, *Beyond Liberal Peacebuilding: A Critical Exploration of the Local Turn* (Routledge, 2017); Dahlia Simangan, 'A Detour in the Local Turn: Roadblocks in Timor-Leste's Post-Conflict Peacebuilding' (2017) 5(2) *Asian Journal of Peacebuilding* 195; Joanne Wallis, 'Is "Good Enough" Peacebuilding Good Enough? The Potential and Pitfalls of the Local Turn in Peacebuilding in Timor-Leste' (2017) 30(2) *The Pacific Review* 251; Martin Ola Lundqvist and Joakim Öjendal, 'Atomised and Subordinated? Unpacking the Role of International Involvement in "The Local Turn" of Peacebuilding in Nepal and Cambodia' (2018) 13(2) *Journal of Peacebuilding & Development* 16; Christelle Rigual, 'Rethinking the Ontology of Peacebuilding. Gender, Spaces and the Limits of the Local Turn' (2018) 6(2) *Peacebuilding* 144.

3. The Model

This thesis seeks to advance the theory and practice of peacebuilding by proposing a model of post-conflict democratisation which places local people at the centre of its activity. It does this by introducing the use of deliberative and other innovative methods to complement more conventional quantifiable or aggregative forms of democratic engagement. Those earlier methods principally involve the organisation of political parties and the counting of ballots within an adversarial and competitive political system.

The thesis thus constructs an original model designed to advance and improve the practice of democratisation, which it asserts has stalled. The model comprises four basic elements. Those elements are: the recognition of deliberative legacies; the presence of deliberative processes in addition to aggregative democracy in a given political system; the capacity or "reach" of deliberation in a political system and; the quality of any deliberation in a political system. These elements were chosen for the following reasons: a preference for the revival (or reuse) of pre-existing structures native to country situations; based on the experience of the writer in delivering democracy-related programs in developing country situations and; as means by which to supplement electoral democracy with deliberative techniques.

4. Objectives

The project has three objectives:

1. To contribute to the existing literature on post-conflict peacebuilding by presenting a form of deliberative democratisation, according to which the ultimate goal of domestic and international democracy promotion should be to produce forms of democracy which incorporate deliberative elements;
2. To develop a model of deliberative democratisation to apply within peacebuilding and to develop a set of deliberative tools to use in a productive coexistence with peacebuilding, and
3. To create more sustainable and representative forms of democratic governance in the national contexts where post-conflict peacebuilding takes place, through the introduction of deliberative methods.

5. Research Questions

In order to guide the central argument, the research is structured around three central research questions, asking:

1. Has the pursuit of democratisation in Cambodia, Timor-Leste and Nepal promoted the emergence of deliberative norms and institutions? If so, to what extent has it done this? The answer ultimately given is that there have been highly variable degrees of success in this regard.

2. Could a deliberative approach to democratisation in these cases have promoted the emergence of democratic norms and institutions? If so, in what ways?

3. Relatedly, could a deliberative approach better account for success, rather than failure, in democratisation than a purely electoral (aggregative) approach? The thesis argues that it could, and puts forward a series of deliberative elements and indicators of deliberative capacity that could be built into a development framework for application to other national contexts.

6. Chapter Outline

The introduction has provided some initial background on the crisis in Western democracy and the consequent crisis in democratisation. It sought to introduce the case study sites and their role in the argument that democratisation in these contexts missed important opportunities to build on pre-existing systems and building a solid deliberative foundation for future democracy. This harmed rather than furthered the cause of democratic development in those countries. The introduction also introduced the argument that what little deliberative initiatives were used in Nepal had a multiplier effect on the democratisation initiative in that country, particularly in engendering a sense of ownership of the post-insurgency Constitution. The introduction also sought to make clear the theoretical underpinnings, and potential pitfalls, of this work and the way deliberative democracy could provide a way forward in the theory and practice of multilateral democratisation. Finally, the introduction made clear the central argument and research questions.

6.1. Chapter 1

Chapter 1 looks at the theoretical antecedents of a possible deliberative approach to democratisation. It draws on the theory and practice of international development and deliberative democracy to underpin a more empowered approach to democratisation, and discuss how democratisation may be reimagined. The chapter does not seek to be exhaustive or definitive on the possible influences of a deliberative approach to democratisation. It seeks to offer ideas for consideration.

6.2 Chapter 2

Chapter 2 lays out the foundations of a deliberative approach to democratisation, providing a model of democratisation based on four deliberative indicators. These indicators are not final or definitive, but provide a foundation to be further developed going forward. The model seeks to advance and improve the practice of democratisation, as described above.

The model has two functions, firstly to analyse and take lessons from the three case studies used in the thesis and secondly to serve as a deliberative framework around which future peace building initiatives can be planned and implemented. The case studies also serve to demonstrate the possible efficacy of the model, in that their presence or absence tells us much about the success (or otherwise) of the overall initiative.

As with Chapter 1, Chapter 2 does not seek to be exhaustive or definitive in its application of deliberative principles. While it attempts to elaborate certain elements of the complex world of deliberative democracy relevant to the argument, this work does not claim to be a precise thesis on deliberative democracy. It is firmly rooted in peacebuilding, international relations, international law and the study of development. It merely seeks to explore the enormous potential for the use of deliberation in the context of democratisation.

6.3. Chapter 3

Given the notable paucity of literature in the area, Chapter 3 provides essential historical background on the theory and practice of democratisation, with a critical focus on a selection of important milestones in its development. The chapter provides context for a thesis which

seeks to change and progress democratisation as it currently stands. It will consider how democratisation has evolved since the end of World War I, moving from decolonisation to self-determination and on to technical democratisation, concluding with a study of the pervasive (but loaded) concept of good governance. More recently the theory and practice of democratisation has begun to embrace some of the rhetoric of participation.

The Chapter argues that despite the change in language, democratisers have yet to fully utilise the ideas and practices of deliberative democracy, despite considerable uptake of these ideas within governments around the world. It seeks to fill a void in the literature and provide context to the problem (and proposed solution) put forward in the thesis. The chapter concludes with an important summary of the current "state of play" in democratisation, including a discussion of the influential role of indicators in dictating how democratisation is now defined and conducted.

6.4. Chapters 4, 5 and 6

Chapters 4, 5 and 6 examine certain aspects of the international democratisation effort in Cambodia, Timor-Leste and Nepal. They provide an analysis of elements of the planning and implementation of those missions, and the circumstances in which elements of the deliberative model of democratisation could have added value to the process. In doing so, these studies make the observation that opportunities were overlooked to utilise existing structures which could have built a greater degree of deliberative capacity into the political system. This could have built on gains made during international involvement and provided a foundation for an expansion of democracy once the international community departed. The chapters are not intended to engage deeply in the well traversed debates around the extensive corruption, resource exploitation and subversion of the rule of law in these countries.

The three cases offer valuable lessons for understanding what constitutes effective democratisation in post-conflict contexts. They also exist on a spectrum, with highly authoritarian and increasingly isolated Cambodia at one extreme, and Timor-Leste and Nepal close to each other, both prone to periodical political crisis but at least still retaining the vestiges of democratic governance. Whether or not this turns out to be a "spectrum of failure" remains to be seen.

6.5. Chapter 7

Chapter 7 draws on the case studies to compare and contrast how each element of deliberative democratisation was advanced or neglected, thus strengthening or weakening efforts to generate sustainable democratisation. By panning out from the detailed analysis in the three case study chapters and placing the four elements front and centre, the chapter identifies critical insights for future efforts towards sustainable, deliberative democratisation. Finally, the chapter offers a linked series of recommendations, based on the model presented in Chapter 3, grounded in the analysis of the three case studies. It is hoped that these recommendations will provide guidance to democratisers going forward.

CHAPTER ONE: INSIGHTS FROM INTERNATIONAL DEVELOPMENT AND DELIBERATIVE DEMOCRACY

Introduction

There have been very few, if any, attempts to provide an outline of the history of participation and deliberation in the historical development of democratisation. Perhaps for this reason there is a shortage of literature in the area. This chapter draws on the theory and practice of international development and deliberative democracy to inform a more empowered approach to democratisation, and to discuss how democratisation may be reimagined.

The discussion is placed within a multidisciplinary context. As a consequence, this chapter looks at a broad range of possible antecedents which form a theoretical foundation to deliberative democratisation including: capacity building; participation; theories of complexity; the systemic turn in deliberation; responsive democratisation; the concept of local ownership; the deepening democracy debate and; the concept of hybrid peacebuilding. None have been perfect in their conception or implementation. All have met with varying degrees of success. However, the approaches discussed do reveal an evolutionary move away from a postcolonial model of intervention (imposition) to a more progressive model of participation and consultation.

1. Insights from International Development

1.1. Democracy

This thesis is guided by a definition of democracy seen through a peacebuilding lens, which is broader than a set of civic institutions or the physical act of casting a vote, and assumes certain positions in relation to democracy and its development. It is guided by a definition of democracy influenced by an integrated model of peacebuilding, in which the various components of a mission work together to achieve an overarching goal. That definition is wider in scope than the political institutions and behaviours which are said to comprise it. It includes human rights, rule of law concepts, self-government and self-determination, and

takes the view that democracy is fundamentally a project of human emancipation.[16] It is therefore optimistic about the prospects for both democracy itself, and democratisation as a way to bring it to people who have not experienced its benefits. The study is not an enquiry into, or summary of, the heavily contested definitional debates around the characteristics or components of a democracy, or for that matter forms of deliberation and deliberative democracy. Nor is it an assessment of the quality of democracy in the chosen case studies, other than to demonstrate some of the successes or shortcomings of Western-led democratisation in those states.

1.2. Post Conflict Democratisation

The term post-conflict democratisation is used throughout the thesis and refers to a historical movement which sought to promote the installation of a particular political system into the developing world, based largely on a model developed over centuries in Europe, combined with market structures perfected in the United States.[17] This system can be best described as *democratic capitalism* and the project of its dissemination in a post-war re-development context as *post-conflict democratisation*. To varying degrees this has occurred in the three case studies analysed later in this thesis.

In the late 1980s the global geopolitical order moved away from the bipolarity of the previous 40 years of the Cold War. In rapid succession the world witnessed the disintegration of the Soviet Union, the reunification of Germany and in China, the post-Tiananmen emergence of the "one country two systems" policy. Democratic reforms and economic expansion took place in South Africa, Zimbabwe, Taiwan, South Korea, Vietnam, Cambodia, The Philippines, Indonesia, Peru, Chile, Argentina and Brazil to name a few.[18]

Democratisation is now seen as an integral component of broader peacebuilding initiatives, falling within the statebuilding and governance efforts undertaken by a variety of international actors led by the United Nations Development Program (UNDP). As noted above, democratisation is also performed by national development agencies and international Non Government Organisations (NGOs), the number of which has exploded in the post-Cold

[16] Susan Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (Oxford University Press, 1st edn, 2000) 2–3.
[17] Francis Fukuyama, *The End of History and the Last Man* (Avon Books, 1993).
[18] Samuel P Huntington, 'Democracy's Third Wave' (1991) 2(2) *Journal of Democracy* 12.

War period. Specialist and quasi-government agencies now include the International Foundation for Electoral Systems (IFES) and the International Institute for Democracy and Electoral Assistance (IDEA), George Soros' Open Society Foundation, the British Westminster Foundation for Democracy and the US National Endowment for Democracy and Carnegie Endowment, the ACE Electoral Knowledge Network and a plethora of European Union funded observation and electoral support initiatives.

One of the problems with the approach taken is that it is simply not succeeding in entrenching democratic governance, however broadly defined. Amongst other side-effects, democratisation has produced a phenomenon in which corrupt authoritarian elites use the external cloak of electoral competition to obtain international patronage (usually in the form of money) and to lend legitimacy to their otherwise illegitimate regimes - which in many cases have never been popularly elected by a majority of citizens.[19]

Criticism has also emerged that democratisation has become supply rather than demand driven, in that it has evolved into a virtual "industry" with the UN at its hub and an army of NGOs, logistics and service providers profiting out of its continuation.[20] One view is that this "industry" is populated by a privileged group of technocrats not necessarily dedicated to civic commitment or political emancipation, but to technical specialisation.[21] More concerning is the view that democratisation redirects the power of protest, human rights and grass-roots social movements into the promotion of Western style political participation, the rule of law and "good governance" (more on that later) using the language of elites circulating through international organisations.[22] Charlesworth has described a roving "cadre of State-building experts who move on to new conflict situations" leaving behind an economy distorted by high expatriate salaries.[23]

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[19] Gills, Rocamora and Wilson (n 14); Zakaria (n 14); Morgenbesser, *Behind the Façade: Elections Under Authoritarianism in Southeast Asia* (n 14); Morgenbesser, 'The Failure of Democratisation By Elections in Cambodia' (n 5); Maria J Debre and Lee Morgenbesser, 'Out of the Shadows: Autocratic Regimes, Election Observation and Legitimation' (2017) 23(3) *Contemporary Politics* 328; Levitsky and Way (n 14); Carothers, 'The Backlash Against Democracy Promotion' (n 14); Bill Cooke and Uma Kothari, *Participation : The New Tyranny?* (Zed Books, 2001).
[20] Guilhot (n 14) 3; Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (n 13) 184.
[21] Guilhot (n 14) 3.
[22] Ibid 4.
[23] Hilary Charlesworth, 'Democracy and International Law' in *Collected Courses of the Hague Academy of International Law* (Martinus Nijhoff, 2015) 136.

While post-conflict democratisation has been chiefly articulated through the use of periodic elections, often in countries with no experience in that form of political expression, it is important to recognise the limitations of electoral processes.[24] On a standalone basis elections will not in themselves create a democratic landscape, nor will they automatically engender a sense of shared civic commitment.[25] They will not necessarily create a unified political sphere, nor will they serve to reinforce the quality or sustainability of political institutions. In many post conflict situations these are seen as the prizes of the victors.[26] In the context of post-conflict statebuilding it is also clear that elections, especially if held too early, can in their aftermath actually increase the possibility for division.[27] As a consequence, the timing of elections is as important as their mere existence. "Front-ending" of elections by placing them first in a peacebuilding process, and exaggerated optimism regarding their effects has been a persistent problem in democratisation since its inception.[28]

Elections should also be seen as but one moment in a multifaceted process of political realignment to enable peaceful transfers of power.[29] Democratisation must be more sophisticated than just the simple holding of an election, in that it requires an understanding of a set of norms and understandings that confer not just an electoral victory but a degree of legitimacy on the victors.[30] Elections must be placed within a broader peace building process in order to contribute to that legitimacy.[31] Legitimacy itself also needs to be understood as a matrix of forms of recognition which are as much sociocultural as they are political, legal or economic. Democratisation is not only a political process but a broad sociocultural realignment, one aspect of a process dedicated to engagement by as many citizens as possible.

This thesis takes as its starting point the belief that democratisation can be a force for good in the context of post-conflict peacebuilding. This normative stance is guided by the writer's 20 years of experience in post-conflict peace building with a focus on democratic governance. It does not proceed on the assumption that any form of democratisation is a neo-colonialist

[24] Interview with Andres del Castillo Sanchez, UNDP (Michael Morison, Dili, 26 July 2017).
[25] Maley (n 14) 124; Interview with Andres del Castillo Sanchez, UNDP (n 24).
[26] Maley (n 14) 124.
[27] Ibid.
[28] Ibid 125.
[29] Ibid.
[30] Ibid 132.
[31] Ibid 133.

imposition to be expunged from development practice altogether. Rather, it is guided by a belief that given the right theoretical and practical underpinnings, democratisation can promote greater levels of political engagement for a greater number of people, and therefore increase quality of life. If democracy is about self-rule, self-determination and human emancipation, then that should be available to those who want it.

1.3. Democratisation and Good Governance

Democratic governance programs began appearing in aid and development frameworks in the 1990s, as an amalgam of traditional democracy and the more contemporary concept of "governance". Initially, governance programs included efforts broader in scope than simple electoral assistance, such as the promotion of human rights, the rule of law, transitional justice, equity, gender equality and political participation.[32] Most Western countries, including Australia, now maintain well-funded and comprehensive bilateral democratic governance programs. Multilaterally however, it is the UN (through UNDP) which takes the lead role in global democratisation. UNDP's 2021 budget for Sustainable Development Goal (SDG) 16 (*Peace, Justice and Strong Institutions*), which takes in democratic governance is $1,435.49 million, 36% of its overall budget, making the organisation the chief global agent for the promotion of democratic governance.[33] As noted above, it is for this reason that this thesis will focus predominantly on UN-led democratisation initiatives in the chosen case study sites of Cambodia, Timor-Leste and Nepal.

Within practice of peacebuilding the concept of "good governance" usually consists of development assistance aimed at improving the operation of representative democratic structures. The logic of good governance programs is to strengthen the capacity and institutions of the state. This can include broad approaches to resource reorientation, the training and quality control of civil servants, improving transparency and a focus on domestic corruption and state performance in international organisations.[34] In the 21st Century

[32] Vincent Chetail, *Post-Conflict Peacebuilding: A Lexicon* (Oxford University Press, 2009) 104.
[33] 'Peace, Justice, And Strong Institutions', *United Nations Development Programme Transparency Portal* (Web Page, 2021) <https://open.undp.org/sdg/16/Peace,%20justice,%20and%20strong%20institutions>; *United Nations Development Programme Annual Report 2020* (No Annual Report, United Nations Development Programme, 2020) 25.
[34] Shaun Goldfinch, Karl DeRouen and Paulina Pospieszna, 'Flying Blind? Evidence For Good Governance Public Management Reform Agendas, Implementation And Outcomes In Low Income Countries' (2013) 33(1) *Public Administration and Development* 50, 52.

contemporary governance programs can include conflict prevention, political party support, institution building and anti-corruption initiatives grouped under the general thematic of peacebuilding. As noted above, peacebuilding (and democratisation within it) is now a multi-billion dollar global initiative led by a range of donor countries.

More recently, scholars from the Global South have exposed the fact that the many rhetorics of good governance carry with them the baggage of post-colonialism. The mere term implies judgement of the target society as prone to "bad governance", needing rectification through the benevolent guiding hand of a Western intervenor.[35] The good governance agenda has been particularly criticised by a now established body of theorists and practitioners who have emerged from the Global South, centred around the Third World Approaches to International Law (TWAIL) movement.[36]

1.4. Responsive Democratisation

Responsive democratisation recognises that democracy, a model developed through a unique set of circumstances in the West, will not necessarily adapt itself well to a sudden change of context. The approach therefore seeks to incorporate input from as many relevant stakeholders as possible in the resolution of peacebuilding problems, such as community organisations, civil society and religious organisations, academic institutions and international organisations.[37] Operating within frameworks of compliance and designed in the context of business regulation, John Braithwaite's responsive regulation model has subsequently been adapted into development and peacebuilding contexts, including democratisation.[38] Braithwaite advocates for a networked or systematic approach to democratisation in post-conflict environments as a means by which to counter the clash between Western power-based systems and more communitarian traditions in the developing world. Reconstruction in this context takes place as an activity in which the fabric of society

[35] Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge University Press, 2003) 172.
[36] Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, 2005) 247; Rajagopal (n 35) 269.
[37] John Braithwaite, 'Responsive Regulation and Developing Economies' (2006) 34(5) *World Development* 884, 892.
[38] Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, 1992).

is gradually mended (or woven) using a combination of external assistance working in concert with pre-existing systems of traditional justice and political resolution.[39]

Braithwaite has further advocated for the benefits of village level democracy in the form of the Indian *panchayats,* and certain community empowerment programs being rolled out by the World Bank across the world, originating in Indonesia and which were once trialled in the context of Timor-Leste.[40] In what he calls a "local deliberative democracy of restorative justice", working examples are given of hybrid models of local level administration and justice in Pakistan, Afghanistan and other parts of South Asia.[41] While not optimistic about access by ordinary people to the legislative arms of government, Braithwaite sees opportunities for a degree of democratic engagement with the judicial branch, particularly where it operates in a restorative context.[42] In the final instance he advocates for a systemic and ongoing contestatory dialogue between different forms of justice, both traditional and innovative. What he calls a "deliberative-representative-contestatory hybridity" is a means to overcome domination and to safeguard freedom in a restorative justice context. [43] Such an approach can have a particular benefit in the context of a post conflict situation where the state has limited resources and reach. The challenge is to bring all of the elements together in a way that can be beneficial.[44]

Susan Marks has also sought to dissect methods of democratisation.[45] Across several works she has sought to reveal some of the hidden agendas behind it, highlighting the rift between its broad emancipatory goals and its status as a detailed development strategy masking the export of an ideology which is not necessarily democratic.[46] If that is the case, then Western-led democratisation needs to evolve into a model that can be emulated successfully and legitimately in the developing world. Democracy can be seen as liberal, open and facilitating

[39] John Braithwaite, 'Conclusion: Hope and Humility for Weavers with International Law' in Brett Bowden, Hilary Charlesworth and Jeremy Farrall (eds), *The Role of International Law in Rebuilding Societies after Conflict: Great Expectations* (Cambridge University Press, 2009) 286.
[40] Braithwaite, 'Deliberative Republican Hybridity Through Restorative Justice' (n 15) 38–9.
[41] Ibid 40.
[42] Ibid 42.
[43] Ibid 48.
[44] Joanne Wallis et al (eds), *Hybridity on the Ground in Peacebuilding and Development: Critical Conversations* (Australian National University Press, 2018) 80.
[45] Marks (n 16) 45.
[46] Ibid 46; Susan Marks, 'What Has Become of the Emerging Right to Democratic Governance?' (2011) 22(2) *European Journal of International Law* 517.

a transfer of power without bloodshed.[47] Put another way, it should be capable of promoting democratic representation in all societies, irrespective of economic or ideological traditions. In other words a responsive democracy.

Jodi Dean has questioned the way the language, theory and practice of democratic capitalism tends to reinforce itself as the only mode of political action in what is (in reality) a much broader field of ideological and political positions which can be taken up by the ordinary person.[48] The overwhelming dominance of democratic capitalism therefore renders electoral politics futile in a situation where the possibilities for inclusion and participation are captured by information, entertainment and communication technologies. [49] These technologies themselves tend to colonise and co-opt resistance, leading to the persistent reproduction and perpetuation of global capitalism. Seen through this lens, the West is simply "selling" a neo-feudal version of democracy where populations are disempowered by corporations, private interest groups and a general trend towards political passivity and consumption. Under these circumstances it is not possible to bring about change in the West within the existing language and practice of democracy. Democratisation is thus implanting a system which will only enforce the same inequalities which are present in the West.[50] The answer therefore is that the goal of genuine liberation is not to be found in Western democracy itself - both a new language and a new discourse are needed. To Dean that alternative may not be deliberative democracy, which she critiques for its inability to provide a viable political alternative due to the fact that it works within existing neoliberal political arrangements and therefore does not adequately address the inequality and violence of democratic capitalism.[51] This thesis sees this problem as a challenge, but not fatal to an overarching discreet goal to deploy aspects of deliberative democracy in a peacebuilding context.

1.5. Deliberative Democracy and the Comparative Study of Democratisation

One theoretical and practical goal of deliberative democrats in the West has been towards greater levels of citizen engagement in decision making, either within the limitations of the party political system or by going beyond it. The theory and practice of international

[47] Karl R Popper, *The Open Society and Its Enemies* (Princeton University Press, 5th edn, 1971) 165.
[48] Jodi Dean, *Democracy and Other Neoliberal Fantasies: Communicative Capitalism and Left Politics* (Duke University Press, 2009).
[49] Ibid 2.
[50] Ibid 9.
[51] Ibid 92.

development has charted a similar course in attempting to build greater degrees of participation into project planning and implementation. The next step is to examine how deliberation can be productively brought into the theory and practice of democratic transition and consolidation.

Early deliberative interventions into democratisation had an institutional focus on entry points such as electoral systems, shared with conventional forms of democratisation.[52] Recent enquiry has taken a more systemic approach by looking at how deliberation can be built in to the whole process of democratisation.[53] Proponents argue that building deliberation into a political system can increase regime legitimacy by involving affected parties in the decision making process, such as the national front-end consultation used in the Nepalese constitutional drafting process discussed in Chapter 6.[54] A further pioneering step is to introduce the theory and practice of deliberation into the practice of peacebuilding and democratisation.

Firstly, deliberative democratisation seeks to marry democratisation, deliberative theory and its practical applications into the context of international peacebuilding. Deliberative techniques could be used at many stages of the peacebuilding process: i) at the outset to set priorities and outcomes; ii) in modelling the type of system of consultation or representation a population might determine to be most appropriate for their needs; iii) to determine whether there are existing aspects of a system to be promoted, retained or fused with any new forms to be introduced; iv) in determining budgeting for any initiatives or; v) to provide communities with input into in the type and makeup of any representative bodies to be established. The possibility that a population may decide to do nothing (in other words make no changes whatsoever) also needs to be considered and respected.

Secondly, the limited scope of technical democratisation to aggregative democracy has affected its success, suggesting that the definition of what constitutes a democratic transition (and perhaps a democracy) needs to be expanded. Deliberative democratisation sees politico-legal change as only one prerequisite for altering the status-quo. Involving and empowering a

[52] Jürg Steiner and Nicole Curato, 'Deliberative Democracy and Comparative Democratization Studies' in André Bächtiger et al (eds), *The Oxford Handbook of Deliberative Democracy* (Oxford University Press, 1st edn, 2018) 2.
[53] Ibid.
[54] Ibid 3.

greater number of citizens in a given system requires a broadening of social and cultural perspectives, with a particular focus on a deeper understanding of the extreme ends of the spectrum, at both the elite and grassroots levels of a country context.[55] It follows that this also requires a broader approach to the definition of democracy itself, one that takes account of "deliberative capacity" or the degree of "reasoned, inclusive and consequential discussion" that occurs in a system between equals.[56] This serves to de-emphasise the role of elections, which have been shown to be a superficial indicator of democratic quality.[57] Deliberative democratisation would therefore seek to move the assessment of transitions and the evaluation of democratic quality beyond a simple study of the transfer of power, to an assessment of legitimacy and inclusion summarised as "free deliberation amongst equals".[58] Any such assessment should employ the "systemic" approach which has become central to deliberative discourse, in which the sites of deliberation in a given system are mapped to identify both their locations - and the linkages between them. This systemic approach will be further discussed in sections of the thesis on the contribution deliberation might make to democratisation.

1.6. Hybridity

The hybrid political orders model proposed by Boege and others recognises the error in presupposing that a post-conflict state is lacking in structure because its institutions are not replicas of Western equivalents.[59] A belief that institutions and political practices can be delivered and installed into Third World states like "products", illustrates a clear lack of understanding of local contexts. Pre-existing "customary non-state institutions" will always tend to persist despite the imposition of external structures. Supported by local assistance, the hybrid model allows for the blending of customary institutions and practices rooted in local communities with introduced political and regulatory elements.[60]

Boege has observed that the rapid introduction of liberal governance norms and structures in Timor-Leste has led to a perception that democracy is simply ongoing competition amongst

[55] Ian O'Flynn and Nicole Curato, 'Deliberative Democratization: A Framework for Systematic Analysis' (2015) 36(3) *Policy Studies* 298, 299.
[56] Ibid.
[57] Ibid.
[58] Ibid 300–301.
[59] Boege et al (n 10) 60.
[60] Ibid 610.

elite groups for power and resources. While intuitively appealing, replicating the same form of competition at the local level may only aggravate this problem, in that it is alien to traditional local conciliation.[61] Critiques have suggested that the hybrid political orders model may simply reinforce binaries that are the cause of state-level division in the first place.[62]

Additionally, using Timor-Leste as an example, Melissa Johnstone has argued that explaining problematic outcomes in post-conflict peace building by invoking a dysfunctional hybrid between "liberal" interveners and "non-liberal" locals is inadequate.[63] It overlooks the powerful forces of gender, class and resource allocation at play in such situations. In this analysis, she observes that "an elite class coalition has a reason to dominate the post conflict East Timorese state, relying on a highly gendered allocation of the country's petroleum fund resources".[64] She argues that access to resources has allowed a patriarchal elite to perpetuate its position as an historically entrenched, socio-politically dominant group.[65]

1.7. Local Ownership and Peacebuilding

The specific goals of participatory democracy are part of a broader ongoing debate around the creation of conditions in which citizens are able to participate in decision making "beyond the ballot box". This means a form of empowerment that involves actual participation in national decision-making rather than just periodic involvement in an isolated electoral process. [66] The debate is itself part of an overall discussion around the concept of local ownership in development initiatives, in which recipients are involved in every phase of the development process, from needs assessment through to monitoring and evaluation.

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[61] Boege, (2009), p. 607-8, Scott, M., Hybridity, vacuity, and blockage: visions of chaos from anthropological theory, island Melanesia, and central Africa. *Comparative studies in society and history,* 2005, 47 (1). pp. 190-216. Dinnen, S., and Kent, L., *Hybridity in Peacebuilding and Development: A Critical Interrogation*, In Brief 2015/50, State Society and Governance in Melanesia Program (SSGM), Australian National University, 2015.
[62] Wallis et al (n 44) 5.
[63] Melissa Frances Johnstone, 'Beyond Hybridity: A Feminist Political Economy of Timor-Leste's Problematic Post-Conflict Peacebuilding' (Conference Paper, International Studies Association Annual Convention, 22-25 February 2017); Melissa Johnstone, 'The Political Economy of Gender Interventions: Social Forces, Kinship, Violence, and Finance in Post-Conflict Timor-Leste' (PhD Thesis, Murdoch University, 2018) 41 <https://researchrepository.murdoch.edu.au/id/eprint/41181/>.
[64] Johnstone, 'Beyond Hybridity: A Feminist Political Economy of Timor-Leste's Problematic Post-Conflict Peacebuilding' (n 63); Johnstone, *The Political Economy of Gender Interventions: Social Forces, Kinship, Violence, and Finance in Post-Conflict Timor-Leste* (n 63) 41.
[65] Johnstone, 'Beyond Hybridity: A Feminist Political Economy of Timor-Leste's Problematic Post-Conflict Peacebuilding' (n 63); Johnstone, *The Political Economy of Gender Interventions: Social Forces, Kinship, Violence, and Finance in Post-Conflict Timor-Leste* (n 63) 42.
[66] John Gaventa, *Triumph, Deficit or Contestation: Deepening the 'Deepening Democracy' Debate* (No Working Paper No 264, Institute of Development Studies, University of Sussex, 2006) 7.

Much of the theory and practice of peacebuilding has historically focused on state level issues and institutions, a phenomenon that reflects an historically elite-centred approach to development policy-making and project implementation. Towards the late 1980s academics and practitioners sought increasingly to draw their level of analysis down to the level of local populations in order to deepen their understanding of what is required to restore the connections between state institutions and the will of citizens. The goal was to increase levels of ownership of development initiatives at the very site at which they are most directly felt, that of the local villager, usually a woman working long, physically demanding days to feed her family while also caring for multiple children.

The general concept of local ownership in development began to take hold amongst major institutions in the mid-1990s. By the mid-2000s the OECD, World Bank and UNDP had begun to write the concept into their policies on technical cooperation.[67] From these origins questions immediately arose as to the authenticity, depth and degree of genuine commitment these agencies had to the practical application of this superficially attractive model.[68]

Richmond has documented how liberal peacebuilding has failed to understand the historical, political and cultural intricacies of the sites in which it has been implemented, and therefore failed to fully engage with local actors. [69] Prioritising care, emancipation and empathy, he proposes engaging with alternative, resistant and critical agencies for peace, with a view to providing an inclusive space for the most marginalised.[70] In the context of post-conflict rule of law programs, Farrall has observed how rebuilt state security apparatus such as policing, courts and correctional bodies are created as replicas of similar institutions to be found in donor countries. Unsurprisingly the design of these institutions does not always take into account specific local requirements or recognise pre-existing structures of a similar kind at the local or district level. To remedy this an essential first step is "broad consultation with the local community concerning the ideal shape and operations of rule of law institutions...where possible transitional justice bodies should encourage and build upon traditional approaches to

[67] Chetail (n 32) 174–5.
[68] Ibid 175.
[69] Oliver P Richmond, *A Post-Liberal Peace* (Routledge, 2011) 3.
[70] Ibid.

justice and accountability".[71] Historically post-conflict institutions have been shaped by foreign "specialists" drawn from international legal quarters. Where available, local expertise in the broader fields of anthropology, human rights, political affairs and constitution-building should be given input into rule of law strengthening.[72]

Grenfell has discussed how the concept of the rule of law came in the 2000's to be seen as a type of panacea to all of the ills of a post-conflict state and why the model provided by the UN in Timor-Leste was both superficial (or "thin") and therefore failed to take primacy over pre-existing customary law.[73] A strong understanding of pre-existing customary legal norms and an appropriate means by which to fuse international and local interpretations of the rule of law are required for successful state-building in this area.[74]

Jeni Whalan has shown that peace operations work best by obtaining from local actors an appropriate degree of consent consistent with their role in the system, to the extent that a peace operation is perceived as legitimate. At the most basic level then, "peace operations work by influencing the behaviour of local actors".[75] She has further argued that peacekeeping generally should be more locally accountable on the basis of a set of principles.[76] One of these principles, a local accountability mechanism such as that built into the UNTAC mission, will allow the local population to interrogate the UN on an ongoing basis as to the progress of its operation.[77] She indicates that such a mechanism must be independent of mission (including budget and reporting requirements) and must have regional representation for hearing and responding to complaints, including the use of media for dissemination of information on accountability.[78] There must be scope for local input into standards and codes and the mechanism must have support at management level in the mission.[79]

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[71] Farrall, J., 'The Future of UN Peacekeeping and the Rule of Law', *Center for International Governance and Justice Issues Paper No 1*, no. Regulatory Institutions Network (REGNET) (2007): 8.
[72] Ibid 9–10.
[73] Laura Grenfell, 'Promoting the Rule of Law in Timor-Leste' (2009) 9(2) *Conflict, Security & Development* 213, 227.
[74] Ibid 233.
[75] Jeni Whalan, *How Peace Operations Work: Power, Legitimacy, and Effectiveness* (Oxford University Press, 2013) 3.
[76] Jeni Whalan, 'Strengthening the Local Accountability of UN Peacekeeping' in Jeremy Farrall and Hilary Charlesworth (eds), *Strengthening the Rule of Law through the UN Security Council* (Routledge, 2016) 136.
[77] Ibid 142.
[78] Ibid 144.
[79] Ibid 145.

The difficulty with this proposal is that frequently there is no local government or authority with which the international community can deal to determine levels of accountability, the dimensions of the problem and issues of staff and discipline. As Bickerton has pointed out, the "logical flaw" in statebuilding is that it allows for sovereignty to be surrendered to the international community, for example through some form of transitional administration, resulting in a burial of the will of the citizenry and a feeling of imposition.[80] In such a situation peacekeepers themselves often become the sole source of semi-autonomous authority, a role which they are neither trained nor properly empowered to do. At the very least any statebuilding should be delayed until disarmament is at least partially completed and there is a degree of state security. No statebuilding should be occurring until there is sufficient security to allow for full local participation in the design of an operation.

Peou has noted that post-conflict peacebuilding is more likely to succeed if its proponents can avoid making the process overly competitive, including by attempting to artificially manufacture a competitive pluralist political landscape in advance of its natural evolution.[81] Studies done by the World Bank have also shown that the likelihood of success for peacebuilding projects increases over time as domestic security situations improve.[82]

2. Insights from Deliberative Democracy

2.1. Deliberative Democracy and Deliberative Democratisation

It is increasingly evident that in many parts of the world democracy is unwell, exhibiting symptoms ranging from collapsing faith in democratic institutions and, more recently, in its compromised state, becoming vulnerable to the opportunistic predations of populist politicians. These phenomena, when combined with pervasive social media, have contributed to perverse political outcomes such as the US election of Donald Trump and the alarming UK Brexit referendum result, both in 2016. Asia is no exception to this problem, and it appears to be getting worse, in the sense that regimes are becoming expert at benefiting from regular

[80] Christopher J Bickerton, 'State-Building: Exporting State Failure' (2009) 32 *Arena* 101.
[81] Peou, 'The Limits and Potential of Liberal Peacebuilding for Human Security' (n 8) 37.
[82] Lisa Chauvet, Paul Collier, and Marguerite Duponchel, 'What Explains Aid Project Success in Post-Conflict Situations?', 2010, 19.

"free and fair elections" while simultaneously undermining rights protections.[83] These outcomes would seem to suggest that the link between the actual will of the people and it's politically manufactured version is increasingly tenuous.[84] The landscape is further confused by the emergence of hybrids such as Singaporean "meritocratic authoritarianism" in which a non-democratic government is still able to provide good administration.[85] It is therefore clear that democracy as we have known it for most of the 20th Century is in need of revitalisation.

A prominent discourse emerging over the last 30 years, which seeks to enhance the deliberative capacity of democratic systems, is the theory and practice of deliberative democracy. Deliberative democracy is an evolving normative theory aimed at deepening the practice of democracy by encouraging the engagement of citizens with each other and with those making decisions that affect their lives.[86] It focuses less on one-off quantitative outcomes, such as electoral events, and more on the value of ongoing discussion of a particular issue, or set of issues. It seeks to allow greater levels of citizen involvement and engagement with the political process as a whole and with individual issues and decisions which take place within it. However, it not only focuses on the role of those who wish to have a say on a particular issue, but also emphasises the importance of listening and embracing alternative positions with an open mind.[87]

For some scholars the concept of public deliberation is narrowly understood as reasoned argumentation, while for others it is a broader societal process. This thesis adopts the latter understanding. A recent discussion of deliberation describes it as “mutual communication that involves weighing and reflecting on preferences, values, and interests regarding matters of common concern.”[88] Deliberative democracy seeks to pursue ideals in which people discuss political issues in an atmosphere of equal status and mutual respect in order to determine policies that affect their lives.[89]

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[83] Ronald F Inglehart and Pippa Norris, *Trump, Brexit, and the Rise of Populism: Economic Have-Nots and Cultural Backlash* (No Working Paper No RWP16-026, Harvard Kennedy School, 2016) 2; Christopher Hobson, ‘Democracy: Trap, Tragedy or Crisis?’ (2018) 16(1) *Political Studies Review* 38, 41.
[84] James S Fishkin and Jane Mansbridge, ‘Introduction’ (2017) 146(3) *Daedalus: Journal of the American Academy of Arts and Sciences* 6.
[85] Ibid 6.
[86] André Bächtiger et al (eds), ‘Deliberative Democracy: An Introduction’ in *The Oxford Handbook of Deliberative Democracy* (Oxford University Press, 2018) 1.
[87] ‘What Is Deliberative Democracy?’, *Centre for Deliberative Democracy & Global Governance* (Blog Post) <https://deldem.weblogs.anu.edu.au/2012/02/15/what-is-deliberative-democracy/>.
[88] Bächtiger et al (n 86) 2.
[89] Ibid.

The field emerged in American political science and philosophy, firstly around scholarly interpretations of the US Constitution.[90] In Australia, a connection was made between participatory democracy, the ideas of Jürgen Habermas and the impact of social movements on established institutions.[91] In the 1990's a set of deliberative principles were proposed to guide the practice of deliberative democracy: reciprocity, in which citizens try to find mutually acceptable ways of resolving moral disagreements; publicity, in which decisions should be made public on the basis that they should be reciprocal and because open government is one of the values of democracy and accountability, in which representatives should be able to give an account of their decisions and take into account the claims of constituents, including future generations.[92]

In 2004 Gutman and Thompson elaborated the essentials of deliberative democracy as requiring the justification of decisions made by both citizens and their representatives in an environment where those citizens are free, equal and acting on mutually understood terms.[93] Reasons given for decisions should be made available to all citizens, particularly those affected, and a citizen making decision should themselves provide reasons to those affected.[94] Deliberation should retain a degree of publicity, in that it is transparent in its processes and outcome, to both increase the level of understanding of those decisions and to establish when expert input is required.[95]

Scholars of deliberative democracy distinguish deliberation from debate or discussion by the fact that it can result in a decision which is binding, to whatever degree has been determined by the parties.[96] Deliberated outcomes are also dynamic in the sense that they remain open to

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[90] Antonio Floridia, 'The Origins of the Deliberative Turn' in André Bächtiger et al (eds), *The Oxford Handbook of Deliberative Democracy* (Oxford University Press, 1st edn, 2018) 4; Joseph M Bessette, 'Deliberative Democracy: The Majority Principle in Republican Government' in Robert A Goldwin and William A Schambra (eds), *How Democratic Is the Constitution?* (American Enterprise Institute for Public Policy Research, 1980); Cass R Sunstein, 'Naked Preferences and the Constitution' in Richard A Epstein (ed), *Economics of Constitutional Law: Individual Rights* (Edward Elgar Publishing, 2009) 469; Cass R Sunstein, 'Interest Groups in American Public Law' in Richard A Epstein (ed), *Economics of Constitutional Law: The Structural Constitution* (Edward Elgar Publishing, 2009) 11; Frank I Michelman, 'Foreword: Traces of Self-Government' (1986) 100(1) *Harvard Law Review* 4; Bruce A Ackerman, 'The Storrs Lectures: Discovering the Constitution' (1984) 93(6) *Yale Law Journal* 1013.
[91] Floridia (n 90) 10; John S Dryzek, *Discursive Democracy: Politics, Policy, and Political Science* (Cambridge University Press, 1995).
[92] Amy Gutmann and Dennis F Thompson, *Why Deliberative Democracy?* (Princeton University Press, 2004) 2, 8.
[93] Ibid 4.
[94] Ibid 5.
[95] Ibid 5.
[96] Ibid.

dialogue and evaluation on the basis that the circumstances in which the decision itself was made can change and can be subject to the emergence of later evidence.[97] This latter requirement also potentially adds to the legitimacy of the original decision in that deliberators can be assured that that decision can be re-evaluated at a later stage, thereby encouraging their initial agreement.[98]

A recent OECD report captures the spirit and growing energy around public deliberation and its application in an increasing number of global contexts by identifying that a "deliberative wave has been building as innovative ways of involving citizens in the policy-making side cycle have gained traction with governments and citizens across the globe".[99] It identifies five drivers contributing to the apparent "death" of democracy: economic; cultural; political; technological; and environmental.[100] Arguing that "current democratic and governance structures are failing to deliver" in a world characterised by increasing complexity and change, the report notes that:

> The current governance systems failure to address the most pressing challenges is partly down to democratic processes and institutions that are not fully fit for purpose in the 21st-century. It is not only the outcomes of the game account; the rules of the game shaped the outcomes. In many OECD countries, these rules were set in the 17th and 18th centuries while advances have been made (e.g. in terms of suffrage), and policymakers use new tools, the institutional architecture and mechanisms of current political systems have remained largely unchanged.[101]

It is in response to those drivers of change, and the stagnation evident in governance systems that were developed in another time and in another context, that deliberation and deliberative democracy have emerged, not as an alternative, but to build on the societal gains made by democratic governance to date.

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[97] Ibid 6.
[98] Ibid 7.
[99] 'Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave | En | OECD' <https://www.oecd.org/gov/innovative-citizen-participation-and-new-democratic-institutions-339306da-en.htm> ('*Innovative Citizen Participation and New Democratic Institutions*').
[100] Ibid 20.
[101] Ibid 24.

2.2. The "Systemic Turn" and a Systemic Approach to Deliberative Democratisation

The "systemic turn" in deliberative theory, articulated initially by Mansbridge in 1999 and later by Parkinson and Mansbridge in 2012, is significant to democratisation because rather than concentrating on a specific forum or component of a system of governance, such as a legislature, executive or judiciary, it views public deliberation as a societal-wide process.[102] The deliberative system concept provides a useful conceptual framework for a holistic approach to democratisation in peacebuilding. For example, in the context of Timor-Leste, Hohe has noted that local cultures should be understood as complex paradigmatic systems which have stood the test of time and which define the way people categorise the events of their lives.[103] The introduction of one single aspect from a different paradigm such as Western-style democracy, divorced from cultural ritual and spiritual life will either not be accepted or will transform the society in an unpredictable way.[104] A systemic approach to democratisation views a given country situation as a holistic entity, rather than seeking to engender deliberative ideals into one element of the system such as the legislature, executive or judiciary. A core aspect of this approach is to broaden the scope of deliberative influence beyond elections or traditional forums into a wider field of endeavour.

A systemic approach to deliberative democratisation would seek firstly to map the components, or *nodes*, of a system in order to analyse how each of those elements interacts with the other.[105] These can include elements as diverse as government, the military, political parties, religious organisations, voluntary organisations and unions.[106] The analysis can then move to how those interactions could improve the deliberative capacity of the entire system. It therefore recognises the complexity of a system and takes an approach which seeks to change the system as a whole, rather than simply component parts of it. An early contribution to the field was Dryzek's effort to place deliberation into the comparative study of democratisation, arguing for the addition of deliberative capacity to definitions of democratic

[102] Stephen Macedo (ed), *Deliberative Politics: Essays on Democracy and Disagreement* (Oxford University Press, 1999) 211; John Parkinson and Jane J Mansbridge (eds), *Deliberative Systems: Deliberative Democracy at the Large Scale* (Cambridge University Press, 2012) 2.
[103] Tanja Hohe, 'The Clash of Paradigms: International Administration and Local Political Legitimacy in East Timor' (2002) 24(3) *Contemporary Southeast Asia* 569, 586.
[104] Ibid.
[105] Parkinson and Mansbridge (n 102) 10.
[106] Ibid.

"quality".[107] He articulates a more generalised system which divides the locations in which deliberation occurs into public or empowered space, allowing it to be applied to a broader range of political landscapes than developed liberal democracies.[108] On the one hand, public space includes the media, social movements, activists and physical forums where citizens can interact and share opinions and ideals. Empowered space is more formal and institutional, including legislatures, courts and corporatist entities.[109] The approach then seeks to identify sites at which the two spaces are able to influence each other, the degree of accountability between them and the extent to which these four elements influence the content of collective decisions.[110] The framework can also allow for a mapping of the points of integration between traditional forms of democratisation and any proposed deliberative enhancements.[111]

2.3. Participation and Participatory Democratisation

One way to improve the quality of deliberation in a system is to improve levels of citizen participation in that system. Drawing from a rich tradition dealing with the place of democratic engagement in the history of political theory, participation theory sought to simultaneously democratise the state and empower ordinary citizens.[112] Early proponents of participation railed against the view amongst some political theorists in the early 1960's that ordinary citizens had little interest in direct political participation because they were unlikely to be directly affected by the consequences of political decisions.[113] Instead they argued that if the chief barrier to political participation, socio-economic differential, could be overcome by incentive and opportunity, then citizens would engage directly with issues that affected them.[114] In this formulation, authentic civic and political engagement comprises more than

[107] John S Dryzek, 'Democratization as Deliberative Capacity Building' (2009) 42(11) *Comparative Political Studies* 1379, 1379.
[108] Ibid 1385.
[109] Ibid.
[110] Ibid 1385–1386.
[111] O'Flynn and Curato (n 55) 310.
[112] Carole Pateman and L. J. Hume collection, *Participation and Democratic Theory*, Book, Whole (Cambridge [Eng.]: University Press, 1970); John Gaventa, *Power and Powerlessness: Quiescence and Rebellion in an Appalachian Valley*, Book, Whole (Urbana: University of Illinois Press, 1982); Elkin, S. & Soltan, K., ed., 'On the Idea That Participation Makes Better Citizens', in *Citizen Competence and Democratic Institutions* (Pennsylvania State University Press, 1999); Robert Alan Dahl, *After the Revolution? Authority in a Good Society.*, Book, Whole, n.d.; Robert Alan Dahl, *Polyarchy: Participation and Opposition*, Book, Whole, n.d.; Dennis F. Thompson, *The Democratic Citizen: Social Science and Democratic Theory in the Twentieth Century*, Book, Whole (London: Cambridge U.P, 1970); Kenneth A. Megill, *The New Democratic Theory*, Book, Whole (New York: Free Press, 1970).
[113] Stephen Elstub, 'Deliberative and Participatory Democracy' in André Bächtiger et al (eds), *The Oxford Handbook of Deliberative Democracy* (Oxford University Press, 2018) 3.
[114] Ibid.

simply voting in elections. Rather, it entails giving citizens at the lowest level equal decision making power in a political system.[115] Participatory democrats saw a greater degree of authenticity in these modes of politics than in traditional representative democracy, according to which decision making power is delegated upward to an elected representative every three or four years. Participatory democracy thus aims to enhance equality, personal autonomy and overall trust in networks of political institutions.[116]

The concept of participation can be manipulated to a variety of ends ranging from making an otherwise unchanged program appear participatory by the mere deployment of the word, to a genuine effort to decentralise the design and management of an initiative down to the local level. Participation made a prominent leap into the world of democratisation in the 2002 *Human Development Report*, the entirety of which was devoted to the ideal of "Deepening Democracy".[117] In particular the report examines the nexus between participation and good governance in the form of democratic politics as a set of "principles and core values that allow poor people to gain power through participation while protecting them from arbitrary, unaccountable actions in their lives by governments, multinational corporations and other forces."[118] Then Secretary General Kofi Annan declares in the report that "good governance is perhaps the single most important factor in eradicating poverty and promoting development" accompanied by a declaration from the writers that "good governance is democratic governance." [119] A 2012 UNDP report focuses exclusively on increasing levels of participation in the context of professional electoral administration, and also the 2015 "HIPPO" report focused in particular on the vital importance of women and girls in civil and political life.[120]

A genuine application of participation into peacebuilding and development would see participatory democratisation giving local populations a greater sense of ownership over externally imposed democratisation initiatives. This requires better recognition of

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[115] Ibid.
[116] Ibid 4.
[117] *Human Development Report 2002: Deepening Democracy in a Fragmented World* (Report, United Nations Development Programme, 2002) v.
[118] Ibid vi.
[119] Ibid 51.
[120] *Evaluation Of UNDP Contribution To Strengthening Electoral Systems And Processes: Participation* (Report, United Nations Development Programme, 2012) x; *Report of the High-Level Independent Panel on Peace Operations on Uniting Our Strengths for Peace: Politics, Partnership and People,* UN Doc A/70/95, S/2015/446 (17 June 2015) 23.

deliberative legacies, a greater role for ethnographic, social and place-based analysis and a stronger understanding of the power relationships at play in the recipient state.[121] Within the discipline of peacebuilding, an influential and prescient study prepared by Chopra and Hohe is based around participatory principles and argues that the most serious challenge for international interventions is at the local level. [122] This is where external agents often confront, but should embrace, a range of pre-existing politically and socially legitimate actors who bring with them the capacity to determine the success or failure of any initiative. They argue for "participatory intervention" involving longer term transitions in which local voices are heard and local communities are involved in "the evolution of their own cultural and political foundations".[123] The experience in Cambodia demonstrated that the international community was not successful in having any lasting or effective impact at the local level, partly because it attempted to create an entirely new structure rather than working with those structures already in existence.[124]

Chopra and Hohe argue that future initiatives require informed decisions as to the design of mechanisms for authentic participation in administrative bodies at the local level.[125] Such a mechanism for participation would fall into four broad categories as to how pre-existing local structures would be treated: reinvention, transformation, integration and reinforcement. Reinvention involves a completely new administration at the local level, transformation involves the gradual development of existing structures into a legitimate, formal local administration, integration involves the connection of central and local government, with the relationship potentially articulated in the Constitution along a separation of powers model, while reinforcement seeks to restore to their full capacities existing bodies and leaders, including the identification of new leaders, especially women and young people.[126]

2.4. The Porto Allegre Experiment: An Early Example Of Participatory Democracy.

Between 1989 and 2004 the Brazilian city of Porto Allegre encouraged citizens and civil society to participate directly in fiscal policy by using a deliberative process to build citizen's

[121] Jan Nederveen Pieterse, 'Participatory Democratization Reconceived' (2001) 33(5) *Futures* 407, 417.
[122] Jarat Chopra and Tanja Hohe, 'Participatory Intervention' (2004) 10(3) *Global Governance* 289, 289.
[123] Ibid.
[124] Ibid.
[125] Ibid 299.
[126] Ibid 299–303.

preferences into budgetary priorities and implementation.[127] Basic sanitation, sewerage and water, land and housing, street maintenance , education, health, transport, parks, taxation and environment needs were included.[128] It sought quantifiable improvements in citizens sense of community empowerment, local government budgetary efficiency and accountability and physical amenity in local neighbourhoods. Studies remain inconclusive on the effect on poverty and inequality.[129] Certain limitations were encountered, such as a shortage in fiscal resources, a gradual decline in commitment from local authorities and a shortfall in the ability of the program to influence income generation and distribution amongst poorer communities.[130]

The experiment remains a milestone in deliberative democracy and has given rise to similar experiments elsewhere with participatory budgeting.[131] In a variety of country contexts participatory techniques have been shown to assist in bridging the gap between macroeconomic policymakers and the citizens that are affected by them.[132] Bolivia, Nigeria, South Africa, Bulgaria, Ireland and Madagascar have had positive outcomes from participatory input into macroeconomic policy.

2.5. Empowered Participatory Governance and Associative Democracy

In the early 2000's Fung and Wright refined a framework for empowered participatory governance which sought to explore "deeper" forms of public engagement than traditional representation , in which citizens elect other citizens to speak for them.[133] Also known as empowered deliberative democracy, these processes took a "bottom-up" approach which involved broad levels of participation and deliberation, allowing ordinary people to influence decisions affecting their lives.[134] The focus was also on a hoped-for constructive engagement

[127] Adalmir Marquetti, Carlos E Schonerwald da Silva and Al Campbell, 'Participatory Economic Democracy in Action: Participatory Budgeting in Porto Alegre, 1989–2004' (2012) 44(1) *Review of Radical Political Economics* 62, 67.
[128] Ibid.
[129] Carew Boulding and Brian Wampler, 'Voice, Votes, and Resources: Evaluating the Effect of Participatory Democracy on Well-Being' (2010) 38(1) *World Development* 125, 133.
[130] Marquetti, Schonerwald da Silva and Campbell (n 127) 78–9.
[131] 'Home - Participatory Budgeting Project – Real Money, Real Power', *Participatory Budgeting Project* (Web Page) <https://www.participatorybudgeting.org/>.
[132] Derick W Brinkerhoff and Arthur A Goldsmith, 'How Citizens Participate in Macroeconomic Policy: International Experience and Implications for Poverty Reduction' (2003) 31(4) *World Development* 685, 685.
[133] Archon Fung and Erik Olin Wright, 'Deepening Democracy: Innovations in Empowered Participatory Governance' (2001) 29(1) *Politics & Society* 5, 17.
[134] Gaventa (n 66) 19.

by central government combined with a commitment to decentralisation allowing for legitimate power to be metered out to lower level entities.[135] While generally positive, there are potential downsides to the challenge that direct participatory engagement can pose to established structures and elites. Where citizens challenge the status-quo there is an increased risk of political violence and reprisal. This can be mitigated by timely action from domestic policy makers and international donors, where those agencies are themselves sympathetic to the goals sought.[136] This of course is not always the case: authoritarian governments frequently shut down entities which they perceive as a threat to their position.

While there is little to refute that direct engagement results in citizen empowerment and contributes to a strengthening of the system overall, a link between participatory governance and increased levels of accountability and responsiveness by government is not always borne out in practice.[137] A further danger is that participation could become another aid conditionality, meaning that genuine participation (and valid ways of measuring it) needs to be built into the very foundations of international development practices.[138] Nor is participation always what it seems. Rodan has observed how Southeast Asian elites in particular manage to manipulate both the forms of participation, and those who would seek to involve themselves in it, with the goal of reinforcing both power and the primacy of the capital they control.[139] Their modes of consultation look superficially participatory but in reality limit the scope for genuine contestation and tend to divide and absorb challengers into the technocratic machinery they have created.[140]

Another proposal put forward to make development more participatory is to invest heavily in civil society and grassroots organisations. Much of this approach is based on discussion in the literature on associative democracy, which seeks to strengthen the power of independent local (often voluntary) organisations as a means by which to hold governments to account, and in some versions to deliver public services.[141] Within the associative framework civil society

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[135] Ibid.
[136] John Gaventa and Gregory Barrett, 'Mapping the Outcomes of Citizen Engagement' (2012) 40(12) *World Development* 2399, 2407.
[137] Johanna Speer, 'Participatory Governance Reform: A Good Strategy for Increasing Government Responsiveness and Improving Public Services?' (2012) 40(12) *World Development* 2379, 2385.
[138] Brinkerhoff and Goldsmith (n 132) 698.
[139] Garry Rodan, *Participation without Democracy: Containing Conflict in Southeast Asia* (Cornell University Press, 2018) 6.
[140] Ibid 6–7.
[141] Frank Cunningham, *Theories of Democracy: A Critical Introduction* (Routledge, 2001) 137.

organisations also serve to promote equality and anti-discrimination, ecological interests and civic consciousness.[142] Such initiatives are frequently included in a general classification described as "democracy building", in which the enhancement of civil society organisations includes support for NGOs, civic education, independent media and the promotion of labour unions.[143]

Models of democracy built on engaging civil society have been criticised on the basis that they tend to replicate a limited view of democracy as confined to interactions between organisations or institutions, sometimes do not take into account local contexts and tend to overestimate the relationships between civil society and government.[144] The shift towards the political right amongst the governments of the Western world has also had an effect on the ability of civil society groups to function as intended, particularly in relation to assisting citizens towards a greater level of engagement in the political process.[145]

Despite these problems with associative democracy, direct engagement with the process of government has been shown to produce better outcomes in development contexts such as water, sanitation and education as well as democratic contexts such as increasing the accountability of state institutions and improving human rights frameworks.[146] In contrast to an approach in which civil society is encouraged to hold the state to account, participatory democratisation seeks to encourage citizen participation in democratic processes as a means by which to improve engagement with the state. It therefore advocates for a type of co-governance model.[147]

2.6. Pluralism and the Study of Deliberative Cultures

UN missions to date have not included any appreciable systemic understanding of pre-existing "political" systems, forms of representation or dispute resolution. Because this is clearly manifested in the structure of the missions, planning appears to be undertaken entirely by professionals from a legal, political or economic background. As previously noted,

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[142] Ibid 138–139.
[143] Gaventa (n 66) 14.
[144] Ibid 15.
[145] Fung and Wright (n 133) 5.
[146] John Gaventa and Gregory Barrett, 'Mapping the Outcomes of Citizen Engagement', *World Development* 40, no. 12 (2012): 2407.
[147] Gaventa (n 112) 15.

developing country systems into which any development initiative is proposed, including democratisation, are not a cultural, legal or political *tabula rasa*. All cultures have pre-existing systems of representation, political articulation and dispute resolution. As Jennifer Murtazashvili has shown, interveners, backed by an assumption that there appears to be little apparent central governmental capacity, often assume that states are either ungoverned, or governed poorly.[148] Her view is that this reflects a persistent and problematic top-down problem in state building, and should be replaced with a realistic understanding of how people survive in political situations with little centralised government.[149] In reality, apparent vacuums in centralised government are often filled by effective grassroots local governance structures, a phenomena which needs to be better understood by statebuilders.[150]

Deliberative theorists have explored ideas and practices of deliberation in the context of Global South development, and in pluralist perspectives in the context of "deliberative cultures".[151] One result of this is that it may allow development to better take account of indigenous modes of deliberation, particularly where they have "political" applications. If the study of deliberation is to continue in this direction it may seek to apply Western deliberative techniques into those contexts. It follows then that the usual markers of good deliberative practice may not apply in a developing country context, requiring a set of revised principles or elements. These principles can perform a twofold function: as the foundation of a framework for the study of deliberation in developing country situations and as an indicative framework by which to assess any attempts to introduce deliberative aspects into such situations. Dryzek might describe these as a measure of "democratic authenticity".[152]

Some theorists of deliberation have sought to embrace differing modes of communication and deliberation, moving beyond Habermasian "reason giving" and classical deliberative

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[148] Jennifer Murtazashvili, 'A Tired Cliché: Why We Should Stop Worrying About Ungoverned Spaces And Embrace Self-Governance' (2018) 71(2) *Journal of International Affairs* 11, 11.
[149] Ibid 12.
[150] Ibid 23.
[151] Jensen Sass and John S Dryzek, 'Deliberative Cultures' (2014) 42(1) *Political Theory* 3; Juan E Ugarriza and Didier Caluwaerts (eds), *Democratic Deliberation in Deeply Divided Societies: From Conflict to Common Ground* (Palgrave Macmillan, 2014); Patrick Heller and Vijayendra Rao (eds), *Deliberation and Development: Rethinking the Role of Voice and Collective Action in Unequal Societies* (World Bank Group, 2015); Martin Hébert, 'Indigenous Spheres of Deliberation' in André Bächtiger et al (eds), *The Oxford Handbook of Deliberative Democracy* (Oxford University Press, 1st edn, 2018); Jensen Sass, 'Deliberative Ideals Across Diverse Cultures' in André Bächtiger et al (eds), *The Oxford Handbook of Deliberative Democracy* (Oxford University Press, 2018).
[152] Dryzek, 'Democratization as Deliberative Capacity Building' (n 107) 1382.

formulations of persuasion and systematic reason-exchange.[153] Rather than coercion and disruption, deliberative action can thus embrace storytelling, humour, rhetoric and "non-persuasive" modes such as sit-ins, public shaming, civil disobedience and dissident tactics.[154] The emerging "deliberative cultures" research also seeks to demonstrate that deliberation takes place in a wide variety of cultural contexts and that Western democracies could benefit from a better understanding of those instances.[155] This analysis opens the frame of deliberative practice to include a wide variety of types of similar communicative action including rhetoric, silence, gossip, humour, ritual and storytelling. This allows for the identification and employment of deliberative practices across cultures.[156]

In Uganda James Fishkin has used (Western devised) focus groups and deliberative polls to isolate challenges faced by people in rural districts hampered by low levels of education, particularly amongst women and girls.[157] In parts of the country marred by environmental disasters, groups focused on issues relating to resettlement, land management and population pressure, producing tangible policy options ready to be implemented.[158] Participants were subsequently given an opportunity to vote on an issue after in-depth deliberative consideration, unlike the majority of citizens in Western democracies who simply enter the ballot box and cast a vote with little consideration of what is at stake.[159] The process resulted in representative and considered deliberation which accurately reflected the views of the communities.[160] The outcomes have been welcomed by local and national levels of government in Uganda, and the process has led to subsequent deliberative polls in Ghana, Senegal and Tanzania.[161] The projects have generated good response rates and abundant deliberation, proving the feasibility of consultation in an African context on policies of relevance to communities, as opposed solely to relying on leaders to speak for communities.[162]

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[153] Nicole Curato, 'A Sequential Analysis of Democratic Deliberation' (2012) 47(4) *Acta Politica* 423, 424.
[154] Ibid.
[155] Sass and Dryzek (n 151) 6.
[156] Ibid 8.
[157] James S Fishkin et al, 'Applying Deliberative Democracy in Africa: Uganda's First Deliberative Polls' (2017) 146(3) *Daedalus: Journal of the American Academy of Arts and Sciences* 140, 140.
[158] Ibid 145.
[159] Ibid.
[160] Ibid 151.
[161] Ibid.
[162] Ibid.

Curato has observed that deliberative models delivered higher levels of engagement in affected populations after the 2013 destruction of a cluster of islands in the Central Philippines by Typhoon Haiyan.[163] Drawing a contrast between authoritarian, communitarian and deliberative approaches to post-disaster recovery, Curato has shown that a deliberative model more effectively combines the involvement of both community and State in recovery, and an active committee-based system creates spaces for productive dissent within the community where outcomes could be better.[164] As Curato et al. have noted, deliberative democracy is realistic in that it has produced positive results in a variety of settings, sits well with the human tendency towards discursive interaction, has a strong appreciation of the realities of power in conventional political systems and is able to take account of a variety of different positions, therefore proving to be useful in deeply divided societies.[165]

2.7. Theories of Complexity, Democratisation and Elections

One of the first steps in improving democratisation is coming to terms with the true complexity of the situations in which it is practised. In a classic study which sought to open a debate on the possible uses of complexity theory in political science, Robert Jervis observed that country situations are not one dimensional, that cause follows effect and that one part of the system affects another.[166] Jervis never elaborated this theory into a grander narrative but, as a starting point, complexity theory could be useful as a means by which to understand how democracy might fit into the broader political, cultural and social landscape of a recipient state. For example, it is now clear that democratisation has a complex effect on all aspects of a post-conflict state. In almost every country context it has triggered some form of resistance to its application, and that resistance affects the motivations of all actors and the final outcome.[167] As a consequence, democratisation should be understood within the context of any resistance which is provoked by its implementation.[168]

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[163] Nicole Curato, 'From Authoritarian Enclave to Deliberative Space: Governance Logics in Post-Disaster Reconstruction' (2018) 42(4) *Disasters* 635, 651.
[164] Ibid 641.
[165] Nicole Curato et al, 'Twelve Key Findings in Deliberative Democracy Research' (2017) 146(3) *Daedalus: Journal of the American Academy of Arts and Sciences* 29.
[166] Robert Jervis, 'Complexity and the Analysis of Political and Social Life' (1997) 112(4) *Political Science Quarterly* 569; Robert Jervis, *System Effects : Complexity in Political and Social Life* (Princeton University Press, 1997) 10.
[167] Seva Gunitsky, 'Complexity and Theories of Change in International Politics' (2013) 5(1) *International Theory* 35, 37.
[168] Ibid.

Three elements of the theory of complex systems are relevant to democratisation: i) the production of emergent properties; ii) a tendency towards non-linear dynamics and; iii) a tendency towards coadaptation rather than evolution.[169] The first element suggests that as a complex system, the properties of democratisation cannot be inferred from the units which combine to form it. Therefore its outcomes cannot be inferred from the behaviour of those units (such as actors), whether they be foreign or domestic, involved in its application.[170] The second element, nonlinearity, suggests that small inputs can result in large outputs and vice versa, the classic example being the assassination of Archduke Ferdinand (if that can be characterised as a small input) leading to the First World War. Small elements can have unintended multiple affects which "ripple" through a system on a potentially infinite basis.[171] An alteration to any part of the system may or may not affect the whole system, for example the implementation of changes at a national level could be felt strongly at a local level. The third element, co-adaptivity, is in many ways linked to the second principle of nonlinearity. Co-adaptation suggests that actors in democratisation should not view the process as a sequence of logical steps, but a dynamic series of inputs and feedbacks by a variety of actors - who are not only affected by the system but are actively shaping it.[172] For example, the behaviour of both good and bad actors will have an ongoing dynamic effect on the outcome of any electoral process.[173]

2.8 Deliberative Democracy and Elections: Levy and Orr

In their work on the law of deliberative democracy Ron Levy and Graeme Orr have been amongst the few theorists to directly embrace the possibilities of a close relationship between deliberative democracy and elections.[174] Their approach seeks to analyse electoral law through the prism of its deliberative democratic content.[175] They outline a series of deliberative standards which are common in the literature as follows: *inclusivity* of citizens views; *cooperative* in the sense that multiple deliberators are able to work together; *open-minded* in that deliberators allow flexibility and changes of position rather than a tendency toward "groupthink"; *reflective* in the sense of an ability to consider arguments

[169] Ibid 39.
[170] Ibid.
[171] Ibid 39–40.
[172] Ibid 43.
[173] Ibid.
[174] Ron Levy and Graeme Orr, *The Law of Deliberative Democracy* (Routledge, 2016) 21.
[175] Ibid.

carefully in detail; *informed* about the issue at hand; *wholistic* in an ability to accommodate a diverse range of costs and benefits; *other-regarding* in that deliberators consider both self-interest and the interests of the community as a whole; *civil* in that any deliberation engaged in uses a civil rather than a hostile discourse, *reason-giving* in that deliberators give reasons for the making of a particular decision and *uncoerced* in that decisions are made without pressure of any kind, whether legal or political.[176]

Additionally, a commitment to both *common good* and *self-interest* (constrained by fairness) in deliberation is also seen as a standardised goal of deliberation; *transparency* (or *publicity*) *and accountability* in deliberation seeks to allow for a degree of transparency in any deliberative process to guard against possible corruption which can emerge in a closed forum, which is particularly relevant in elected representative forms of deliberation; a*uthenticity* and *sincerity* among speakers is linked to mutual respect and also can be seen to encourage good deliberation.[177]The application of these ideals can be mediated through governmental elites, sometimes following the consensus of ordinary citizens, or can be articulated through processes deliberately processes between citizens and themselves such as deliberative referendums and deliberative voting.[178]

Levy and Orr's distillation of these overlapping hallmarks across the literature have been used to guide this thesis, particularly in the development of a model of deliberative democratisation articulated in Chapter 2.

3. Conclusion

This discussion of the antecedents of deliberative democratisation has sought to occupy a space between the study of peacebuilding and development, and the comparative study of democratic transitions and deliberative democracy. It has not sought to be a generalised (or specific) discussion of the entire corpus of deliberative theory, nor has it sought to be a discussion of what constitutes a democracy or a democratisation process - a similarly large area of enquiry. It has not sought to be an in-depth analysis of the various underpinnings of the four chosen elements of deliberative democratisation outlined in more detail in the following chapter. This can be forwarded to a series of later studies.

[176] Ibid 22.
[177] Bächtiger et al (n 86) 8.
[178] Levy and Orr (n 174) 24.

It has sought to build on certain theoretical positions in international development and deliberative democracy. The fusion of these multiple areas could be described as the study of deliberative democratisation, being the actual activity of bringing greater degrees of participation, civic engagement and deliberative access to as many people as possible.[179] The next chapter will provide a sketch of what that might look like.

[179] Dryzek, 'Democratization as Deliberative Capacity Building' (n 107).

CHAPTER TWO: A MODEL OF DELIBERATIVE DEMOCRATISATION

Introduction

The previous chapter looked at some of the broad range of antecedents of deliberative democratisation. This chapter outlines the theoretical and practical framework to advance a model of democratisation that engenders participation, consultation and public deliberation. Such an 'alternative' approach should seek to recognise existing democratic and participatory practices and provide opportunities for the participation of citizens in decisions that affect them. It should allow for the acknowledgement of the value of a broader range of democratic practices and structures beyond aggregative electoral processes and promote the development of a well functioning public sphere and public deliberation in a well functioning democratic system. The approach should engender responsive governance, enduring democratic institutions and build capacity to ensure their sustainability.

As previously noted, the model comprises four basic elements. Those elements are: the recognition of deliberative legacies; the presence of deliberative processes in addition to aggregative democracy in a given political system; the capacity or "reach" of deliberation in a political system and; the quality of any deliberation in a political system. This chapter will now seek to broadly identify those elements. A clearer picture of the nature of each element will emerge in the context of the case studies and recommendations to be found later in the thesis.

1. Recognition of Deliberative Legacies

A recognition of deliberative legacies seeks to recognise the value of, and build upon, pre-existing structures or entities, be they political, constitutional, legal, social or cultural. A good example is truth-telling processes in the aftermath of conflict that build upon pre-existing traditions of grievance-airing and dispute resolution. It assumes that development sites are not a blank slate. It calls for a multidisciplinary understanding of the mission destination with the goal of achieving greater ownership by local populations. It seeks to engender more sustainable, long-term outcomes and can incorporate elements of legal pluralism, complexity, hybridity, deliberative cultures and responsive democratisation.

Where deliberative techniques complement aggregative techniques in a given democratisation process, synergies are created through the ability to draw on the inherent qualities of both techniques. This makes room for deliberative innovation in systems undergoing democratic transition, recognises the historical primacy of aggregative democracy and serves to potentially deepen democracy.

2. The Presence of Deliberative Processes in Addition to Aggregative Democracy

2.1. Deliberation, Aggregation and "Deepening Democracy"

Voting is sometimes a necessary requirement for choosing a nominated representative or resolving a dispute, and is one of the central pillars of democracy. Deliberative systems need voting procedures. In many cases a deliberative process requires a vote in the final instance to arrive at an outcome. Democracy involving the casting of ballots and the counting of votes, known as "aggregative democracy", contrasted with deliberative processes in which informed citizens discuss an issue in order to arrive at recommendations or conclusions, are far from mutually exclusive. What may be ideal is a combination of informed citizen deliberation with free and fair voting procedures applied when necessary.[180]

In the early 1980s deliberative theorists were beginning to push the boundaries of participatory democracy in new directions. Barber emphasised the value of strong democratic "talk" and Mansbridge was beginning to draw a contrast between the value of discussion and aggregative voting (and counting procedures), particularly in the ability of discussion to redress asymmetries of understanding and improve access to decision-making processes.[181] Dahl outlined the essence of participation as one where all citizens have equal opportunities to express their preferences, where voting equality exists at the decisive stage, where citizens have equal opportunity to learn about the issue at hand, have control of the issue, and where all adult citizens are included.[182]

Such a combination could also serve to accommodate transitions from the various forms of aggregative democracy seen today, many of them dysfunctional, such as competitive and electoral authoritarianism - to sustainable systems allowing for genuine deliberative citizen

[180] Bächtiger et al (n 86) 3.
[181] Floridia (n 90) 3–4.
[182] Robert A Dahl, *Democracy and Its Critics* (Yale University Press, 1989).

engagement. Combinations of the two also recognise the value of aggregative democracy and its primary place in the historical development of democratic practice, and simply recognise the enormous value of voting procedures.

Much of the discourse in this area takes place within what is known as the "deepening democracy" debate.[183] The debate is especially relevant to a development context and seeks to expand the scope of traditional representative democracy into areas which allow for a greater degree of citizen participation in government.[184] It has particular resonance in the Global South where questions arise as to the appropriateness of Northern democratic models.[185] The debate has also given rise to numerous labels for the types of democracy found (or created) by democratisers around the world, including authoritarian, neo-patrimonial, military, inclusionary, participatory and low-intensity.[186]

3. Capacity or "Reach" of Deliberation in a System

3.1. Traditional Capacity Building in Development

Capacity building was an influential but now largely superseded method of development which, in its earlier forms, involved a targeted transfer of skills and knowledge between individuals, institutions or communities.[187] It later evolved into a broader multi-disciplinary form of development, pioneered by the Organisation for Security and Cooperation in Europe (OSCE), to take in cooperation, policy, organisational change and innovation and sustainability.[188]

Originally based on participatory principles, the technique was intended to promote local ownership and responsibility. Used often in post-conflict settings, it sought to aid in the reconstruction of collapsed basic services such as water and sanitation.[189] Later it spread to areas as diverse as land ownership, policing, judicial systems and small business. In its "good

[183] Gaventa (n 66) 3.
[184] Ibid 4.
[185] Ibid 9.
[186] David Collier and Steven Levitsky, 'Democracy with Adjectives: Conceptual Innovation in Comparative Research' (1997) 49(3) *World Politics* 430; Gaventa (n 66) 10.
[187] Hohe (n 103); Chopra and Hohe (n 122); Chetail (n 32) 34.
[188] Chetail (n 32) 37.
[189] Ibid 35.

governance" form it seeks to improve the functioning of more complex systems such as parliamentary, judicial or executive functions.[190] In many cases these structures may have survived the conflict, or exist in a shape not discernible to the outside intervener. Such surviving structures may need to be supported back into a functioning form.[191]

Capacity building placed a heavy emphasis on technical training and various types of institutional behaviour modification, often involving the placement of "experts" within government ministries to guide the work of the locals. In an electoral context, the process involves the establishment and development of electoral management bodies (National Electoral Commissions) to provide registration, logistical and legal support to the running of electoral processes. Activities like "training of trainers" programs were popular at the height of the capacity-building period.

A good example is the Civic Education program in which the author was employed in the lead-up to Timor-Leste's first constituent assembly election in August 2001. The work involved the building of electoral roll databases, often from scratch, and the issuing of voter registration cards in anticipation of a forthcoming election and preparation for election day. Some months out from election day civic education programs were rolled out, involving community meetings in which role-plays, films and literature were distributed which explained democracy and Western-style polling systems. Locations were then identified in various parts of the district, based on their suitability as a polling place, often in a local school as is the case in many Western countries. In what sometimes felt like an exercise in modelling behaviour, local counterparts would shadow us as we went about our tasks. 12 years later the roles were reversed, with internationals as "observers" assisting capable local electoral officials who had adopted the democratic ways modelled for them.

The capacity building method has been criticised on various grounds, mostly linked to its lack of definition and questionable efficacy. There is no guarantee that deliberative approaches would eliminate the problems encountered in traditional capacity building, but practitioners should at least be aware of them when designing programs aimed at increasing deliberative capacity. Like many governance related goals, "capacity" is a difficult thing to

[190] Ibid.
[191] Ibid.

define and even harder to quantify.[192] Capacity building programs frequently display a "zero dollar" characteristic, in that much of the money donors devote to such projects is returned to donor countries in the form of consultant salaries, raising questions as to whose capacity is actually being built.[193] Capacity building programs are also predicated on the questionable assertion that local processes are not functioning up to a foreign imposed standard.[194] Regular program reporting sometimes tends to gloss over the inadequacies of a particular initiative in the interests of meeting predetermined goals, thereby preventing realignment of the program to make it more effective.[195] International staff in capacity building positions often find themselves struggling with challenging living conditions, demoralised by the slow pace of change in government institutions.[196] In practice, staff are often consultants brought from the public service of a donor country, bringing with them the institutional knowledge and workplace culture of their home system. This occurs despite the stated goal of capacity building as being to "empower" or give "local agency" to recipient actors.[197]

Capacity building also suffers from time constraints. The long-term commitments required are rare when mandates are limited by a politicised Security Council and NGOs operate on short term funding cycles dictated by donors. [198] Additionally, capacity building has not been immune from the neoliberal shift towards performance indicators and "results driven" short-term action.[199]

3.2. Deliberative Capacity

Assessing the capacity or "reach" of deliberation in a given system involves gauging the capacity of that system to provide deliberated outcomes, and the presence (or absence) of structures to host genuine deliberation (i.e. see below "free and fair deliberation among equals") rather than conventional formal negotiation between elites in an "empowered space".

[192] Gordon Peake, *Beloved Land: Stories, Struggles, and Secrets from Timor-Leste* (Scribe, 2013) 199.
[193] Ibid.
[194] Ibid 200.
[195] Ibid 201.
[196] Ibid 200.
[197] Chetail (n 32) 40.
[198] Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (n 13) 235.
[199] Peake (n 192) 214.

A deliberative approach to democratisation would propose revised indicators based on the various types of capacity in a given system. One such measure is deliberative capacity. Dryzek has articulated the concept of deliberative capacity as "the extent to which a political system possesses structures to host deliberation that is authentic, inclusive and consequential".[200] A political system is deliberative to the extent that its citizens can exercise the right to participate in productive and egalitarian discussion about any decision which may affect them.[201]

The approach is systemic rather than simply working on a particular aspect of a given system.[202] Crucially, it is also agnostic as to the ideological bent of the particular system under analysis. It also allows for the use of a set of less formulaic markers of democracy, for example the determinants of deliberative capacity in Dryzek's schema are literacy, education, shared language, voting system design, state structures and institutions and political culture.[203] Obstructions to deliberative capacity include religious fundamentalism, ideological conformity and any lack of opportunity for members of different groups in the society to communicate with one another.[204] In the final instance the system identifies the open-ended development of deliberative capacity as central to democratic deepening in any political transition or consolidation.[205]

Additionally, Ian O'Flynn and Nicole Curato have noted that new methods of gauging the deliberative capacity of a political system should challenge simplistic models of comparison based on fixed indicators like those surveyed above.[206] In also advocating for a more deliberative approach to democratisation, they call for a move away from "free and fair elections" as the chief indicator of democratic quality.[207] They argue that a "transition to democracy" should mean not just a transfer of power but broad social and cultural change.[208] Legitimacy is more accurately measured as "free and fair deliberation among equals", not just as formal negotiation between elites in an "empowered space".[209] They identify deliberative

[200] Dryzek, 'Democratization as Deliberative Capacity Building' (n 107) 1382.
[201] Ibid 1381.
[202] Ibid 1387.
[203] Ibid 1395–6.
[204] Ibid 1396–7.
[205] Ibid 1399.
[206] O'Flynn and Curato (n 55) 298.
[207] Ibid.
[208] Ibid 299.
[209] Ibid 303.

forums where ordinary people meet to decide on matters of collective importance, defined as "public space".[210] The number, quality and extent of the links between the two, whether formal or informal, can be used to determine the "deliberative capacity" of a system.[211]

The “free and fair deliberation amongst equals” standard would seek to assess deliberative capacity as the ability for a given political system to foster “reasoned, inclusive and consequential” discussion rather than a simple focus on elections. Such an approach to measurement also looks beyond the simple power dynamics of a change of government to include elements such as legitimacy (which relies on deliberative capacity), inclusion or “inclusiveness”, authenticity and consequentiality.[212] In this schema authenticity indicates the ability of a political system to foster genuine reciprocal communication on civic preferences in a non-coercive atmosphere, inclusiveness refers to the extent to which all those affected by a decision are involved in its determination and outcome, consequentiality refers to the extent deliberation actually influences outcomes.[213] It is important to note here that the type of outcomes envisaged should be defined broadly (certainly more broadly than simply the outcome of an election) to include changes in political culture and improvements in trust between previously hostile political elements.[214]

Another measure is “participatory capacity”, which challenges a common criticism of deliberative democracy that most citizens are either unwilling or unable to participate in more engaged forms of democratic politics such as deliberative processes.[215] Linked to that is the criticism that deliberative processes tend to be accessed by the same elements in the society who already have access to traditional forms of power, those who are educated and economically advantaged.[216] Recent studies have however shown that while socio-economic status is a factor, organisational membership and the fact that deliberative processes often attract those groups usually alienated by traditional politics tends to moderate the effects of

[210] Ibid.
[211] Ibid.
[212] Dryzek, ‘Democratization as Deliberative Capacity Building’ (n 107) 1382; Nicole Curato, ‘Deliberative Capacity as an Indicator of Democratic Quality: The Case of the Philippines’ (2013) 36(1) *International Political Science Review* 99, 5; O’Flynn and Curato (n 55) 301.
[213] Curato, ‘Deliberative Capacity as an Indicator of Democratic Quality: The Case of the Philippines’ (n 212) 5.
[214] Ibid.
[215] Nicole Curato and Simon Niemeyer, ‘Reaching Out to Overcome Political Apathy: Building Participatory Capacity through Deliberative Engagement’ (2013) 41(3) *Politics & Policy* 355, 357.
[216] Ibid.

income disparity.[217] There is also evidence to suggest that citizens engaged in deliberative processes tend to shift from expressed cynicism, a sense of apathy about politics and an entrenched aversion to political discussion - to a later renewed interest in politics and political discussion.[218]

4. The Quality of Any Deliberation Present

4.1 Defining Quality Deliberation

There is no agreed standard of the "quality" of deliberation in a given system, however themes do emerge and coalesce into broad requirements or markers. Levy and Orr's ideal features of democratic discourse are again useful in helping to define quality deliberation: inclusivity, cooperation, open-mindedness, reflexivity, information, holistic accommodation of diverse values, concern for others, civility, the giving of reasons and an absence of coercion in coming to a decision.[219]

In a development useful for the model, deliberative theory has more recently expanded the concept of *consensus* to incorporate non-Western contexts.[220] The result is a broader definition of "compatible values and common interests" with the overarching goal of *conflict clarification* and *fair compromise*. This takes account of situations where compatible values and common interests are difficult to find.[221] Gaventa has noted that, while participation seeks to encourage the reach and rate of inclusion in democratic processes, deliberative democracy seeks to improve the nature and quality of any deliberation that occurs.[222] Consistent with the aims of deliberation and deliberative theory, the emphasis is less on quantitative markers such as numbers of votes cast and more on qualitative aspects, emphasising the "quality" of interaction. Deliberative processes also seek to discourage capture by narrow interest groups, and competition between those groups. [223] Innovations in public engagement are now as common in both advanced Northern countries and the Global

[217] Ibid.
[218] Ibid 375.
[219] Bächtiger et al (n 86) 4.
[220] Ibid 6.
[221] Ibid 6–7.
[222] Gaventa (n 66) 17.
[223] Ibid 18.

South. Deliberative polling, deliberative meetings, and experiments with various forms of e-democracy are now to be found around the world from Indonesia to Brazil.[224]

4.2. Deliberative Techniques and Quality Deliberation

The quality of any deliberation present in a system will be partly attributable to the techniques used in a particular context, whether that be at village, district or national level. An in-depth analysis and evaluation of applicable techniques is beyond the scope of this study, however a large range of practical deliberative techniques may be adaptable into democratisation initiatives. The selection of techniques may be readily adaptable on the basis that they lend themselves to governance initiatives in a cross cultural setting. Where possible practical techniques should be based in a pre-existing local method or structure, or at least informed by that entity. Practical steps and techniques in deliberative democracy are evolving all the time and will also emerge on the ground. Some will be more appropriate than others. Techniques must be culturally sensitive and should at first be tested then adapted to accommodate local requirements. The right choice of deliberative techniques will complement aggregative processes and improve the capacity of that system to deliver deliberated outcomes. When used correctly, such techniques will also improve the quality of any deliberation present in a system. A broad survey of some appropriate practical techniques and tools can be found in Appendix 1 of this thesis.

5. Conclusion

This chapter has laid out the foundations of a deliberative approach to democratisation. The chapter proposes a new model of democratisation based on four revised, deliberative indicators which provide a foundation for a model of democratisation which can be developed going forward. The next chapter provides some relevant historical background to the practice of engendering democracy in post-conflict contexts.

[224] Ibid.

CHAPTER THREE: DEMOCRATISATION IN LIBERAL PEACEBUILDING

Introduction

This chapter is a critical historical overview of the theory and practice of democratisation, with a critical focus on a selection of important documents and milestones in its development. It discusses the ideas underpinning democratisation as it has evolved since its emergence early in the last century. Moving from decolonisation to self-determination and on to technical democratisation, the chapter concludes with a brief study of the pervasive, but loaded, concepts of good governance and participation in democracy-related development programs. The chapter argues that despite these changes in approach, the UN and the international community of NGOs involved in democratisation have yet to fully embrace the ideas and practices put forward by deliberative democracy. This is despite considerable uptake of these ideas with Western and non-Western governments around the world.

The foundations of UN democratisation were laid by the establishment of the Mandate and Trusteeship System under the League of Nations in the 1920s. Major changes took place with the establishment of the UN in 1945, particularly in regards to the codification of political rights. The following period was marked by a Cold War-led ambiguity as to the position of the UN in relation to democracy. This came to an end, temporarily as it turned out, with the geopolitical changes of the late 1980s. The 1990s onwards saw the prevalence of technical democratisation, giving way to more recent trends towards participation and concepts of hybridity.[225]

As a result, the language the UN employs to describe the content of its work has changed over time, articulated mainly as a set of guiding principles reinforced by international legal instruments and accompanying resolutions of the Security Council and General Assembly. In order to illustrate these changes the chapter has surveyed the critical debates behind a selection of milestone documents in the evolution of UN democratisation. The picture that emerges is one of an ambiguous relationship with democracy and an unfinished experiment, characterised by an evolution from paternalism, intervention and eventually to a (nominally)

[225] Boege et al (n 10); Wallis et al (n 44).

participatory approach. It is also clear that democratisation has never sufficiently considered the imperative to involve local populations, most importantly at the lowest level possible, in the design and implementation of democratisation initiatives.

The survey reveals that democratisation has taken a technical approach to what is essentially a sociocultural problem, an approach guided by a belief that a sequence of steps followed in the right order would inevitably arrive at a given democratic conclusion. The chapter makes it clear that any attempted reorientation of both civic culture and political landscape in a target state involves more than replicating a set of institutions developed over centuries in other contexts, and hoping that they will take root and flourish in unfamiliar soil.

1. The Origins of Democratisation 1945 – 1989: UN Foundations, Mandate, Trusteeship and Decolonisation.

The seeds of contemporary democratisation were sown during the first major exercise in international organisation under the League of Nations in the 1920s. The Covenant of the League established a Mandated Territory system which allowed the League to remove the colonial territories of the vanquished Axis powers (Germany and the Ottoman Empire) and give them to the victorious Allied powers.[226] France was given Syria and Lebanon while the United Kingdom gained Iraq, Transjordan, Palestine, Togoland (now Ghana and Togo) and Tanganyika (now Tanzania). Belgium was given what is now Rwanda and South Africa was given what is now Namibia. Japan was granted the Caroline Islands, New Zealand gained Western Samoa and Australia gained Papua and New Guinea and Nauru (with the UK and New Zealand). The Pacific Trust Territories (Palau, Micronesia, Marshall Islands) were handed to the United States.[227] The three case studies analysed later in this thesis, Cambodia, Timor-Leste and Nepal, were also handed over to colonial administrations, although not through the formal trusteeship process.

The Mandate system was later carried on as the International Trusteeship System under Chapters XI-XIII of the UN Charter.[228] While different in their ideological and historical backdrop, both the Mandate and Trusteeship system sought to supervise colonial

[226] *Treaty of Peace between the Allied and Associated Powers and Germany* signed 28 June 1919 (entered into force 10 January 1920) pt. I ('*The Covenant of the League of Nations*').
[227] Joseph G Starke, *Starke's Introduction to International Law* (Butterworths, 9th edn, 1984) 107–8.
[228] *Charter of the United Nations* Chapter XI, XII, XIII, Art. 73-91.

administrations whilst moving them towards self-government and independence.[229] Most of these territories (including Syria, Iraq, Jordan, Ghana, Togo, Tanzania, Rwanda, Nauru, New Guinea and the Pacific Trust Territories) were handed over to colonial powers without the consent of local populations. During the lifetime of the League only Iraq in 1931 achieved meaningful independence under the Mandate system. After that Syria and Lebanon were given independence in chaotic fashion by France during WWII and Palestine erupted into warfare with a nascent Israel in 1948 - which continues to this day.

Both the mandate and trusteeship system were an ignominious start to later UN involvement in self-determination. In many instances the wishes of local populations were not taken into account and there was little effort made to understand the sociocultural implications of actions under the scheme, which laid the foundations for a complex relationship between colonialism, development and democratic capitalism.[230] The mandate system allowed for the shifting of moral responsibility for colonialism from empires to a faceless bureaucracy, which allowed for the continued exploitation of colonial territories without the moral stigmas of colonialism, from which the colonising powers were keen to escape.

The mandate system laid the historical foundations for what would later become a noticeably technocratic approach to development through its relentless collection, collation and quantification of "facts" and statistics drawn from mandated territories. These inquiries were said to improve the condition of colonised peoples but were effectively part of a broader system of surveillance, management and control.[231] Linked to this surveillance strategy the mandate system emphasised established standards informed by collected data to determine if the mandatory power was exercising its control in an effective manner.[232] Later chapters of this thesis will return to this theme in looking at how this technical approach to the establishment of standards (now known as "benchmarking", KPIs or indicators) was subsequently fully absorbed into the theory and practice of democratisation.

The mandate system sought to provide a means by which the transition from colonialism to development (and resource exploitation) could be conducted in a legitimised manner.

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[229] Nele Matz, 'Civilization and the Mandate System under the League of Nations as Origin of Trusteeship' (2005) 9 *Max Planck Yearbook of United Nations Law* 47, 49.
[230] Rajagopal (n 35) 48.
[231] Ibid 53.
[232] Ibid 61.

Whether intentional or not, the mandate system's goals were primarily economic, yet it cloaked these goals in the promotion of humanitarianism, self-government and sovereignty for mandated territories.[233] For example, customs were discouraged (or removed) which were said to be inconsistent with colonial ideals of humanitarianism, such as traditional dominant chieftain leadership.[234] The suppression of these traditions facilitated the faster integration of the territory into the economic structure of the mandatory power.[235] The mandate system had woven into it a new form of colonialism by replacing the old order with a "new set of technologies for the management of colonial problems".[236] In many cases it also encouraged a resistance by colonised peoples to outside intervention, and an ongoing inability by external interveners to genuinely adapt to local conditions and needs. Anghie has argued that the mandate system is intrinsic to an understanding of contemporary development practice in that international law seeks to mask its colonial foundations and therefore its tacit support of the inequalities of colonialism.[237]

The Charter of the UN does not specifically mention democracy, rather the central principle underpinning democratisation has been the right to self-determination.
In keeping with prevailing post-war rhetoric of liberation and decolonisation, the instrument employs the language of equality, combined with certain specific refences to self-determination. The Charter does however contain the first codified recognition of a right to self-determination, enshrined in Article 1(2), which calls on the organisation to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.[238]

Article 2 (4) prohibits UN member states from the use of force to compromise the territorial integrity of any state - and therefore its political independence. Article 2(7) prevents any wording in the Charter being interpreted to "authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state", or any compulsory requirement that domestic matters be brought for settlement to the UN.[239] Article 55(c) draws a link between self-determination, "human rights and fundamental freedoms". It

[233] Anghie (n 36) 156. UN
[234] Ibid 168.
[235] Ibid 168.
[236] Ibid 195.
[237] Ibid 119.
[238] *Charter of the United Nations* (n 228).
[239] Ibid.

commits the UN to the promotion of economic, social, health and human rights objectives (but not civil and political goals) as a means by which to promote the self-determination of peoples.[240]

The Charter is remarkable as much for its ambiguity as it is for its role in establishing one of the key institutions of the post WWII era. An exact definition of the term "peoples" is not to be found in the document itself or the *travaux préparatoirs* leading to its establishment. In the negotiations at the San Francisco conference, the term could mean variously individuals, those governments negotiating the treaty, or the peoples of the world speaking through their governments negotiating the treaty on their behalf.[241] No clear definition emerged of the role of colonisers (or the colonised) in the drafting of the Charter.[242] There was also little agreement as to what the term "democracy" might mean if it was included in the Charter, due to Cold War sensitivities around the need to avoid alienating any negotiating state which was not "democratic". The goal was to focus more on sovereignty, independence and peace and security.[243]

The Universal Declaration of Human Rights (UDHR), produced by the UN Commission on Human Rights, sought to provide a "bill of rights" to further define references to the protection of human rights contained in the UN Charter at Article 1(3). The instrument was adopted as a resolution of the UN General Assembly on 10 December 1948.[244] Like the Charter, the UDHR does not specifically mention democracy or self-determination, but it clearly contains democratic (and electoral) principles. Specifically, it establishes a lasting connection between human rights and government, including a right to direct participation in political decision making in Article 21. This connection was to become more significant in the later phases of democratisation, particularly in relation to the connection made between human rights, democracy and governance. Article 21(1) and Article 21(2) indicate respectively that "everyone has the right to take part in the government of his (sic) country, directly or through freely chosen representatives" and that "everyone has the right of equal access to public service in his country".[245] Crucially, Article 21(3) indicates that "the will of

[240] Ibid.
[241] Kirsten Haack, *The United Nations Democracy Agenda: A Conceptual History* (Manchester University Press, 2013) 44.
[242] Ibid 45.
[243] Ibid.
[244] *Universal Declaration of Human Rights* GA Res 217A(III), UN Doc A/RES/3/217A (10 December 1948).
[245] Ibid.

the people shall be the basis for the authority of government: this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures".[246] Article 29 (2) indicates that legal limitations on the rights of persons are to be "determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare of a democratic society".[247]

1.1. Decolonisation, Self-Determination and Human Rights

Article 1 (2) of the Charter gave rise to a set of historic General Assembly resolutions on decolonisation, beginning with the *Resolution on Self-Determination* (1958), the *Declaration on the Granting of Independence to Colonial Countries and Peoples* (1960) and Resolution 1541 (XV).[248] These unanimous agreements expressly recognised the right of self-determination of peoples and dependent states by declaring that "alien subjugation, domination and exploitation" was contrary to the principles enshrined in the UN Charter and a violation of human rights and that "all people have the right to self-determination" and therefore the right to "freely determine their political status".[249] All peoples were also to "enjoy complete independence and freedom".[250]

The wording of these declaration once again reflected the political sensitivities of the Cold War, in that the language appears to be deliberately apolitical. As a consequence of this ambiguity these instruments encountered a range of difficulties in application, including how to define the term "peoples" as either nations, states, ethnic groups or territorial entities. Where states held numerous "nations" (geographic, cultural or ethnic) within their boundaries, true non-territorial self-determination could internally trigger the dissolution of

[246] Ibid.
[247] Ibid Art.
[248] *Recommendations Concerning International Respect for the Rights of Peoples and Nations to Self-Determination* GA Res 1314 (XIII), UN Doc A/RES/1314(XIII) (12 December 1958); *Declaration on the Granting of Independence to Colonial Countries and Peoples,* GA Res 1514 (XV), UN Doc A/RES/1514(XV) (14 December 1960); *Principles Which Should Guide Members in Determining Whether Or Not An Obligation Exists to Transmit the Information Called For Under Article 73e of the Charter,* GA Res 1541 (XV), UN Doc A/RES/1541(XV) (15 December 1960); Gregory H Fox and Brad R Roth (eds), *Democratic Governance and International Law* (Cambridge University Press, 2000) 71.
[249] *Declaration on the Granting of Independence to Colonial Countries and Peoples,* (n 248) Art.1,2.
[250] ibid Art.5.

existing states.[251] By way of clarification, Resolution 1541 (XV), issued on 15 December 1960, indicated that while Chapter XI of the UN Charter outlines the concept of "non self-governing territories moving towards a full measure of self-government" the holding of geographical territory (i.e. physical statehood) was a precondition for a claim of self-determination.[252]

As noted, the focus on self-determination concealed a reluctance to mention the word "democracy" during the Cold War, partly due to a need to include as many states as possible in the new UN.[253] This led to an ambiguity, whether intentional or otherwise, in the UN approach to the type of government it sought to model. The language goes to some lengths to indicate that the UN was not imposing any particular model of government - while subsequently going on to advocate for a model of democracy which closely conformed to a Western liberal democratic format particularly after 1989.[254]

The *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) along with the UDHR complete the "International Bill of Rights"[255]. These codified for the first time at an international level a set of civil and political rights directly related to political participation. Common Article 1 indicates that "all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

Article 25 of the ICCPR outlines for the first time in an international instrument broad guarantees relating to non-discrimination, participation and a right to free elections:

> Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

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[251] Haack (n 241) 48.
[252] United Nations, 'Principles Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called for under Article 73 e of the Charter, GA Res 1514 (XV), 948th Plenary Meeting, 15 December 1960'.
[253] Haack (n 241) 37.
[254] Ibid 37.
[255] *International Covenant on Civil and Political Rights* opened for signature 16 December 1966, 999 UNTS 171 (entered into force 3 January 1976); *International Covenant on Economic, Social and Cultural Rights,* opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

> (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
> (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
> (c) To have access, on general terms of equality, to public service in his country.

Article 25(a) seeks to extend citizen suffrage to prevent discrimination against political parties on the basis of ideology. It refers to participation in public policy over and above involvement in elections, including international, national, regional and local levels. As Fox and Roth note, it also requires a multi-party, pluralist system to satisfy the requirement of "genuine" elections and a concomitant right to freedom of political association.[256]

In 1970 the General Assembly attempted to further clarify its position on self-determination in Resolution 2625 (XXV), known as the *Friendly Relations Declaration,* drawn from the language of Article 1(2) of the UN Charter in which the organisation seeks "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples…".[257] The declaration also marks one of the last moments of the UN commitment to neutrality in regards to its expressly preferred political system. The document contains repeated references to the freedom to pursue complete political independence regardless of the political outcome. It indicates that "every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.[258] It also declares that "(t)he establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people." [259] Moreover, it reaffirms that each State has the right freely to choose and develop its political, social, economic and cultural systems.[260]

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[256] Fox and Roth (n 248) 53–59.
[257] *Charter of the United Nations* (n 228).
[258] United Nations, 'GAR2625 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation among States in Accordance with the Charter of the United Nations' (1970) Art. 3(4).
[259] Ibid Art. 5 (4).
[260] Ibid Art. 6(2)(e).

1.2. Electoral Democracy Dominant

By the late 1980s the UN was openly advocating electoral democracy. Issued between 1988 and 1994, the General Assembly's yearly resolutions on *Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections* arose initially from the condemnation of apartheid in South Africa and that regime's disenfranchisement of its black population.[261] In 1991, as part of the "enhancing" process, the General Assembly requested the Secretary-General to seek the views of member states, specialised agencies and other stakeholders within the UN on appropriate responses to the increasing requests from members states for electoral assistance.[262] The General Assembly also requested the Secretary-General to summarise UN experience in the area.[263] A large portion of the concluding recommendations in the Secretary-General's response are devoted to words of caution on UN involvement in electoral verification, advocating that it become an exceptional activity due to its capacity to compromise UN impartiality.[264]

The resulting document released on 4 November 1991 entitled *Enhancing The Effectiveness Of The Principle Of Periodic And Genuine Elections: Report of the Secretary General* contains a series of replies received from member states amounting to unequivocal endorsements of elections as the basis of a genuinely democratic system.[265] Many, including the United States, also recommended an expanded role for the organisation in the area of electoral assistance including into the area of electoral verification.[266] An Annex to the document provided a useful history of UN involvement in the field of electoral verification and assistance to that point.[267] In the face of increasing requests for electoral assistance from member states, the December 1991 *Enhancing* resolution establishes a focal point and roster for technical assistance in election verification.[268]

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[261] Haack (n 241) 62.
[262] *Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections: Report of the Secretary-General,* UN Doc A/46/609 (19 November 1991) 3.
[263] Ibid.
[264] Ibid 25.
[265] *Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections: Report of the Secretary-General,* UN Doc A/46/609/Add.1 (4 November 1991) 4.
[266] Ibid 47.
[267] *Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections: Report of the Secretary-General,* (n 262) 27.
[268] *Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections,* GA Res 46/137, UN Doc A/RES/46/137 (17 December 1991).

A 1993 resolution recognised the establishment of a United Nations Trust Fund for Technical Assistance to Electoral Processes.[269] Moreover, it emphasised the use of electoral processes as the chief means by which to engage in democratisation, indirectly placing less focus on gathering an understanding of the unique political, social and cultural aspects of each country situation prior to engaging in such processes.[270]

1.3. The "Golden Age" of Democratisation 1989 – 2005: Technical Democratisation

Perhaps as a way of sidestepping the definitional difficulties thrown up by the ambiguity of the Cold War, the UN began to take an increasingly technical approach to democratisation. It did this by entrenching its focus on electoral processes as the chief means by which to advance popular voice and consultation, combined with logistical assistance to these processes.

Early interventions by the UN in the area of democratisation were confined to the observation and verification of the results of elections and plebiscites in Eritrea, Mexico, South Africa and Nicaragua.[271] In particular, greater degrees of supervision and control came with the Namibian verification mission (UNTAG) during 1989 and 1990, the subsequent mission to monitor the Nicaraguan elections in 1990, and the UN Monitoring Operation in Haiti (UNMIH) during 1990 and 1991.[272]

The Namibian mission was built into a comprehensive political and transitional justice settlement plan, which set and applied standards for electoral participation based on a series of negotiated concessions by former occupiers South Africa.[273] Considered the first major success in "comprehensive" electoral supervision, the mission sought to occupy other aspects of the electoral cycle such as the provision of electoral legal frameworks, the establishment of electoral management bodies, voter registration and identification systems, campaign monitoring and supervision and political party assistance in addition to the oversight of elections themselves.[274]

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[269] *Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections,* GA Res 48/131, UN Doc A/RES/48/131 (16 February 1994).
[270] Maley (n 14) 122.
[271] *Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections: Report of the Secretary-General,* (n 262) 9–43.
[272] Ibid 27–43.
[273] SC Res 385, UN Doc S/RES/385 (30 January 1976) ('*UNSC Res 385 (Namibia)*').
[274] Fox and Roth (n 248) 74–5.

This structural statebuilding approach seeks to rebuild state institutions as replicas of those in donor countries, because this is from where the majority of funding (and policymaking) is derived. This expansion in responsibilities paved the way for more ambitious UN involvement seeking to re-establish all of the institutional elements of a "failed state" during its transition back to functioning "statehood". Technical democratisation reached its apex with full transitional administration missions to Cambodia in 1993 and Kosovo and Timor-Leste in 1999, all of which made elections a central feature of their mandate - and an important measure of their success.[275]

Chesterman has described transitional administration "as a period of benevolent foreign autocracy".[276] The size and scope of transitional administrations meant that financing, timing and mandates became issues of great sensitivity amongst the members of the Security Council. Transitional administration was always limited by the United Nations' lack of independent military capacity and by the limited finances provided, given the scope of the operations.[277] The scope of transitional administrations also created a tension between international intervention, the creation of sustainable locally owned institutions, and an underlying subtext that target states were a *tabula rasa* in which politics and the resolution of disputes has ceased.[278] Again, given the scope of such missions, and the sensitivities within the Security Council, some foreseeable end to a mission was required and the logical end was often the staging of an election.[279]As a consequence, elections often became an exit strategy for missions which were costly and otherwise open ended.[280] Because they drew in a high number of international employees, transitional administrations tended to increase the overall scope of intervention and accordingly decrease the level of local involvement.

Transitional administration represented the logical conclusion of the technical approach, guided by a belief that a state could be reconstituted by installing a set of elements to make up a whole. However transitional administration had built into it a set of contradictory assumptions which increased its complexity. Bickerton has pointed to a significant logical flaw at the heart of such initiatives: artificially created institutions cannot be grounded in a

[275] SC Res 745, UN Doc S/RES/745 (28 February 1992) ('*UNSC Res 745 (Cambodia UNTAC)*'); SC Res 1244, UN Doc S/RES/1244 (10 June 1999) ('*UNSC Resolution (Kosovo UNMIK)*'); SC Res 1272, UN Doc S/RES/1272 (25 October 1999) ('*UNSC Res 1272 (East Timor UNTAET)*').
[276] Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (n 13).
[277] Ibid 2–3.
[278] Ibid 6.
[279] Ibid 9.
[280] Ibid 204.

popular sovereignty which is absent in an immediate post-conflict situation.[281] Where state institutions cannot exist without international support, the state itself as a sovereign entity, cannot therefore exist. Sovereignty is an indivisible and foundational hallmark of a state. Where sovereignty is abrogated in state-building interventions, the connection between state institutions and the will of citizens is lost. State institutions "are no longer rooted in society but become independent of it and are subordinated to the power of international institutions and powerful states", resulting in a feeling of imposition, or even occupation, amongst local populations.[282]

1.4. Post 1989: Democracy Dominant and the "Agendas"

As non-democratic states continued to decline economically and socially during the 1980s, a series of claims were made about the primacy of democratic governance, including that democracies were statistically less likely to go to war (with each other) and were therefore inherently peaceful.[283] Samuel Huntington argued that democracy had entered a "Third Wave" of popularity, leading to a "global democratic revolution".[284] His argument was based on the steady growth in the number of democracies in nineteenth century Europe and America, followed by the emergence of superficial forms of democracy in Asia and Latin America in the second half of the 20th century.[285] Democracy, according to Huntington, received a further boost after the two World Wars, followed by the "third wave" from 1974 to 1995 when the number of democracies jumped from 39 to 76 by 1990, and then to 117 by 1995.[286]

In an influential book, Francis Fukuyama proposed that the collapse of the Soviet Union provided further proof of the triumph of Western democratic capitalism over alternative ideologies, and that global political evolution had reached its zenith. [287] To Fukuyama, three traditions of thought had converged to form the ideological underpinning of the liberal state as we know it today. The liberal tradition of civil order and representative government

[281] Bickerton (n 80) 109.
[282] Ibid 110.
[283] Michael W Doyle, *Liberal Peace: Selected Essays* (Routledge, 2011).
[284] Samuel P Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (University of Oklahoma Press, 1991); ibid.
[285] Huntington, 'Democracy's Third Wave', *Journal of Democracy*, 2.2 (1991), p. 12.
[286] Chetail (n 32) 106.
[287] Fukuyama (n 17).

originating in Hobbes and Locke, joined the Nietzschean call for "a new aristocracy to be the adversary of …all that is despotic and to write anew upon tablets the word 'noble'.[288] In particular Fukuyama believed that the rapid growth of Asian economies suggested that prosperity for all was the logical conclusion of the historical development of Western liberal democracy.[289] Claims to the dominance of democracy were further entrenched when Thomas Franck asserted that state practice was leading to the establishment of democratic governance as a "global entitlement in the nature of a human right".[290] Even the developing world joined in. Taking a post-colonial perspective, Amartya Sen argued that democracy was an intrinsic human need, regardless of history or cultural differences.[291]

On the other hand, not all observers came on board. In a prescient rebuttal of Franck's thesis published the following year, Gerry Simpson observed that the principles of international law upon which a supposed democratic entitlement was based - were themselves insecure.[292] Firstly, democratic governance was never accepted by all countries as their most appropriate form of government. Secondly, the democratic entitlement simultaneously relied on an ill-defined and manipulated principle of self-determination while seeming to impose on the community of states a particular form of governance.[293] Etzioni even made the extraordinary claim that self-determination was an "evil" which retarded democratisation in some countries and destroyed the foundations of democracy in others.[294]

In fact, few of the early tributes to the dominance of democracy questioned whether it was an appropriate goal for all available contexts. Worse, the tacit support these ideas gave to neo-colonialism (cloaked as humanitarian intervention) had the perverse effect of legitimising its hegemony and further complicating and delaying the project of political self-determination across the developing world.[295] Darker predictions were made by Huntington and Barber.[296] Huntington determined that Western ideas of individualism, liberalism, human rights, the rule

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[288] Ibid 337.
[289] Ibid 103.
[290] Franck, T., The Emerging Right to Democratic Governance', *The American Journal of International Law*, 86.1 (1992), p. 46.
[291] Amartya Sen, 'Democracy as a Universal Value' (1999) 10(3) *Journal of Democracy* 3, 11.
[292] Gerry J Simpson, 'Imagined Consent: Democratic Liberalism in International Legal Theory' (1994) 15 *Australian Year Book of International Law* 103, 124.
[293] Ibid.
[294] Amitai Etzioni, 'The Evils of Self-Determination' (1992) 89 *Foreign Policy* 21.
[295] Chetail (n 32) 106.
[296] Samuel P Huntington, 'The Clash of Civilizations?' (1993) 72(3) *Foreign Affairs* 22; Benjamin R Barber, 'Jihad vs. McWorld' (1992) 269(3) *The Atlantic* 53.

of law, democracy, free markets and the separation of church and state would increasingly clash with Confucian, Orthodox and Islamic cultures. Efforts to promote such ideas amongst these latter cultures in particular, would increasingly be resisted.[297] Barber saw "McWorld", a global market bleached of any ethical or moral foundation pitted in direct opposition to a global "Jihad", with the latter delivering an antidemocratic, fanatical groupthink in direct opposition to Western individualism.[298]

After 1990 a growth in the "supply side" of peacekeeping encouraged by a liberated Security Council drove an explosion in the number of statebuilding initiatives led by UN, rather than a newfound demand in recipient states.[299] A newly liberated Security Council built an elaborate architecture devoted to democratisation as a key element of humanitarian and peacekeeping processes. Despite this growth the UN maintained its ambiguity in relation to a definition of democracy or its components. A series of General Assembly resolutions in December 1989 reaffirmed the position that "there is no single political system or electoral method that is equally suited to all nations and their people".[300]

During the post-Cold War period there was a noticeable shift in the nature of the language used to describe initiatives from self-determination to democratisation. Secretary General Boutros-Ghali's 1992 document *An Agenda for Peace* moved away from the previously dominant language of self-determination, preferring to speak of "democracy within the family of nations". The *Agenda* also evidenced a somewhat contradictory line on state sovereignty - stressing a continued need to respect it while indicating that "absolute and exclusive sovereignty" is a thing of the past.[301] The *Agenda* also indicates that state sovereignty is dependent on good internal governance and that claims to statehood by "ethnic, religious or linguistic" groups must not place in jeopardy the "established international system" or "democracy within the family of nations".[302] The *Agenda for Peace*

[297] Huntington, 'The Clash of Civilizations?' (n 296) 40–1.
[298] Barber (n 296) 63–4.
[299] Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (n 13) 184.
[300] *Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections* GA Res 44/146, UN Doc A/RES/44/146 (15 December 1989) 225; *Respect for the Principles of National Sovereignty and Non-interference in the Internal Affairs of States in their Electoral Processes* GA Res 44/147, UN Doc A/RES/44/147 (15 December 1989) 226.
[301] *Preventive Diplomacy, Peacemaking and Peace-Keeping: Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992* (n 2) 17.
[302] Ibid 19, 82.

also introduced the term peacebuilding into the formal UN policy lexicon as well as the concept that democratic practices, the rule of law and transparency were prerequisites for peace and security and political stability.[303]

Three years later Ghali released *Supplement to the Agenda for Peace*, which reinforces the central role of the UN in the affairs of member states through the establishment of the Department of Political Affairs (DPA), an entity that was integral to UN democratisation.[304] Reflecting the rapidly changing attitudes to state sovereignty in play at the time, the Secretary General stated that:

> Clearly the United Nations cannot impose its preventive and peacemaking services on Member States who do not want them. Legally and politically their request for, or at least acquiescence in, United Nations action is a *sine qua non*. The solution...may lie in creating a climate of opinion...within the international community in which the norm would be for Member States to accept an offer of United Nations good offices.[305]

One interpretation of this approach is that it is a call to alter the accepted view of state sovereignty. Another is that it may be preferable if "failing states" were *unable* to refuse a request for involvement if made by the UN itself. Such an approach would mark a dramatic change not only in perceptions of sovereignty, but also in the previous requirement for a request for assistance from the state itself. Because of its possible overreach the idea never really took hold at the time, and is a virtual impossibility now.

Boutros Ghali's 1996 document *An Agenda for Democratisation*, his third after the *Agenda for Peace* (discussed above), and the 1994 *Agenda for Development*, represented the UN's most concerted effort up to that point to expand its primacy in the field of democratisation.[306] Chapter IV, entitled "An Evolving United Nations Role" contained a discussion of a growing bureaucratic architecture within the UN in regards to democratisation.[307] In particular it

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[303] Ibid 16.
[304] *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations,* UN Doc A/50/60 (25 January 1995) 26.
[305] Ibid 28.
[306] *Letter dated 17 December 1996 from the Secretary-General addressed to the President of the General Assembly* UN Doc A/51/761 (20 December 1996) annex I ('*Towards an Agenda for Democratization*').
[307] Ibid 45.

referred to the establishment in 1994 of an Electoral Assistance Focal Point and an Electoral Assistance Division (EAD) within the United Nations Department of Political Affairs.[308] This took place despite the fact that most of this infrastructure was already operating within member states at an institutional level. It also called for a radical extension of the UN's role beyond election day - into constitution making, judicial reinforcement, institutional accountability and the rule of law. The document sought to broadly define democracy as "a system of government which embodies, in a variety of institutions and mechanisms, the ideal of political power based on the will of the people". It also reiterates a claim about democracy which is so generalised as to be virtually indisputable, that it "is increasingly regarded as essential to progress on a wide range of human concerns and to the protection of human rights."[309]

As noted by Ghali's speechwriter at the time, the document was not universally welcomed. Department heads and senior staff within the organisation were at odds over the legitimacy of the United Nations' new role in promoting global democratisation, particularly in light of Article 2 (7) of the Charter.[310] Criticisms ranged from a view that the document was pontificating and paternalistic, and that democracy was not a goal of the UN Charter, to the view that the case for international democratisation was "weak and inchoate".[311] Many argued that the Secretary General had no business reporting on democratisation, that the UN had no role in democratisation and could only do what member states asked it to do.[312] In summary, the argument was that it exceeded the mandate of the UN.[313]

From the perspective of the Global South, Rajagopal has noted that the *Agenda for Democratisation* seeks to further reinforce the role of the UN as the primary global democratiser, in the same way as it saw itself as the chief steward of decolonisation.[314] Ghali, he argues, seeks to cast the UN as the voice of the international community that the Global South can turn to at transformative moments. In the same way that it judged what qualified as "genuine" anti-colonialism, the UN can help the Global South to determine what qualifies as

[308] Ibid 38.
[309] Ibid 13, 45.
[310] Caroline E Lombardo, 'The Making of an Agenda for Democratization: A Speechwriter's View' (2001) 2(1) *Chicago Journal of International Law* 253, 53.
[311] *Towards an Agenda for Democratization* (n 306) 262–3.
[312] Ibid 262.
[313] Ibid 263.
[314] Rajagopal (n 35) 137.

"genuine" democratisation.[315] However, despite its obvious deficiencies the *Agenda* remains a foundational document in UN democratisation. It has continued to influence UN approaches to the theory and practice of democratisation up to the present day. Its emphasis on electoral democracy laid the foundation for a series of UN democratisation initiatives, usually housed within peace operations.

1.5. The Emergence of "Good Governance"

The set of meetings and accompanying documents that comprised the International Conference of New and Restored Democracies (ICNRD) between 1988 and 2007 chart the assistance provided by the UN to democratising states over a period of decades. As such, the entity deserves some analysis and evaluation of its evolving policy and language around democratisation, particularly in its early advocacy for the concept of good governance. The ICNRD embodied the optimism of a technical approach to democratisation. It is also significant because of its deliberate attempt to bring previously "non-democratic" states into the Western fold in an effort to reverse the perception that the democratisation agenda was driven by the West.[316]

The documents and resolutions which emerged from the ICNRD meetings exemplified the new "technical' development paradigm in two ways. Firstly, multidimensional peace operations, such as the Cambodian UNTAC, mission paved the way for an extensive civilianisation of previously militarised UN statebuilding and peacebuilding. This was largely due to the perceived need for "expert" assistance derived from the Western states. Secondly, these missions represented a "localisation" of peacebuilding, in that the UN and its agencies moved from a remote operations model to an "in the field" model where direct intervention and influence was believed essential to the implementation of an agenda to "save failed states".[317]

The first ICNRD conference was held in Manilla 6 June 1988; it sought to bring together 15 newly democratising countries in a "multilateral dialogue" on democracy, with the goal of affirming the "moral superiority of power which is legitimised by the will of the people".

[315] Ibid 144.
[316] Haack (n 241) 58.
[317] Rajagopal (n 35) 139–40.

Subsequent meetings were held in Managua (1994), Bucharest (1997), Cotonou (2000), Ulan Bataar (2003) and Doha (2006).[318]

In 1995 the UN General Assembly began supporting the ICNRD process with regular reports from the Secretary General as to how the organisation sought to support the process.[319] Taking the 1995 report as an example, the Secretary General made it clear that the UN does not endorse or promote any specific form of government, that it is not a model to be copied from certain states, and can take many localised forms.[320] The report also refers to the need to "promote a democratic culture" through a series of conditions including political will, free and fair elections to representative bodies, free association, plurality of political parties, a free media and an active civil society.[321] There is no reference to the apparent contradiction between "localised forms" and the very Western-style of democracy being promoted.

The document defines democratisation as a process by which an authoritarian society becomes increasingly participatory through elections, public accountability, independent judges and a free press. It refers to how that goal may be arrived at in a series of gradual steps which may proceed at a varying pace dependent on political, economic, social and cultural factors.[322] The real focus of the report is on a series of technical steps through seven basic

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[318] *Letter dated 22 November from the Permanent Representative of Nicaragua to the United Nations addressed to the Secretary-General* UN Doc A/49/713 (23 November 1994) annex I ('*Managua Declaration (4-6 July 1994)*'); *Note Verbale dated 10 September 1997 from the Permanent Representative of Romania to the United Nations Addressed to the Secretary-General,* UN Doc A/52/334 (11 September 1997) appendix ('*Progress Review and Recommendations, Third International Conference of the New or Restored Democracies on Democracy and Development, Bucharest (2-4 September 1997)*'); *Letter dated 22 March 2001 from the Permanent Representative of Benin to the United Nations addressed to the Secretary-General,* UN Doc A/55/889 (5 April 2001) annex I ('*Cotonou Declaration (4-6 December 2000)*'); *Letter dated 18 September 2003 from the Permanent Representative of Mongolia to the United Nations addressed to the Secretary-General,* UN Doc A/58/387 (23 September 2003) annex I ('*Ulaanbaatar Declaration: Democracy, Good Governance and Civil Society (10-12 September 2003)*').

[319] *Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies: Report of the Secretary-General,* [1995] UN Doc A/50/332 (7 August 1995); *Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies: Report of the Secretary-General,* UN Doc A/51/512 (18 October 1996); *Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies: Report of the Secretary-General,* UN Doc A/55/489 (13 October 2000); *Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies: Report of the Secretary-General,* UN Doc A/60/556 (15 November 2005); *Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies: Report of the Secretary-General,* UN Doc A/62/296 (23 August 2007); *Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies: Report of the Secretary-General,* UN Doc A/62/302 (24 August 2007).

[320] *Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies: Report of the Secretary-General,* (n 319) 4.

[321] Ibid 4–5.

[322] Ibid 3.

forms of electoral assistance: the conduct of free and fair elections; supervision; verification; coordination and support for international observers; support for national election observers; technical assistance and observation.[323] The emphasis on institution building in the ICNRD reveals a top-down approach guiding the overall direction of what is essentially a technical alteration to the "strategic orientation" of national institutions, which may be changed or "managed".[324] The report emphasises the importance of reform of inadequate bureaucracies and the promotion of 'good governance'. As such it is one of the first appearances of this concept in the policy literature of the UN .[325]

Good governance refers to a suite of often ill-defined requirements imposed on countries, such as political participation, rule of law elements, superficial transparency, accountability of state institutions and a responsiveness to the demands of donors.[326] It ensures states remain the recipients of international aid and allows for the imposition of conditionality while maintaining an appearance of political agnosticism.[327] It therefore provides a convenient euphemism to avoid any specific reference to a particular political system, namely democracy, while at the same time promoting exactly that.[328] As is borne out by wording in the Secretary General's reports, a chief goal here is to avoid a "breakdown of the established order", suggesting a strong security-led motivation to the approach.[329] There is also an inevitability to the tone; little discussion is present of local structures or whether the process may be appropriate for the context. The 1995 report advises that "political parties can be encouraged and given the means to contribute in an active and constructive manner to the political debate and to transcend the purely tribal or religious affiliations on which they are sometimes based."[330]

The needs assessment in the document provides an indication of the immensity, and potentially the impossibility, of the task placed before technical democratisers. Problems included a lack of material resources, a lack of skilled professionals in areas such as civic

[323] Ibid 9.
[324] Ibid 25.
[325] Ibid 33.
[326] Chetail (n 32) 107.
[327] Ibid.
[328] Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (n 13) 225.
[329] *Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies: Report of the Secretary-General,* (n 319) 27.
[330] Ibid 5.

education, training, logistics, demography and information systems.[331] Additional problems include weak administrative structures within the electoral bodies (where they exist), a lack of identification documents such as birth certificates, a high level of illiteracy, lack of a reliable electoral register and problems associated with distributing electoral materials as a result of deficient infrastructure and transport facilities.[332]

By 1996 the ICNRD documents indicate that many states were experiencing difficulties in consolidating any democratic gains made since 1988 and the Manila meeting.[333] The number of requests for UN assistance was exploding; the Security Council approved 20 new operations between 1989 and 1994, raising the number of peacekeepers from 11,000 to 75,000 and placing unsustainable financial demand on the resources of the organisation and its ability to coordinate stakeholders.[334] High expectations of newfound freedoms and the political and social benefits of democratisation were not being met, leading to the unravelling of some democratisation initiatives and a reversion to conflict or a return to authoritarianism.[335] The report again notes that the UN is not promoting "any specific form of government" as a template to be copied from one country to another, noting that differing cultures and societies produce "differing forms of democracy".[336]

The report also sets out in imperative language that "certain conditions must be met" for democratisation to occur, such as periodic elections to representative bodies, an independent judiciary, accountable public administration and a free press.[337] Democratisation occurs where participatory systems are "established" or "implemented" as part of a broader settlement and through development efforts in "effective governance" or the promotion of political parties and civil society.[338] Where these conditions are met the only determining issue is the pace of democratisation, rather than whether or not it is going to occur at all.

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[331] Ibid 18–19.
[332] Ibid.
[333] *Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies: Report of the Secretary-General,* (n 319).
[334] 'Our History', *United Nations Peacekeeping* (Web Page) <https://peacekeeping.un.org/en/our-history>.
[335] *Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies: Report of the Secretary-General,* (n 319) 19.
[336] Ibid 3.
[337] *Support By The United Nations System Of The Efforts Of Governments To Promote And Consolidate New Or Restored Democracies: Report of the Secretary-General,* UN Doc A/50/332 (7 August 1995) 9.
[338] *Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies: Report of the Secretary-General,* (n 319) 4.

Thus, while the rate of progress of democratisation is determined by "political, economic, social and cultural factors", its inevitability is assumed.[339]

By the time of the 1997 ICNRD report, issued subsequent to the Bucharest meeting of the ICNRD between 2-4 September that year, the full implications of the enormity of the job the organisation had set for itself in democratisation was becoming evident. In a special focus the report indicated that some states were experiencing greater difficulty with consolidation. Of particular concern was the tenuous grip on power of many regimes in transition, particularly those with military origins, rule of law concerns, issues with a politicised executive and dysfunctional legal infrastructure.[340] Perhaps most importantly for this analysis, the document called for a set of indicators to measure advances in democratisation, and as a means by which to hold governments to account.[341] While indicators are useful in themselves, the design of those indicators is just as important. Technical (or managerial) benchmarking at the time was often built on an assumption that states were a blank slate, overlooking that reality that states carry with them a political and social memory as strong as the new historical narrative which is being imposed upon them.[342] Around the same time, one observer noted that "the envisaged future was not based on a model drawn from these nations own past, nor was it conceived as a locally born program…the design of the future was imported.[343] International donor preconditions only add to the problem. US aid agencies in particular make political and legal reform central to the provision of funds, meaning new institutions are created to comply with those conditions rather than naturally evolving "over an extended period of time by various social and political forces that typically valued these institutions for their own sake."[344]

The 2000 ICNRD report offers some revealing recommendations, including that the organisation should try to avoid using mainly "Westernized" experts in democracy un order

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[339] *Ibid 3.*
[340] *Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies: Report of the Secretary-General,* UN Doc A/52/334 (11 September 1997) 4–5.
[341] Ibid 13.
[342] Sally Engle Merry, 'Measuring the World: Indicators, Human Rights, and Global Governance' (2011) 52(S3) *Current Anthropology* S83, 84.
[343] Claus Offe, 'Cultural Aspects of Consolidation: A Note on the Peculiarities of Postcommunist Transformations' (1997) 6(4) *East European Constitutional Review* 64, 65.
[344] Offe (n 343).

to take more advantage of the diversity of expertise that exists within developing countries.[345] In this regard the report recommends a greater degree of engagement with a broader base of local actors, with a view to encouraging greater dialogue and transparency.[346] At the time of the Ulaanbaatar ICNRD conference in 2003, 119 states were represented in the group.[347] Given its post 9/11 date, the meeting was largely preoccupied with terrorism but still produced a declaration on democracy, good governance and civil society, referring to participation in its first paragraph. [348] The focus however is still very technical, promoting institutions, elections, political parties and civil society. Passing reference is made to a need to "strengthen democracy at the local level".[349] Further reference is made to the need to develop indicators of democratic advancement unique to each country.[350] The overall tone of the document is devoted to bringing newly democratised states into the global fold of human rights adherence and greater engagement with international organisations, especially the International Court of Justice (ICJ).[351]

By 2005 the development of unique indicators for each country had become a major priority as a way to more effectively monitor "progress in democratic and social development".[352] Also in evidence for the first time is a linkage between weak democracy, terrorism and organised crime.[353] The "no single model" paradox persists however, stating that while democracy is a "universal value", peoples are free to determine their own political systems and that there is no single model of democracy unique to any country or region.[354]

In 2007 the emphasis was on decentralisation and local governance as a way to engage with the "local", despite the persistent institutional nature of this approach. The replication of institutions at the local level can be inefficient and can still cut across existing cultural

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[345] *Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies: Report of the Secretary-General,* (n 319) 7.
[346] Ibid.
[347] *Letter dated 18 September 2003 from the Permanent Representative of Mongolia to the United Nations Addressed to the Secretary-General* UN Doc A/58/387 (23 September 2003) annex I ('*Ulaanbaatar Declaration (10-12 September 2003)*').
[348] Ibid 5–6.
[349] Ibid 6.
[350] Ibid 11.
[351] Ibid 13.
[352] *Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies: Report of the Secretary-General,* (n 319) 4.
[353] Ibid 7.
[354] Ibid.

lines.[355] The report also makes reference to the "state of democracy assessment methodology" developed by International IDEA, an early manifestation of the "scorecard" approach to measuring levels of democratisation by using a set of pre-determined criteria.[356] The document mentions participation on many occasions, indicating that while electoral turnout is only one form of participation, it is still the most important gauge of public confidence in process and legitimacy.[357] Subsequent references to participation in the document discuss it in the context of elections rather than any form of deeper democratic engagement - any discussion about "participation" really means electoral participation.

The overall focus of the ICNRD is on building a growing inventory of post-authoritarian or post-conflict states using technical assistance, good governance and capacity building. References to participation are limited to generalised statements about increasing levels of involvement in political life and public service. Passing reference is made to the need to take heed of the local and to recognise pre-existing forms of authority, but essentially the strategy comes down to electoral processes as the chief means by which to leave a democratic legacy in states after any international intervention has largely come to an end. There is little or no effort to propose practical measures which might be taken to increase levels of direct access to government decision making. There is no reference to deliberation or deliberative techniques. The work of the ICNRD took place against the backdrop of a set of tumultuous world events. These events gave rise to a series of assertions, ideas and policy prescriptions around democracy and democratisation. It is to those that this survey will now turn.

1.6. The "Light Footprint" and "No Single Model" Paradox

The 2000 *Report of the Panel on United Nations Peace* Operations, commissioned by Ghali's successor Kofi Annan and led by former Algerian Foreign Minister Lakhdar Brahimi, who was also Chairman of the Panel on United Nations Peace Operations, referred to a need to "strengthen democracy" in the context of a renewed UN emphasis on "democracy and governance".[358] The conflation of these goals came to be universally accepted by Western

[355] *Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies: Report of the Secretary-General,* (n 319) 9.
[356] Ibid 13–14.
[357] Ibid 6.
[358] *Report of the Panel on United Nations Peace Operations,* UN Doc A/55/305, S/2000/809 (21 August 2000) 57 ('*The Brahimi Report*'); *Human Development Report 2002: Deepening Democracy in a Fragmented World* (n 117) 51.

democratisers because the two are synonymous as an integral part of the "good governance" agenda.[359] Brahimi would later lead the assistance mission in Afghanistan (UNAMA) after the US invasion of December 2001, advocating for a "light footprint" approach in contrast to the all-encompassing integrated mandates of the Kosovo and East Timor missions.[360] In a recognisable departure from previous peacebuilding approaches, the goal was to recognise that at the earliest possible moment the Afghans themselves should drive the future of the country.[361] In terms of *realpolitik* this approach also sought to promote ownership amongst a highly divergent group of political actors in a fragile security situation.[362]

In April 1999 the UN Commission on Human Rights adopted a resolution on the *Promotion of the Right to Democracy* "recognising the rich and diverse nature of the community of the worlds democracies", including rights to development, freedom of expression and transparency of governance.[363] The following year the *United Nations Millennium Declaration*, a document adopted by the General Assembly at the start of the 21st Century, sought to reaffirm the principles of the UN Charter in an era of globalisation. [364] Reasserting the nexus between human rights, democracy and good governance, the declaration also reiterated the commitment of the international community to self-determination, decolonisation, democratic and participatory governance, sovereignty, territorial integrity and non-interference in the domestic affairs of states.[365] The Declaration set out a series of eight goals with time-bound targets, which became known as the Millennium Development Goals (MDG's).[366]

This commitment reflected an overconfident faith in elections and traditional representative democracy which is now shown to have been misplaced, particularly in its ability to deliver real outcomes at lower levels of a given society. The Declaration consistently invokes the

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[359] Merilee S Grindle, 'Good Governance, R.I.P.: A Critique and an Alternative' (2017) 30(1) *Governance* 17, 18; Geraldine O'Mahony, 'Defining Good Governance and Its Role in Peacebuilding' (2019) 21(2) *International Studies Review* 303, 303–4.
[360] Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (n 13) 90.
[361] Ibid.
[362] Ibid 92.
[363] *Promotion of the Right to Democracy,* (UN Commission on Human Rights) UN ESCOR, UN Doc E/CN.4/RES/1999/57 (27 April 1999).
[364] *United Nations Millennium Declaration* GA Res 55/2, UN Doc A/RES/55/2 (18 September 2000) V., Art. 24, 25.
[365] Ibid I, Art. 4, 6.
[366] *Road map towards the implementation of the United Nations Millennium Declaration: Report of the Secretary-General (6 September 2001)* A/56/326 18.

language of good governance as a prerequisite for poverty reduction and reaffirms the nexus between human rights, democracy and good governance, while at the same time striving for inclusion and participation in the domestic politics of member states.[367] Phraseology around "participation and inclusion" as an aspect of good governance evidences a growing perception within the organisation that populations needed a greater say in programs affecting them.[368]

On 28 February 2001 the General Assembly passed resolution 55/96, entitled *Promoting and Consolidating Democracy*.[369] The document reinforces the link between human rights and democracy in keeping with the push at the time to establish democracy as an entitlement backed by customary international law.[370] In the same year, in the wake of troubled missions to Angola and Somalia, the UN engaged in much soul-searching as to how to depart, particularly in a situation where reconciliation between the warring parties proved intractable. The result of that reflection, *No Exit Without Strategy*, included references to the importance of strengthening political institutions through good governance, electoral assistance and the development of a regulatory framework such as codes of conduct and electoral councils.[371]

In 2002 the *Warsaw Declaration of the Community of Democracies* and the accompanying *Seoul Plan of Action* established what has become known as the "Community of Democracies".[372] It has since become an entrenched entity with a permanent secretariat located in the Polish capital comprised of 106 signatory states seeking to promote the "core democratic values, principles and standards of the *Warsaw Declaration"*.[373] The Declaration itself is an amalgam of the generalised language of the UN Charter, the UDHR, the ICCPR and ICESCR in relation to electoral rights, rights to civic participation, and legal guarantees of freedom of thought and religion and association and peaceful assembly.[374] The *Seoul Plan of Action* outlines a series of measures to support democratisation amongst member states,

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[367] *United Nations Millennium Declaration* (n 364) III, Art. 13.
[368] Ibid I, Art. 5, 6; V. Art. 25.
[369] *Promoting and Consolidating Democracy,* GA Res 55/96, UN Doc A/RES/55/96 (28 February 2001).
[370] Ibid 1.
[371] *No Exit Without Strategy: Security Council Decision-Making and the Closure or Transition of United Nations Peacekeeping Operations* UN Doc S/2001/394 (10 April 2001) 4; Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (n 13) 204.
[372] *Warsaw Declaration: Towards a Community of Democracies,* signed 27 June 2000, 39 ILM 1306 (2000).
[373] Ibid.
[374] Ibid.

including regional initiatives, civic education, good governance and monitoring.[375] Both documents are drafted in the increasingly specific language of democratisation prevalent at the time, especially in their focus on "electoral democracy" as the chief means by which to engage in democratisation.

The language in these documents again reveals the persistent "no single model paradox", perhaps best summarised in the 2002 Human Development Report on *Deepening Democracy in a Fragmented* world, which indicated that

> "(P)eople everywhere want to determine their destiny. The kind of democracy they chose choose need not follow a particular model – the North American or the western European for example, the model must be adapted to local circumstances and history.[376]

Apart from the amusing choice between two types of democracy, American or European, it is clear that on the one hand the UN supported no particular political model, yet on the other advocates for democratic governance and promotes elections as the chief means by which citizens are allowed to have a voice. Therefore, the primary UN approach is purportedly agnostic on political model but requires elections as the basic characteristic of democracy. There may be no particular political model, but there is a thin model of democracy - and it is elections, amounting to a difference between form (elections) and substance (democratic representation and good governance).

1.7. The Good Governance, Democracy and Development Nexus

The 2002 Human Development Report formally established "participation" rhetoric in the policy framework of UN, by reinforcing the nexus between good governance, democracy and development and illustrating the interconnectedness of different interventions in the stabilisation to development trajectory of peacebuilding.[377] No mention of self-determination occurs in its entire length, however the word "participatory" occurs 32 times, and the word

[375] *Letter dated 15 November 2002 from the Permanent Representative of the Republic of Korea to the United Nations addressed to the Secretary-General* UN Doc A/57/618 (19 November 2002) annex I ('*Seoul Plan of Action: Democracy: Investing for Peace and Prosperity (12 November 2002)*').
[376] *Human Development Report 2002: Deepening Democracy in a Fragmented World* (n 117) 61.
[377] *Human Development Report 2002: Deepening Democracy in a Fragmented World* (n 117).

"participation" 176 times. It argues that democracy "must widen and deepen" by involving more people in decision making processes, using examples such as participatory and gender based budgeting, the promotion of education to enable greater involvement in politics, and an increased role for NGOs and civil society in the expansion of political participation.[378] Paradoxically the document also states that democracy cannot be imported, yet lays out detailed prescriptions on a development framework for the expansion of democracy into the developing world.[379] The proposed model emphasises the importance of participation but still focuses on institution building and the provision of more aid as the answer.[380] It is overly superficial in its definitions of the elements of democracy, articulated through a focus on institution building and in its understanding of the barriers to political participation such as a lack of education.[381] The proposed framework also does not take into account the fact that states in transition can "stall" in the process of consolidating democratic gains, locking them into illiberal, low intensity democracy or competitive authoritarianism.[382]

The international legal and international relations literature of the time also captures the optimistic spirit of *Deepening Democracy in a Fragmented World*. Martti Koskenniemi sought to rehabilitate certain positive aspects of the "civilising mission" of international law, and Roland Paris characterised democratic peacebuilding as a relatively benign contemporary "mission civilisatrice".[383] At the time Keene also observed how the "standard of civilisation" which codified imperial dominance in international affairs began to erode in a post-1945 world.[384] This occurred not as a result of the increasing dominance of the Global South, but because of a crisis of confidence born of the profound instability of Europe in the first half of the 20th century.[385]

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[378] Ibid 1–5.
[379] Ibid 4.
[380] Ibid 5.
[381] Ibid 5.
[382] Fareed Zakaria, 'The Rise of Illiberal Democracy', *Foreign Affairs* (14 June 2019) 22 <https://www.foreignaffairs.com/articles/1997-11-01/rise-illiberal-democracy>; Zakaria (n 14) 13; Levitsky and Way (n 14) 53; Carothers, 'The End of the Transition Paradigm' (n 14) 5; Carothers, 'The Backlash Against Democracy Promotion' (n 14) 6.
[383] Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge University Press, 2009); Roland Paris, 'International Peacebuilding and the "Mission Civilisatrice"' (2002) 28(4) *Review of International Studies* 637, 637.
[384] Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge University Press, 2002) 147.
[385] Ibid.

1.8. Securitised Democratisation

Building on a technical foundation, democratisation initiatives in the post-9/11 period effectively became "securitised", in that they became less a development priority and more a matter of international security. The 2004 *Report of the High Level Panel on Threats, Challenges and Change* argued that the UN needed to transition from dealing with state based security issues to enhanced threats posed by intra-state armed conflict, economic inequality, pandemics, environmental degradation, terrorism and transnational crime.[386] In an unusual move the document also mentions the Al-Qaida Islamist group as a specific threat.[387] The report also reinforced the nexus between international terrorism, organised crime and "the absence of human rights and democracy".[388]

Anghie has noted how 9/11 and the "Global War on Terror" promoted binary labels such as modern, pre-modern, democratic, non-democratic, liberal and non-liberal, which echo similar labels imposed on states during the era of colonisation.[389] He argues that the "End of History" is therefore the beginning of a new type of imperialism involving different actors, techniques and ideologies.[390] In this new world order, coalitions of the willing dealt with a "democratic deficit" in target states such as Afghanistan, Iraq and Somalia, subsequent to their inclusion in an alarmist rhetoric about the challenges to the liberal peace posed by "failed states".[391] In this generalising negative discourse, "failed states" are characterised as underdeveloped, politically backward and potential hosts to terrorism, neglecting the role of local populations in determining what is in their best interests.[392] Additionally the report recognised that the UN human rights architecture was suffering from a "legitimacy deficit" and pointed to a particular need to revamp the ailing Human Rights Commission into a standalone body renamed the Human Rights Council.[393] However, perhaps the most important aspect of the

[386] *Report of the High-level Panel on Threats, Challenges and Change,* UN Doc A/59/565 (2 December 2004) 11.
[387] Ibid 45.
[388] Ibid 20–21.
[389] Antony Anghie, 'Towards a Postcolonial International Law' in Prabhakar Singh and Benoît Mayer (eds), *Critical International Law, Postrealism, Postcolonialism, and Transnationalism* (Oxford University Press, 2014) 138–9.
[390] Ibid 139.
[391] Gerald B Helman and Steven R Ratner, 'Saving Failed States' (1992) 89 *Foreign Policy* 3; Ruth Gordon, 'Saving Failed States: Sometimes a Neocolonialist Notion' (1997) 12(6) *American University Journal of International Law and Policy* 903; Daniel Lambach, 'Security, Development and the Australian Security Discourse about Failed States' (2006) 41(3) *Australian Journal of Political Science* 407, 410.
[392] Gordon (n 391) 962.
[393] *Report of the High-Level Panel on Threats, Challenges and Change,* (n 386) 75.

report is its recommendation to establish a standing Peacebuilding Fund and a Peacebuilding Commission and Support Office to assist with the peacebuilding work of the various UN organs in the field.[394]

The 2004 UNDP document entitled *Electoral Systems and Processes, Practice Note* epitomises the technical approach to democratisation.[395] It asserts that elections confer legitimacy on a political system and are a "universal must" for any state to be considered truly democratic".[396] The document reflects the UNDP view at the time that elections were the primary means by which citizens could participate in government. It outlines UNDP's "entry points" as electoral system reform, voter registration, administration, civic education, resource management, political party support and observation.[397] Long term capacity building was also confined to these areas. Crucially, electoral assistance is also depicted as an entry point for broader good governance programming.[398] In this regard, brief references are made to electoral programs as entry points for further programming in local governance and access to information and e-governance, although little detail is provided on the merits or opportunities these initiatives may provide in regards to more engaged forms of representation or participation. [399] The document is accompanied by an annex which outlines a series of technical steps for the implementation of the practices outlined. This included a method of reviewing an understanding of the note itself, as well as needs assessment, conceptualising anticipated assistance, coordination, resource management and staff retention.[400] No mention is made of deliberative processes.

1.9. The Electoral Cycle

The electoral cycle became a commonly used "tool of the trade" during the 2000s, to illustrate the workflow of stakeholders in the electoral process, such as electoral management bodies, legislators and political participants.[401] It is a key instrument in the armoury of the "technical expert" in democratisation. The highlight of the cycle, and the part which most

[394] Ibid 89.
[395] UNDP, *Electoral Systems and Processes* (Practice Note, United Nations Development Programme, 2004).
[396] Ibid 3.
[397] Ibid 5.
[398] Ibid 7.
[399] Ibid 19.
[400] Ibid 20.
[401] 'The Electoral Cycle', *International IDEA* (Image) <https://i.pinimg.com/736x/ed/a8/b7/eda8b781de28e7200bf5dd59754703fa--theory-cycle.jpg>.

voters see, is the "Voting Operations and Election Day" section. This section forms only a small part of the total activities related to the overall electoral process. Complex post "e-day" activities include post-election evaluation, assessment and improvement of electoral legal frameworks, planning and implementation for the next electoral event, training, education, voter registration and management of the campaign period.

Figure 1: The Electoral Cycle

The cycle is a valuable tool to illustrate the ongoing continuity of electoral work and that there is more to the electoral process than just the logistical spectacle that is election day. It also illustrates that the process is heavily institutionalised, focusing on the political, legal and logistical practices that support the election period. However, the focus on election day and the cycle surrounding it has limited the scope for practitioners to operate outside of the electoral framework on the system as a whole. It therefore has the potential to rotate endlessly, making little or no overall progress towards a set of conditions for deliberative democratic engagement, especially in post-conflict settings.

2. Democratisation Unravels 2005 – 2019: An Art and a Science

2.1. Illiberal Democracy

By the 2000s the export of democracy had become a central feature of the development programs of Western states, robed in a set of standards backed by international human rights norms and machinery. International organisations, private enterprise and NGOs were now all working together to bring democracy to the world.[402] The promotion of democracy became the province of an elite group of individuals and institutions, all selling a particular type of technical expertise.[403] A set of "privileged channels for the exportation of political technologies, economic recipes or juridical models".[404]

In 2005 UN Secretary General Kofi Annan produced a report entitled *In Larger Freedom,* a reference to the wording in the preamble of the UN Charter seeking to "promote social progress and better standards of life in larger freedom".[405] Despite the fact that it does not mention the word democracy, the report argues that the UDHR actually framed the "essentials of democracy".[406] The document refers to the *Millennium Declaration* and the signature by over 100 countries of the *Warsaw Declaration of the Community of Democracies and Seoul Plan of Action*.[407] The Secretary General also supported the establishment of the United Nations Democracy Fund (UNDEF) and a formal link between UNDP and the Electoral Assistance Division of the DPA. [408] The document also provided explanatory notes on the newly created Human Rights Council and Peacebuilding Commission.[409]

Despite the optimism of the times articulated by *In Larger Freedom*, by the middle 2000's it became evident that rather than making an inevitable transition to democracy, transitioning

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[402] Guilhot (n 14) 4.
[403] Ibid 11.
[404] Ibid 8.
[405] *In Larger Freedom: Towards Security, Human Rights and Development for All: Report of the Secretary-General,* UN Doc A/59/2005 (21 March 2005).
[406] Ibid 148.
[407] Ibid 149.
[408] Ibid 151.
[409] *In Larger Freedom: Towards Security, Human Rights and Development for All: Report of the Secretary-General - Addendum: Human Rights Council: Explanatory Note by the Secretary-General,* UN Doc A/59/2005/Add.1 (23 May 2005); *In Larger Freedom: Towards Security, Human Rights and Development for All: Report of the Secretary-General - Addendum: Peacebuilding Commission: Explanatory Note by the Secretary,* UN Doc A/59/2005/Add.2 (23 May 2005).

states were stalling at a political mid-point, what Carothers has described as the "grey zone".[410] This observation emerged from an earlier (but by that stage extensive) “transition” literature, which engaged in a comparative study of transitions to democratic governance under the rubric “transitology”.[411] Carothers argued that new forms of polity were emerging which combined both democratic and authoritarian traits.[412] Other observers came to call these regimes "illiberal democracies", "semi authoritarian states” or "low intensity democracies".[413] A shared characteristic was that they used elections to legitimise themselves and masqueraded as democracies through a charade of periodic elections while depriving citizens of basic rights - largely in order to benefit from the patronage of the international community.[414] Levitsky and Way saw this is as a consequence of "competitive authoritarianism", in which domestic groups compete for opportunities to engage in authoritarian behaviour and the exploitation of state resources.[415]

A revealing aspect of this “transition” literature, and the study of “transitology” generally, is that it often assumes that political change is possible in a certain political system, let alone desirable or inevitable. Similarly, the term “illiberal democracy” assumes that a trajectory towards democracy is still the most desirable outcome, disregarding the possibility that people may vote against their own interests, or may be manipulated by an elite. In addition, self-determination does not necessarily lay the groundwork for democracy or a deepening of existing democratic governance. Mutua has observed how, in order to redeem itself, the "good state" of the Third World must control its natural tendency towards “savagery” by absorbing Western human rights principles and "cleansing" itself of its barbarism.[416] A possible effect is to de-legitimise forms of localised political expression and subsume them into one of the globalised discourses of democratisation discussed above, thus restricting the theoretical and practical openings that could be created by empowering a more localised democratisation processes. Similarly, while paying lip service to national ownership, UNDP electoral assistance manuals in the 2000’s continued to take a decidedly technical approach in

[410] Carothers, ‘The End of the Transition Paradigm’ (n 14).
[411] O’Donnell, Schmitter and Whitehead (n 14).
[412] Carothers, ‘The End of the Transition Paradigm’ (n 14) 6.
[413] Carothers, ‘The Backlash Against Democracy Promotion’ (n 14); Gills, Rocamora and Wilson (n 14).
[414] Zakaria (n 14) 13.
[415] S. Levitsky and L. Way, *Competitive Authoritarianism: Hybrid Regimes after the Cold War* (New York: Cambridge University Press, 2010): 53.
[416] Makau Mutua, ‘Savages, Victims, and Saviors: The Metaphor of Human Rights’ (2001) 42(1) *Harvard International Law Journal* 201, 203.

their emphasis on skills transfer and institutional capacity building.[417] The periods of the electoral cycle between actual electoral events are not reserved for enquiry into how international assistance can better integrate with local conditions and traditions. Instead they look to "developing "multi-year strategic plans, consolidating human resources and financial strategies…boundary delimitation (and) testing of technological innovations".[418] Peacebuilding is limited to security, public order, rule of law, political institution building and electoral assistance.[419] After-action reflection through evaluation is dominated by laudatory statements about UNDP achievements but little in the way of genuine self-scrutiny.[420] Program evaluation is limited to broad recommendations on increased participation by women and marginalized groups as voters and candidates only, therefore failing to address issues relating to the empowerment of the community as a whole.[421]

By 2005 peacebuilding had become significant enough to create a "UN Peacebuilding Architecture", consisting of a Peacebuilding Commission, Peacebuilding Fund and Peacebuilding Support Office, with the structure affirmed by the Security Council in December of the same year.[422]. Despite maintaining an institution building approach as its priority, the initiative is the first organisation-wide sign of a recognition that peacebuilding strategies need to be integrated across the organisation as a whole. A novel emphasis on sustainability of outcomes is also evident in the language used.

2.2. The Death of the "Democratic Entitlement"

After 2005 the optimism that a "democratic spring" would bloom across the world in the wake of the Cold War soon gave way to the geopolitical realities of 9/11 and a "backlash" from recipient states in the Global South.[423] Accordingly d'Aspremont and others argued that the short democratic "interlude" of the early 21st century has, if anything, given way to the retreat of democratic governance as an international legal norm.[424]

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[417] *UNDP Electoral Assistance Implementation Guide* (United Nations Development Programme, 2007) 1.
[418] Ibid.
[419] *United Nations Peacekeeping Operations: Principles and Guidelines* (United Nations, 2008) 25–6.
[420] *Evaluation Of UNDP Contribution To Strengthening Electoral Systems And Processes: Participation* (n 120) iii.
[421] Ibid 7.
[422] SC Res 1645, UN Doc S/RES/1645 (20 December 2005) ('*World Summit Outcome*').
[423] Carothers, 'The Backlash Against Democracy Promotion' (n 14).
[424] Jean d'Aspremont, 'The Rise and Fall of Democracy Governance in International Law: A Reply to Susan Marks' (2011) 22(2) *European Journal of International Law* 549, 12.

More recently, in a reassessment of the democratic legitimacy thesis first outlined by Franck, Marks has revealed how the West has moved from promoting a discrete goal of "good governance" to the implementation of a detailed and multifaceted political development strategy.[425] This raises important questions about whether democracy promotion has brought increased levels of genuine participation, enfranchisement or even improved the living standards at the local level in recipient states. If the answer is "no" then democratisation is potentially unmasked as another form of regime change, an extension of the neoliberal project of opening markets and protecting existing forms of neo-colonial exploitation, particularly of the Global South.[426] At that moment its legitimacy amongst local populations is damaged, especially where prominent Western proponents such as the United States are neither democratic nor able to resist an increasing tendency towards authoritarianism.[427]

Similarly, John Gray has suggested that certain forms of democratisation, particularly those supported by the Republican right in the United States, are in reality a form of persistent neo-utopianism: a belief that the spread of democracy around the world can create a global "political arcadia" for democratic capitalism.[428] More recently even proponents of democratisation, chastened by the failure of the "Arab Spring" and the disasters of Iraq and Afghanistan, have belatedly realised that anything resembling democratisation might require more than just manpower, hardware and enthusiasm. They have also begun to entertain the possibility that it may never occur.[429]

2.3. Good Governance Exposed

By the first decade of the new century the rhetoric of self-determination had been subsumed into the language of good governance and subsequently participation. It was well articulated in development circles through a set of internationally defined bureaucratic and technocratic criteria. As a consequence, lawyers from the Global South, especially Anthony Anghie, began to reveal the way the rhetoric of good governance as employed by developed countries could be seen as a form of post-colonial "management" of Third World peoples, through an

[425] Marks (n 46) 507.
[426] Ibid 523.
[427] Ibid 519.
[428] John Gray, *Black Mass: Apocalyptic Religion and the Death of Utopia* (Farrar, Straus and Giroux, 2007).
[429] Etzioni (n 14) 149.

intrusive regime which uses the vocabulary of good governance to sanitise practices which are not in the interests of local populations.[430] Extending this theme by deliberately invoking corporate terminology, Anghie has observed how the promotion of “good governance” can be seen as a form of post-colonial "management" of Third World states and peoples. He notes that concepts of “good governance” and legitimacy are being absorbed into a new and much more intrusive regime which uses international law to sanitise practices which are not in the interests of local populations.[431] Similarly, Bickerton has identified how the term "failed state", when applied to a given country, indicates a failure to meet a set of administrative standards determined by Western donors, thereby turning "states into international composites of Western expertise and regulation".[432] The term "failed state" then, when applied to a Third World country, indicates a failure to meet a set of administrative standards determined by Western donors, thereby turning recipient states into agents of Western expertise and regulation.[433]

Rajagopal argues that the discourse of democratisation, couched in the "incontestable language" of human rights, has sought to position itself as the approved form of liberation (or resistance) amongst populations of the Global South.[434] In this sense it has sought to replace the previous development paradigm of “modernisation”, which sought to address economic "backwardness". The discourse therefore seeks to address political "backwardness", which is considered a cause of economic "backwardness".[435] Additionally, where Modernisation theory placed democratisation at the end point of development, good governance paradigms placed democracy as one of the motivating factors in the process of development. [436] Democratisation has increasingly become a specific pre-requisite for Western assistance and Third World development, sometimes with limited genuine understanding of the individual national contexts into which it is inserted.

[430] Anghie (n 36) 249.
[431] Ibid 255.
[432] Bickerton (n 80) 123.
[433] Ibid 123.
[434] Rajagopal (n 35) 135.
[435] Ibid 136.
[436] Haack (n 241) 59.

2.4. The Decline of Technical Democratisation

By 2010 it was clear that the technical approach to democratisation had all but collapsed as a viable strategy and that societies could not be completely transformed using either military or political means, or a combination of both. Bhuta has defined the obsessive documentation, classification and statistical characteristics of the colonial project as an early type of "politics as technology". The collated "knowledge" allowed for the reordering and transformation of subject societies into legal and political replicas of the coloniser under a set of standards. The same "standard of civilisation" written into imperial dominance has carried over into the international structure post-1945.[437] In particular, since the end of the Cold War democratisation, good governance and state-building had emerged as forms of expertise reflecting politics as technology.[438]

The corresponding decline of alternatives to democratic capitalism immediately after the collapse of Soviet communism (prior to the emergence of China as a global power), reduced the diversity of political orders and allowed for more intrusive prescription by the West as to the permitted forms of domestic politics, particularly in the developing world.[439] As noted above, this encouraged the emergence of a variety of triumphalist rhetorics which were discussed earlier in this chapter, such as the "democratic peace" thesis, the concept of "democracy's third wave", the "end of history" thesis and the argument for "democracy as a universal value". It also allowed for the brief appearance of the idea that democratic governance could be enshrined as "right" within the international human rights architecture and of the notion of the "liberal peace" in which democratic states were seen as inherently peaceful simply by virtue of the outward manifestations of their political system.[440]

Therefore, the technologies of democratisation can be applied both as medical procedures and exit strategies to deal with conflicts that have come to the attention of the Security Council. As noted above, one of the early claimed successes was the Namibia mission, which in reality can be attributed as much to history and a set of particularised internal dynamics quite apart from the mechanics of any external intervention.[441] Non-democracies are therefore

[437] Bhuta (n 14) 43.
[438] Ibid 44.
[439] Ibid 45.
[440] Ibid.
[441] Ibid 48.

"pathologies" to be dealt with by "peace engineering", including democratisation and state building, both of which are code for dealing with pathologies of disorder and violence.[442]

In the final instance the synthesis of democratisation, the rule of law and human rights into a prescription of good governance emerges as an exercise in total control over the state.[443] However, the critical problem is that the forms of governance being modelled as solutions to undesirable political outcomes, are the products of a specific historical and political trajectory which took place in the West.[444] To go one step further, as Jodi Dean argues, the current state of Western democracy itself limits opportunities for an internal discourse around the transformation of democracy into a new form.[445] A principled approach that seeks to deepen deliberation and representation is required, as outlined in the four-part model proposed later in this thesis.

2.5. Statebuilding and the Ascendancy of Peacebuilding

By 2015 statebuilding began to decline as a goal, replaced by peacebuilding as a principal aim across the entire work of the UN. Despite this, peacebuilding was still superficially understood and sporadically implemented. The 2015 *Review of the United Nations Peacebuilding Architecture* critically examined the historical performance and effectiveness of the whole UN system in its efforts at peacebuilding. It consisted of a three part agenda, the *High Level Panel on United Nations Peace Operations*, a *Review of United Nations Peacebuilding Architecture* and a review of the *Implementation of Security Council Resolution* 1325 (Resolution 2122 (2013) (*Implementation of the Women, Peace and Security Agenda*). Of greatest relevance to this analysis are aspects of the first of these reports.

Perhaps due to the influence on the analysis of panel member José Ramos-Horta, the 2015 *Report of the High-Level Independent Panel on Peace Operations* (also known as the "HIPPO" report) appears to be one of the first real attempts to recognise the need to involve local communities in the decision making and implementation process.[446] Aspects of the

[442] Ibid 48–9.
[443] Ibid 52.
[444] Ibid 60.
[445] Dean (n 48) 94.
[446] *Report of the High-Level Independent Panel on Peace Operations on Uniting Our Strengths for Peace: Politics, Partnership and People,* (n 120) 77.

report still adhere to the problematic good governance formulation that conflicts are caused largely by "bad governance" and state capture.[447] These, according to its diagnosis, aggravate ethnic and religious tensions which can spill over into the international sphere.[448] What constitutes bad governance is not defined and, like contested notions of "state failure", this nexus between "bad governance" and state instability is far from universally accepted, particularly in those states which are on the receiving end of its prescriptions.[449] Nor does it take into account the impact and legacy of colonialism.[450]

The innovative aspects of the HIPPO report advocate for a comprehensive and sustainable approach to peacebuilding and for national ownership of peacebuilding processes through broad and inclusive participation.[451] The report calls for several essential shifts in the implementation of peace operations, including that democratisers must address the underlying causes of conflict, that an overly technocratic focus on (geographic) capitals and elites must be reversed, that there is a need to engage with local communities and actively include them in the work of the UN and on an unusually practical note, that UN staff need to be less "remote and aloof" from those they are meant to serve.[452] The report calls for increased levels of engagement with local communities in inclusive and participatory peace processes.[453] In advocating for the "localisation" of peacebuilding, it also increases use of the language of participation, particularly for women and girls. [454] While there is recognition of the need for change, there is no recommendation for a comprehensive restructuring of operations to make missions better connect with local communities. While the document recognises the need to understand the political dimension of each context, it does not proceed to recommend a better understanding of the historical, cultural, anthropological or gender dimension of those situations.

The 2015 *Sustainable Development Goals* (SDGs), successors to the MDGs, do not mention the word democracy but advocate for a more holistic approach to development, including in

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[447] Ibid 19.
[448] Ibid.
[449] Jarat Chopra, 'Building State Failure in East Timor' (2002) 33(5) *Development and Change* 979; Bickerton (n 80).
[450] Anghie (n 36) 249–50.
[451] *Report of the High-Level Independent Panel on Peace Operations on Uniting Our Strengths for Peace: Politics, Partnership and People,* (n 120) 77.
[452] Ibid 78.
[453] Ibid 25.
[454] Ibid 78.

the area of peacebuilding and statebuilding. SDG 16 dealing with "peace, justice and strong institutions" calls for the promotion of the rule of law at the national and international levels and a guarantee of equal access to justice for all.[455] The goals call for effective, accountable and transparent institutions at all levels and a need to promote responsive, inclusive, participatory and representative decision-making at all levels.[456]

These goals, which share the MDG's lack of specificity in their generalised wording and ambiguous targets, place a renewed emphasis on the rule of law, institution building and anti-corruption. What is new is that the goals seek to promote the participation of developing states in the institutions of global governance. In fact the goals call for the "weaving" of developing states into the "institutions of global governance".[457] While well intentioned, this merely cements an "upward" focus towards the supranational entities which were tasked by the international community with conducting the interventions in the first place. This begs the question whether this outcome is really what is needed when the majority of the problems exist at sub-national level.

3. Democratisation Today

3.1.Electoral Observation and Democratic Indicators

Since 2010 there has been a rapid increase in the number of organisations seeking to both scrutinise and measure the conduct of democracy, to the extent that it has become a key feature of democratisation in the 21st Century. As a form of in-country affirmation linked to the use of indicators, electoral observation has become a parallel occupation to the global democratisation industry, almost to the point of becoming a norm.[458] However the efficacy of election monitors remains ambiguous at best, and in some cases can actively undermine the possibilities for truth-telling in a questionable electoral situation.[459] In repeated Cambodian elections (1993, 1998, 2002, 2006) international observers have documented the killing of opposition activists during election campaigns, government manipulation of the electoral

[455] 'Goal 16', *UN Sustainable Development Goals* (Web Page) <https://sdgs.un.org/goals/goal16>.
[456] Ibid.
[457] Ibid.
[458] Susan D Hyde, *The Pseudo-Democrat's Dilemma: Why Election Observation Became an International Norm* (Cornell University Press, 2011) 28.
[459] Max Grömping, 'Agents of Resistance and Revival? Local Election Monitors and Democratic Fortunes in Asia' (2021) 28(1) *Democratization* 103, 117.

authorities and media domination, while continuing to assert that elections are "free and fair".[460]

The 2017 Communal Council election in Cambodia, observed by this writer, was declared free and fair by the Asian Network for Free and Fair Elections (ANFREL), a growing regional NGO specialising in electoral observation. ANFREL have also been involved in the observation and declaration of marginally less problematic Nepalese elections as "free and fair".[461] Like all elections staged since the CPP came to power, the Cambodian election was effectively a rubber stamping exercise for the one-party rule of the CPP. A conversation between the writer and the leader of an observation mission included a broad discussion of indicators, participation and inclusion, the problem of unauthorised registrations, problems with the training of polling staff, the issue of campaign finance, the problematic electoral legal framework - but no discussion of whether it was accurate to declare the election free and fair.[462] In the post-Cold War period electoral observation has become controversial in itself. Professional workers in democratisation decry the influx of aging "electoral tourists" who flood out of affluent (especially European) Western democracies to act as observers in emerging political landscapes. Lee Morgenbesser has written of "shadow observers", put up to legitimise otherwise fraudulent or corrupted electoral outcomes, as simply acting to affirm the status quo.[463]

Measuring the effect of any form of development is notoriously difficult, evidenced by the circular debates which revolve around the distinction between outcomes and impact.[464] Measuring the impact of governance programs is more difficult than measuring the effect of sanitation or clean water initiatives. In keeping with broader patterns in peacebuilding theory and practice, traditional indicators of democratic development have been positioned at state, institutional or international level and are overwhelmingly quantitative in nature. While that character introduces an element of statistical precision into the process, the choice of questions and characteristics has a material effect on resulting outcomes. This introduces an

[460] Sebastian Strangio, *Hun Sen's Cambodia* (Yale University Press, 2014) 85, 98, 109.
[461] *Elections and Political Processes in Asia* (Asia Foundation, 27 June 2016) 3.
[462] Interview with Rohana Hettiiarachchiel (Michael Morison, Asian Network for Free Elections, Phnom Penh, 7 June 2017).
[463] Debre and Morgenbesser (n 19).
[464] Claire Provost, 'Bill Gates and Dambisa Moyo Spat Obscures the Real Aid Debate', *The Guardian* (online, 1 June 2013) <https://www.theguardian.com/global-development/poverty-matters/2013/may/31/bill-gates-dambisa-moyo-aid>.

element of subjectivity into the apparently scientific process of measurement, especially in an increasingly crowded field. Because close analytical and comparative analysis of the full range of democratic indicators calls for a separate study in itself, the following is a selection of the most prominent indicators. After an overview of the general landscape, this study will focus on the three sets of indicators (see summary Figure 2), which contain elements which could be described as genuinely participatory. From those only one (V-Dem) contains an element which assesses forms of deliberative engagement with the state.

Many indicators use a "scorecard" approach in which a set of benchmarks are proposed and their presence or absence is simply ticked off . Broad areas are surveyed, including assessments of the effectiveness and impartiality of Electoral Management Bodies (EMBs), the extent and accuracy of voter registration, the quality and veracity of electoral data generated by EMBs, best practice comparisons of electoral procedures between local and international EMBs, compliance with international legal obligations, general institutional compliance with rule of law principles, adherence to international human rights obligations and civilian control of the military, particularly during electoral events. In many cases benchmarks are more generalised than these comparatively specific indicators citing such things as "free and fair elections".[465] Some, like the *Vanhanaen Polyarchy Dataset* are complex documents requiring close study to draw out conclusions.[466]

The *Democracy & Dictatorship Index* provides four indices based around popular election of leader and legislature, multiparty electoral competition and consistency of means of transfer of power.[467] The *Polity* project, now in its fourth iteration as *Polity IV*, examines trends in armed conflict, governance and social-system development.[468] *Democracy Barometer* assesses the "quality of democracy" through a series of indicators based around the headline indicators of freedom, control and equality.[469] It assesses degrees of participation only in relation to suffrage, electoral participation, petitions and demonstrations. The now apparently discontinued *Unified Democracy Scores* (UDS) includes GDP, "openness" (undefined), inflation, education, party fictionalisation and presidential parliamentary "freedom" to

[465] O'Flynn and Curato (n 55) 298.
[466] 'The Polyarchy Dataset - Vanhanen's Index of Democracy', *PRIO* (Web Page) <https://www.prio.org/Data/Governance/Vanhanens-index-of-democracy/>.
[467] 'DD - José Antonio Cheibub' <https://sites.google.com/site/joseantoniocheibub/datasets/democracy-and-dictatorship-revisited>.
[468] 'About Polity', *Center for Systemic Peace* (Web Page) <https://www.systemicpeace.org/polityproject.html>.
[469] 'Concept', *Democracy Barometer* (Web Page) <https://democracybarometer.org/concept/>.

produce numerical ratings.[470] Pippa Norris' *The Electoral Integrity Project* focuses on the limited confines of the electoral cycle itself to assess the stages of the cycle such as electoral law, procedures, boundaries, parties, candidates, registration, media coverage, finance, voting process, count, results and the quality of electoral authorities.[471] The World Bank *Worldwide Governance Indicators* (WGI) is a set of aggregated indicators compiled and summarised from 30 existing data sources. Indicators include elements such as "voice" and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law and control of corruption.[472]

The yearly *Economist Intelligence Unit Democracy Index* (EUI) classifies countries into four types: full or flawed democracies and hybrid or authoritarian regimes. It then gives a 10 point ranking on the basis of five categories: electoral process and pluralism; civil liberties; the functioning of government; political participation; and political culture.[473] The EUI index confines itself to measuring purely political participation and does not deal with participatory elements more broadly or any elements involving deliberative engagement with the state.

Like the EUI index, the much cited F*reedom House Annual Survey of Political Rights and Civil Liberties*, known by its yearly publication "Freedom in the World", gives point rankings to individual countries on 10 political rights and 15 civil liberties indicators using a question and answer basis. The questions cover aspects of political rights and civil liberties such as the electoral process, political pluralism and participation, functioning government, freedom of expression and belief, associational or generational rights, the rule of law and personal autonomy and individual rights. Data is gathered from in-house staff, academic, think-tank and human rights experts, the media, individual contacts and NGOs.[474] National Democratic Institute (NDI) democracy indicators cover eleven subcategories including civil, economic and social rights, participation, political parties, electoral integrity, integrity of the security apparatus, media freedom and corruption.[475] The criteria used by the NDI as to what

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[470] 'Unified Democracy Scores', *Unified Democracy Scores* (Web Page) <http://www.unified-democracy-scores.org/>.
[471] 'The Electoral Integrity Project: Why Elections Fail and What We Can Do about It', *The Electoral Integrity Project* (Web Page) <https://www.electoralintegrityproject.com>.
[472] 'WGI 2019 Interactive > Home' <https://info.worldbank.org/governance/wgi/>.
[473] www.eiu.com/democracy2015 (accessed 06/12/16)
[474] *Freedom in the World 2016* (Freedom House, 2016).
[475] O'Day, J. Brian, *Democracy Indicators*, National Democratic Institute, 2007 (https://www.ndi.org/node/13713, accessed 03/11/2016); https://Prominent house.org/report/freedom-world-2015/methodology (accessed 03/11/2016).

constitutes a democracy cannot readily be established from its web presence or printed material.[476]

The German *Bertelsmann Transformation Index* (BTI) ranks countries according "the quality of democracy, a market economy and political management in 129 developing and transition countries."[477] The same organisation manages the Sustainable Governance Indicators, which rate EU and OECD countries on policy performance, quality of democracy and governance.[478] The Swedish Varieties of Democracy (V-Dem) project seeks to depart from more limited indices by seeking to measure democracy on electoral, liberal, participatory, deliberative and egalitarian bases.[479] It engages to a greater extent with issues around the process of decision-making, by first defining and then contrasting it with decisions led by parochial interests or coercion. It explicitly asserts that democracy requires more than aggregation, including dialogue at all levels guided by reasoned justification, an interest in the common good, a respect for the counter arguments and broad range of consultation with the goal of creating an engaged society.

The International Institute for Democracy and Electoral Assistance (IDEA) framework seeks to assess the "Quality of Democracy" on the basis of a series of questions on citizenship, the rule of law, accountable government, participation and external democratic influences.[480]

3.2. Critiques of Contemporary Democratic Measurement

A full survey of the various critiques of democratic indicators and the measurement of democracy is beyond the scope of this study, however some targeted observations are appropriate in a development and peacebuilding setting. Davis has noted that indicators are themselves assertions of power, in that they selectively produce knowledge through which are communicated coded forms of ideology as to how governance should be conducted and what defines a "good society".[481] It is important to note that the audience for these forms of

[476] 'National Democratic Institute | Home', *National Democratic Institute* (Web Page) <https://www.ndi.org/>.
[477] 'Bertelsmann Transformation Index', *Bertelsmann Transformation Index* (Web Page) <http://www.bti-project.org/en/home/>.
[478] 'SGI 2019', *Sustainable Governance Indicators* (Web Page) <https://www.sgi-network.org/2019/>.
[479] 'Home | V-Dem' <https://www.v-dem.net/en/>.
[480] http://www.idea.int/publications/catalogue/assessing-quality-democracy-practical-guide (accessed 06/12/2016)
[481] Davis, K.E., et al., 'Indicators as a Technology of Global Governance', *Law & Society Review* 46, no. 1 (2012): 77.

communication include governance and peacebuilding practitioners. Similarly, Engle-Merry has observed that indicators are consistently the product of ideologically based decisions as to criteria made in the First World but consistently directed at the Third World for the collection of data.[482] Coppedge and other experts have proposed a full range of supplementary indicators which partially meet these types of requirements.

As a further means of classification, the emergence of "adjectival democracy" is also worthy of note here.[483] Perhaps best initiated by Dahl and his concept of polyarchy, in which a properly functioning democracy ensures that power is dispersed across a broad landscape of interest groupings and stakeholders in an atmosphere of extensive participation and contestation.[484] This thesis has previously discussed low intensity democracy, competitive authoritarianism, neo-patrimonial and military democracy.[485] Electoral authoritarianism, transitional and ambiguous regimes can be added to that.[486]

A recurring problem with these indicators is that if the criteria used to determine democratic quality are too broad, they can also be so narrow as to be unable to gauge the effects of democratisation at the local level, where the benefits of international assistance are often most needed.[487] In a rare reference to deliberation, the 2016 UNDP Human Development Report identified "the ability to deliberate, participate in public debates and be agents in shaping their own lives" as essential to human development.[488]

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[482] Engle Merry, S., Measuring the World Indicators, Human Rights, and Global Governance, *Current Anthropology*, Vol. 52, No.3, in Corporate Lives: New Perspectives on the Social Life of the Corporate Form: Edited by Damani J. Partridge, Marina Welker, and Rebecca Hardin (Supplement to April 2011), p. 85.
[483] Collier and Levitsky (n 186).
[484] Dahl, *Polyarchy: Participation and Opposition* (n 112); Mike Alvarez et al, 'Classifying Political Regimes' (1996) 31(2) *Studies In Comparative International Development* 3, 19; Cunningham (n 141) 65.
[485] Gills, Rocamora and Wilson (n 14); Collier and Levitsky (n 186); ibid.
[486] Andreas Schedler (ed), *Electoral Authoritarianism: The Dynamics of Unfree Competition* (Lynne Rienner, 2006); José Antonio Cheibub, Jennifer Gandhi and James Raymond Vreeland, 'Democracy and Dictatorship Revisited' (2010) 143(1/2) *Public Choice* 67; Larry Jay Diamond, 'Elections Without Democracy: Thinking About Hybrid Regimes' (2002) 13(2) *Journal of Democracy* 21.
[487] Coppedge, M., et al., 'Conceptualizing and Measuring Democracy: A New Approach', *Perspectives on Politics* 9, no. 2 (2011): 248.
[488] *Human Development Report 2016: Human Development for Everyone* (Report, United Nations Development Programme, 2016) 86.

3.3. Revised Indicators

A revised set of conventional indicators would draw on and extend elements discussed in the existing literature while seeking to take a more focused approach to the operation of democracy at the local level. Necessary elements could include: more innovative ways of assessing the work of electoral management bodies to include local participation, meaningful ways to assess the work of international electoral programs, more meaningful and innovative ways to assess understandings and interpretation of Western Rule of Law principles such as the separation of powers, the use of technologies (such as offshoring) to improve levels of press freedom and more meaningful ways of assessing levels of decentralisation.

More advanced measures would revolve around genuine ways to assess levels of adherence to international human rights obligations, genuine civilian control of the military, levels of recognition and integration of existing sub-national representative and regulatory structures in national government, degrees of equal representation of women and young people in executive and political positions at both sub-national and national level and the frequency and legitimacy of local level elections and the decentralisation of power through the use of devices such as "Community Councils" used in the CEP model discussed below in the context of Timor-Leste. Based on the forgoing analysis of democratic indicators, the next chapter builds a model of deliberative democratisation around a set four elements devised for this study. These elements can be used as both a means of assessment of an existing system and as a planning tool around which to build future initiatives. The following chart provides a summary of the few participatory and deliberative elements in three of the prominent indicators discussed.

Table 1: Democratic Indicators with Deliberative Elements

INDICATOR	PARTICIPATION	DELIBERATION
 Transformation Index of the Bertelsmann Stiftung 2018	13.2 Civil Society Traditions To what extent are there traditions of civil society? Indicators of civil society traditions are: • long-term presence of public or civic engagement • a civic culture of participation in public life • numerous and active civic associations • social trust (social capital) 16.4 Civil Society Participation To what extent does the political leadership enable the participation of civil society in the political process? This question asks whether the political leadership involves civil society actors in: • agenda setting • policy formulation • deliberation and decision-making • policy implementation • performance monitoring Civil society actors include civic, economic and professional interest associations, religious, charity and community based organizations, intellectuals, scientists and journalists. • The political leadership actively enables civil society participation. It assigns an important role to civil society actors in deliberating and determining policies. • The political leadership permits civil society participation. It takes into account and accommodates the interests of most civil society actors. • The political leadership neglects civil society participation. It frequently ignores civil society actors and formulates its policy autonomously. • The political leadership obstructs civil society participation. It suppresses civil society organizations and excludes its representatives from the policy process.	Refer to 16.4

V-Dem Institute Varieties of Democracy	The Participatory Component Index The participatory principle of democracy emphasizes active participation by citizens in all political processes, electoral and non-electoral. This principle prefers direct rule by citizens as practicable. The V-Dem Participatory Component Index (PCI) takes into account four important aspects of citizen participation: civil society organizations, mechanisms of direct democracy, and participation and representation through local and regional governments. Four different V-Dem indices capture these aspects and are the basis for the PCI. The V-Dem Participatory Component Index Civil society participation index • Candidate selection – National / Local • CSO consultation • CSO participatory • Environment • CSO women's participation Direct popular vote index Local government index • Local government elected • Local offices relative power • Local government exists Regional government index • Regional government elected • Regional offices relative power • Regional government exists (p. 36)	The Deliberative Component Index The V-Dem Deliberative Component Index (DCI) captures to what extent the deliberative principle of democracy is achieved. It assesses the process by which decisions are reached in a polity. A deliberative process is one in which public reasoning, focused on the common good, motivates political decisions – as contrasted with emotional appeals, solidary attachments, parochial interests or coercion. According to this principle, democracy requires more than an aggregation of existing preferences. There should also be respectful dialogue at all levels – from preference formation to final decision – among informed and competent participants who are open to persuasion. Deliberative Component index • Reasoned justification • Common good • Respect counterarguments • Range of consultation • Engaged society
International IDEA The Global State of Democracy 2019 Addressing the Ills, Reviving the Promise	Attribute 5: Participatory Engagement Participatory Engagement measures people's political participation and societal engagement at different levels. Because they capture different phenomena, the sub attributes of this aspect—Civil Society Participation, Electoral Participation, Direct Democracy and Local Democracy—are not aggregated into a single index. (p. 248)	

4. Persistent Tensions in Peacebuilding and Democratisation

In 2024 the theory and practice of peacebuilding could not be more diverse in its opinions, approaches and debates around peacebuilding. Within the academy, discussion is now better characterised by a lack of consensus rather than common agreement.[489]

To begin with, the definition of peacebuilding is debated, including around the difference between peacekeeping and peacemaking.[490] The term has been more recently applied as "post-conflict peacebuilding" [491]. On a broad level there is discussion that peacebuilding is actually statebuilding.[492] As noted above, the field is populated by many practitioner scholars, perhaps because there has been many opportunities over the last 20 years to become part of UN mission practice in the area.[493] Criticisms of peacebuilding include that it has become overly generalised or commodified and that it has become a turf war between international and institutional players.[494]. Various entities have staked a prominent claim (UN, UNDP, NGOs) and debates persist about who, or what, actors should be involved.[495] Similarly, tension persists around current institutional setups and the influence of peacebuilding on peace operations generally.[496] Debates exist around the three chief pillars of peacebuilding - Security, Welfare and the Rule of Law - and whether they should include democratic governance and perhaps embrace free markets. This tension touches on the contradictions inherent in peacebuilding's difficult association with market liberalisation: is it simply opening up markets? [497] Discussions also abound on the relationship between the rule of law and political priorities in peacebuilding.[498]

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[489] Vincent Chetail and Oliver Jütersonke, *Peacebuilding: A Review of the Academic Literature* (White Paper Series No 13, Geneva Peacebuilding Platform, 2015) 2.
[490] Johan Galtung, *Peace, War and Defense* (Ejlers, 1976) 282.
[491] Chetail (n 32) 1.
[492] Michael Barnett et al, 'Peacebuilding: What Is in a Name?' (2007) 13(1) *Global Governance* 35.
[493] Michael W Doyle and Nicholas Sambanis, 'International Peacebuilding: A Theoretical and Quantitative Analysis' (2000) 94(4) *The American Political Science Review* 779.
[494] Charles T Call and Elizabeth M Cousens, 'Ending Wars and Building Peace: International Responses to War-Torn Societies' (2008) 9(1) *International Studies Perspectives* 1; Jonathan Goodhand and Mark Sedra, 'Who Owns the Peace? Aid, Reconstruction, and Peacebuilding in Afghanistan' (2010) 34(s1) *Disasters* S78.
[495] Volker C Franke and Andrea Warnecke, 'Building Peace: An Inventory of UN Peace Missions Since the End of the Cold War' (2009) 16(3) *International Peacekeeping* 407.
[496] Gisela Hirschmann, 'Peacebuilding in UN Peacekeeping Exit Strategies: Organized Hypocrisy and Institutional Reform' (2012) 19(2) *International Peacekeeping* 170.
[497] Michael Pugh, 'The Political Economy of Peacebuilding: A Critical Theory Perspective' (2005) 10(2) *International Journal of Peace Studies* 23; David A Craig and Doug Porter, *Development Beyond Neoliberalism? Governance, Poverty Reduction and Political Economy* (Routledge, 2006); Oliver P Richmond, 'The Problem of Peace: Understanding the "Liberal Peace"' (2006) 6(3) *Conflict, Security & Development* 291.
[498] Simon Chesterman, 'Rough Justice: Establishing the Rule of Law in Post-Conflict Territories' (2005) 20(1) *Ohio State Journal on Dispute Resolution* 69; David Chandler, '"Rule of Law": The Lessons of BiH for

Of particular significance to this thesis are debates around the viability of peacebuilding's externally driven intervention, or the transplantation of Western systems into non-Western contexts, including the possibility that peacebuilding is simply the old *mission civilisatrice* in a new guise.[499] There is perhaps less consensus now around the liberal peace thesis: that history shows liberal democracies do not go to war with each other and are therefore are more peaceful. [500] The once important debate in international law around the notion of the emergence of a normative democratic entitlement akin to a human right is now largely over.[501] There is also now an understanding that a premature rush to the ballot box can not only be counterproductive but it can actually lay the foundations for a later unravelling of any good work done.[502]

There is a tension between national, institutional and local, with some going so far as to describe it as a fundamental contradiction. [503] However, an excessive emphasis on civil society can, and has, indirectly or inadvertently reinforced internal local hierarchies.[504] One solution to this is to advocate for a more participatory approach to peacebuilding, in which space is provided for local voices to be heard and for communities to have a role in the shaping of political and civil institutions.[505] This advocates a bottom up approach as opposed to the top down technocratic nature of peacebuilding as practised by multilateral institutions.[506] Thus a background problem exists that the international community, because it

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Peacebuilding in Iraq' (2004) 11(2) *International Peacekeeping* 312; Kirsti Samuels, 'Post-Conflict Peace-Building and Constitution-Making' (2006) 6(2) *Chicago Journal of International Law* 663; Carsten Stahn, 'The Geometry of Transitional Justice: Choices of Institutional Design' (2005) 18(3) *Leiden Journal of International Law* 425; David Mendeloff, 'Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?' (2004) 6(3) *International Studies Review* 355; Chandra Lekha Sriram, 'Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice' (2007) 21(4) *Global Society* 579.

[499] Roland Paris, 'Peacebuilding and the Limits of Liberal Internationalism' (1997) 22(2) *International Security* 54; Richmond (n 497); John Heathershaw, 'Unpacking the Liberal Peace: The Dividing and Merging of Peacebuilding Discourses' (2008) 36(3) *Millennium: Journal of International Studies* 597; Pugh (n 497); Paris (n 383).

[500] Paris (n 499); Susanna Campbell, David Chandler and Meera Sabaratnam (eds), *A Liberal Peace? The Problems and Practices of Peacebuilding* (Zed Books, 2011); Doyle (n 283).

[501] Franck (n 290); Gregory H Fox, 'International Law and the Entitlement to Democracy After War' (2003) 9(2) *Global Governance* 179; Marks (n 46); d'Aspremont (n 424).

[502] Charles T Call and Susan E Cook, 'On Democratization and Peacebuilding' (2003) 9(2) *Global Governance* 233; Anna K Jarstad and Timothy D Sisk (eds), *From War to Democracy: Dilemmas of Peacebuilding* (Cambridge University Press, 2008); Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (n 13) 206.

[503] Tanja Chopra, 'When Peacebuilding Contradicts Statebuilding: Notes from the Arid Lands of Kenya' (2009) 16(4) *International Peacekeeping* 531.

[504] Béatrice Pouligny, 'Civil Society and Post-Conflict Peacebuilding: Ambiguities of International Programmes Aimed at Building "New" Societies' (2005) 36(4) *Security Dialogue* 495.

[505] Chopra and Hohe (n 122).

[506] Roger MacGinty, 'Routine Peace: Technocracy and Peacebuilding' (2012) 47(3) *Cooperation and Conflict* 287.

is unable to act in ways that are not bureaucratic, may be undermining local ownership simply by virtue of its very engagement in peacebuilding.[507] There is therefore an ongoing unresolved tension between the international and the local in peacebuilding. One way forward revolves around "hybrid political orders", in which peacebuilding occupies a place at the intersection of the international, the national and the local.[508] This is mirrored by an ongoing tension between the views of the academy and the concrete realities of field practitioners. [509] In the specific area of democratisation, tensions have only become more amplified with time. The nature of democratisation as an external imposition has not been markedly tempered by any notable new techniques. Many organisations involved are themselves plagued by undemocratic decision making and a lack of accountability to local populations, a problem that is not being addressed by the continued use of electoral processes alone.[510]

The "external imposition" problem operates on so many levels that it can sometimes seem insurmountable. Reshaping the political landscape of a country inevitably disrupts pre-existing modes of local governance and decision-making, often imposing (in short time-frames) a system which took centuries to evolve in Western states.[511] Extant modes of local governance may be incompatible with those imposed, or may be destroyed, supressed or irretrievably altered by the process of imposition.[512]

Problems with democratisation at an international level also reflect broader problems with democracy at home. Among the many critiques that have emerged, one of the most penetrating is Jodi Dean's observation that Western democracy has been captured by the materialisation of ideas of inclusion and participation in information, entertainment and communication technologies in ways that capture resistance and intensify global capitalism.[513] According to this analysis democratisers are effectively replicating in the developing world a feudalised democracy where populations have been disempowered by corporations and private interests which encourage consumption and political passivity.

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[507] Timothy Donais, 'Empowerment or Imposition? Dilemmas of Local Ownership in Post-Conflict Peacebuilding Processes' (2009) 34(1) *Peace & Change* 3; MacGinty (n 506) 288.
[508] Boege et al (n 10); Wallis et al (n 44).
[509] Richmond (n 69).
[510] Chetail (n 32) 113.
[511] Ibid.
[512] Ibid 114.
[513] Dean (n 48) 2.

Along similar lines Wendy Brown has explained how the brutal monetarist logic of neoliberal ideology has already taken much out of the ideals and conventions of democracy. Given that this destruction is at an advanced stage, we can only seek to shore up and save what remains.[514] Despite these tensions, the UN continues to sponsor the implementation of electoral processes across the globe, these days centred around *Strategic Development Goal 16*, maintaining an electoral focus illustrated by the continued use of the electoral cycle as one of the primary planning models for democratisation.[515]

5. Conclusion

Soon after it was established in 1945 to "maintain international peace and security", the UN was hamstrung in its capacity to deal with its core remit by the deep freeze of the Cold War. Despite that, or perhaps as a result of it, concepts of self-determination and freedom of political participation were given impetus by the ongoing struggle of former colonial states towards decolonisation. The end of the Cold War in 1989 and the accompanying liberation of the Security Council from the deadlock of the veto saw an explosion in the number of interventions into the developing world undertaken by the international community - using the UN as a vehicle. Written into the goals of many of these interventions was a commitment by member states to the placement of Western-style democracy into systems which had no tradition of this type of government. By the end of the 20th Century democratisation had become both an ideological phenomenon and a practical discipline unto itself, with its high water mark in the movement to establish democratic governance as an entitlement akin to a human right in the international legal architecture.[516]

The period after the attacks on the Twin Towers on September 11, 2001 evidenced a marked shift in the ideology and rhetoric of democratisation. A series of catastrophes after interventions in Somalia, Afghanistan, Iraq and Haiti showed that converting states with no democratic tradition into something else was going to be a more complicated proposition than was first thought. As a result, the concept of governance, and its related goal of good governance emerged in the theory and practice of UN democratisation. It came to act as an

[514] Wendy Brown, *Undoing the Demos: Neoliberalism's Stealth Revolution* (Zone Books, First, 2015) 202.
[515] 'Peace, Justice and Strong Institutions', *Sustainable Development Goals* (Web Page) <https://www.un.org/sustainabledevelopment/peace-justice/>.
[516] Franck (n 290).

umbrella term for a variety of statebuilding activities, such as rule of law promotion, parliamentary and political party support, transitional justice and electoral support programs.

This chapter has tried to unpack some of the agendas behind the implementation frameworks of these programs, often described in development jargon as "outcomes". Marks has shown how the good governance agenda, as a vehicle for setting political standards through development, in reality conveys both a political model and the expression of an ideology, largely defined by donor states.[517] Democratisation initiatives, as a means by which standards of good governance can be set through development, can therefore be characterised as a cover for the implementation of an ideology articulated through the spread of Western neoliberal capitalism around the world.[518] Marks' formulation reminds us of the way Baxi has described how the Western-driven human rights project has been "commandeered" by free market actors such as the World Trade Organisation (WTO) and the International Monetary Fund (IMF) to promote the rights of global capital.[519]

Partly influenced by broader debates in development theory which have called for a "bottom up" rather than "top down" approach to development, some governance programs have sought to build into their life cycle a greater role for host populations often articulated through the language of "participation". While slow to arrive in the democracy-related work of the UN, it has lately entrenched itself as an "outcome". In many cases little substantial change to programs resulting in real participation can be seen behind it.
Forms of democratisation as a component of the statebuilding agenda in which post-conflict states could be rebuilt "from scratch", have been problematised by real-world failure in Afghanistan and Iraq. The incorporation of genuine participation into broader peacebuilding goals has in part flowed from a "local turn" in peacebuilding literature in which research is driven primarily by a goal to understand how the national and international affects the local. The local turn has been articulated in a variety of ways, including the concept of "hybridity", which allows for a fusion between pre-existing and introduced forms of governance, and the concept of "participation" which seeks to involve local populations in governance programs

[517] Marks (n 16).
[518] Ibid 29.
[519] Upendra Baxi, *The Future of Human Rights* (Oxford University Press, 1st edn, 2002) 147.

from the point of inception to the point of exit.[520] Seen in a positive light, the incorporation of participatory elements into governance programs provides a useful foundation upon which to build the next generation of deliberative initiatives. As this thesis argues, one way to imbue genuine participation into democratisation initiatives is to use the theory and practice of deliberative democracy.

The next three chapters examine certain aspects of the international democratisation effort in Cambodia, Timor-Leste and Nepal and the circumstances in which deliberation could have added value to those processes. As noted above, the three case studies were chosen because in addition to the fieldwork conducted in all three locations for this thesis, the writer has lived in Cambodia and has substantial working experience in democratisation in the region generally, and in Timor-Leste particularly. All three case studies also exist on an historical timeline dating from 1993 to 2000 in the case of Cambodia and Timor-Leste respectively, and on to 2007 in the case of Nepal.

[520] Wallis et al (n 44); 'Hybridity: Law, Culture and Development (Paperback) - Routledge', *Routledge.com* (Text) <https://www.routledge.com/Hybridity-Law-Culture-and-Development/Lemay-Hebert-Freedman/p/book/9781138333598> ('*Hybridity*').

CHAPTER FOUR: FAILED DEMOCRATISATION IN CAMBODIA

Introduction

The following section examines certain aspects of the international democratisation effort in Cambodia, and the circumstances in which deliberation could have added value to the process. In doing so it makes the observation that opportunities were overlooked to utilise existing structures which could have built a greater degree of deliberative capacity into the political system, which could have emphasised gains made during international involvement and provided a foundation for an expansion of democracy once the international community departed.

Cambodia's one hundred year transition from feudal kingdom to neo-feudal authoritarian kleptocracy has been marked by persistent foreign interventions.[521] Its regional neighbours, Thailand to the South and Vietnam to the East have, at different periods in history, made the riches of Cambodia their own.[522] In more recent times Europeans, Americans and a host of international organisations have had an influence on its trajectory.[523] Now it is the turn of the latest global empire builders, the Chinese.[524]

Contemporary Cambodia is a state run by a small number of families, backed by the military in a form of state-sanctioned organised crime.[525] The city streets of Cambodia are crossed by darkened vehicles carrying politicians and "businessmen" past garment factories and villages where locals live on one US dollar a day.[526] This despite the deployment of massive amounts of financial and human capital by the UN, in an attempt to transform Cambodia into a pluralist democracy along Western lines.[527]

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[521] David P Chandler, *A History of Cambodia* (Westview Press, 4th edn, 2008) 15.
[522] John Tully, *A History of Cambodia: From Empire to Survival* (Allen & Unwin, 2005) 67; Chandler, *A History of Cambodia* (n 521) 146.
[523] Sophal Ear, *Aid Dependence in Cambodia: How Foreign Assistance Undermines Democracy* (Columbia University Press, 2013) 117.
[524] Chanborey Cheunboran, *Cambodia's China Strategy: Security Dilemmas of Embracing the Dragon* (Routledge, 2021) 188.
[525] Morgenbesser, 'Cambodia's Transition to Hegemonic Authoritarianism' (n 5) 159.
[526] David Hutt, 'Cambodia's Ball-and-Chain of Corruption and Inequality', *The Diplomat* (Blog Post, 18 February 2021) <https://thediplomat.com/2021/02/cambodias-ball-and-chain-of-corruption-and-inequality/>.
[527] Kheang Un, 'A Mixed Legacy: The United Nations Intervention In Cambodia' (2020) 27(1) *International Peacekeeping* 22, 22.

However, it is important to note that Cambodia has never been a democracy by any Western definition, despite the many observers who have lamented, in the aftermath of international involvement Cambodia's "democratic deficit" and recent "reversion to autocracy".[528] The regime maintained by the dominant Cambodian People's Party (CPP) and its autocratic leader Hun Sen, is rather a form of "competitive authoritarianism" in which ruling elites undermine the capacity of opposition groups by manipulating the distribution of state resources and the ruthless use of a party-controlled internal security apparatus and judiciary.[529] Three decades after one of the largest democratisation efforts undertaken by the international community, this is the reality of contemporary Cambodia.

After a brief historical summary, the purpose of this chapter is to reflect on certain missed opportunities to create the conditions for the emergence of sustainable democracy in Cambodia, using the model of deliberative democratisation outlined in Chapter 2. Pre-existing systems which could have helped to embed deliberative processes at multiple levels of Cambodian society were overlooked or negated by the international community. The focus of international intervention revolved almost entirely around an electoral structure, leading to a final electoral event, while overlooking the possibilities to embed deliberative processes at multiple levels of Cambodian society.

1. Historical Backdrop

1.1.The Pre-Paris Accords Period

Early Cambodian history has the pre-medieval civilisation of Angkor at its center.[530] Founded around 980 AD on the Northern Shore of the Tonlé Sap lake near what is now Siem Reap, the city state is a potent symbol of Cambodian history and culture that forms the centrepiece of its national flag.[531] Settled accounts of pre-Angkorean history are scarce, but evidence

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[528] '"Descent Into Outright Dictatorship"', *The Cambodia Daily* (Phnom Penh, 4 September 2017); Sebastian Strangio, 'Cambodia Becomes the World's Newest One-Party State', *Foreign Policy* (Blog Post) <https://foreignpolicy.com/2017/11/17/cambodia-becomes-the-worlds-newest-one-party-state-china-democracy-dictators/>; Lee Morgenbesser, 'Cambodia's Leader Just Cracked down on the Opposition, and the Consequences Will Be Dramatic', *Washington Post* (online, 24 February 2017) <https://www.washingtonpost.com/news/monkey-cage/wp/2017/02/24/cambodias-leader-just-cracked-down-on-the-opposition-and-the-consequences-will-be-dramatic/>.

[529] Levitsky and Way (n 14).

[530] Chandler, *A History of Cambodia* (n 521) 32; Roland Fletcher et al, 'Angkor Wat: An Introduction' (2015) 89(348) *Antiquity* 1388, 1391.

[531] Arthur Cotterell, *History of Southeast Asia* (Marshall Cavendish International (Asia), 2014) 38.

suggests that the early Khmers, an agricultural people of what is now central Cambodia, moved southwards to occupy coastal empires at the mouth of the Mekong River.[532] The Khmers successively occupied the states of Funan and Zhenla on their way down the Mekong valley.[533] At its height in 1150 the Angkor civilisation had established formal relations with China and extended its influence south into what is now northern Thailand and as far as the Malayan Peninsula, west into what is now Burma, and east well into what is now Vietnam.[534] From 1218 onwards the Angkorean Kings found it difficult to maintain the unity of the kingdom amidst repeated border incursions, particularly from the south. A prominent example occurred in 1393 when the Thai king of Ayudhya (in what is now Thailand) besieged and captured Angkor. By 1431 the Khmers had abandoned the city and moved the capital downriver to what is now Phnom Penh.[535] In 1699 the Spanish arrived in Cambodia and then in 1863 the Cambodian monarch agreed to place his people under French protection, while recognising the dominance of the more powerful Siamese across much of the Mekong Peninsula.[536]

In 1945 the conquering Japanese declared Cambodia, Vietnam and Laos independent. The later surrender of the Japanese saw the French administration willing to let go of Cambodia but not Vietnam, leading to the first Vietnamese war ending in 1954 with the defeat of the French.[537] Between 1955 and 1975 Cambodia became an unwilling participant in one of a series of proxy wars fought by the dominant players of Cold War bipolarity, caught in the ideological and strategic competition between the United States and the Soviet Union.

In March 1970, during a visit to France, Cambodia's King Sihanouk was overthrown by a group led by one of his conservative Generals, Lon Nol, amidst much speculation as to the role in the coup of the (recently reopened) US embassy.[538] In 1970 and 1971 Lon Nol mounted two abortive offensives against the North Vietnamese while waging a losing battle with the growing Cambodian Communist insurgency known as the Khmer Rouge, supported

[532] Ibid.
[533] Tully (n 522) 9; Cotterell (n 531) 39–42.
[534] Cotterell (n 531) 59.
[535] Ibid 65–6.
[536] Tully (n 522) 59.
[537] Cotterell (n 531) 291.
[538] David P Chandler, *The Tragedy of Cambodian History: Politics, War, and Revolution since 1945* (Yale University Press, 1991) 193.

by Sihanouk, in the North.[539] In the first half of 1973 President Nixon ordered large scale bombing of Cambodia of an intensity not seen since World War II.[540] The Lon Nol regime struggled on until the morning of April 17,1975 when Cambodian Communist troops, led by Saloth Sar (better known as Pol Pot) took the besieged capital of Phnom Penh.[541]

Between April 1975 and December 1978, the Khmer Rouge put in place an extreme Maoist inspired revolution, under the name Democratic Kampuchea (DK), which claimed the lives of an as yet undetermined number of people, ranging between 1 and 3 million people.[542] The Khmer Rouge asserted that the revolution ended two thousand years of Cambodian history, which restarted at "year zero" in 1975. As a result, the city of Phnom Penh was emptied of its two million inhabitants who were dispersed into rural communes in the space of 48 Hours.[543] Over the subsequent four years over one million people out of a population of 7 million died as a result of the actions of the Khmer Rouge from starvation, mistreatment of the sick, or outright murder of those considered to be enemies of the revolution.[544]

Repeated border confrontations led to a Vietnamese invasion on December 25, 1978, forcing the remnants of the Khmer Rouge regime into the jungles of western Cambodia.[545] Phnom Penh was abandoned by the last of the Khmer Rouge bureaucracy on January 7, 1979.[546] With Soviet backing, Vietnam installed a regime during 1979 known as the Peoples Republic of Kampuchea (PRK) with Hun Sen and Heng Samrin as chiefs of state.[547] Both were former Khmer Rouge regimental commanders from the eastern provinces who had fled the Khmer Rouge genocide in 1977.[548]

Having drifted off international agendas during the closed years of the DK period, the Vietnamese invasion stirred the first international interest in Cambodia for some time.

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[539] Chris Connolly, 'Kissinger, China, Congress, and the Lost Chance for Cambodia' (2010) 17(3) *The Journal of American-East Asian Relations* 205, 208.
[540] William Shawcross, *Sideshow: Kissinger, Nixon, and the Destruction of Cambodia* (André Deutsch, 1979) 209.
[541] Chandler, *A History of Cambodia* (n 521).
[542] Philip Short, *Pol Pot: Anatomy of a Nightmare* (Henry Holt, 2005) 36.
[543] Ibid 299; Ben Kiernan, *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge 1975-79* (Yale University Press, 1st edn, 1996) 32.
[544] Chandler, *A History of Cambodia* (n 521); Kiernan (n 543) 159.
[545] Kiernan (n 543) 450.
[546] Ibid 451.
[547] Chandler, *A History of Cambodia* (n 521) 176.
[548] Ibid 222.

Ironically this came about partly due to concern over the motives of the Vietnamese rather than the atrocities of the DK regime.[549] On 14 November 1979 the General Assembly adopted the first of a series of resolutions refusing to accept the PRK's credentials, calling for the 'withdrawal of all foreign forces' from Cambodian territory, for self-determination for the Cambodian people and for the Secretary-General to pursue a solution.[550] The Association of Southeast Asian Nations (ASEAN) also mobilised against the Vietnamese occupation by supporting the resistance Coalition Government of Democratic Kampuchea (CGDK), thereby keeping the issue high on the UN agenda and denying the PRK the Cambodian seat at the General Assembly.[551] In the final outcome the United States, China and the ASEAN states encouraged opponents of the PRK within Cambodia to form an allied guerrilla movement against the Vietnamese invaders, giving rise to the CGDK which was headed by Prince Sihanouk. Two opposing groups, the CGDK and the PRK then descended into a bloody civil conflict, dubbed 'stable war', for most of the 1980's.[552]

1.2. The Paris Agreement, UNTAC and the 1993 election.

In the late 1980's the international community turned its attention to a resolution of the Cambodian conflict, in particular some way to divert the Khmer Rouge, which continued to be a persistent and violent hangover from the Cambodian war.[553] After the Vietnamese invasion of 1979, which had liberated Cambodia from the genocidal embrace of the Khmer Rouge, it removed its ideological disguise to reveal itself as an entity largely devoted to violent kidnapping, theft and organised crime.[554]

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[549] Tully (n 522) 203.
[550] *The Situation in Kampuchea,* [1979] GA Res 34/22, UN Doc A/RES/34/22 (14 November 1979); *The Situation in Kampuchea,* [1980] GA Res 35/5, UN Doc A/RES/35/5 (20 October 1980); *The Situation in Kampuchea,* GA Res 36/5, UN Doc A/RES/36/5 (21 October 1981); *The Situation in Kampuchea,* GA Res 36/7, UN Doc A/RES/36/7 (27 October 1981); *The Situation in Kampuchea,* GA Res 37/6, UN Doc A/RES/37/6 (28 October 1982); *The Situation in Kampuchea,* [1983] GA Res 38/3, UN Doc A/RES/38/3 (27 October 1983); *The Situation in Kampuchea,* GA Res 39/5, UN Doc A/RES/39/5 (30 October 1984); *The Situation in Kampuchea,* GA Res 40/7, UN Doc A/RES/40/7 (5 November 1985); *The Situation in Kampuchea,* GA Res 41/6, UN Doc A/RES/41/6 (17 October 1986); *The Situation in Kampuchea,* GA Res 42/3, UN Doc A/RES/42/3(14 October 1987); *The Situation in Kampuchea,* GA Res 43/19, UN Doc A/RES/43/19 (3 November 1988); *The Situation in Kampuchea,* GA Res 44/22, UN Doc A/RES/44/22 (16 November 1989).
[551] Frank Frost, *The Peace Process in Cambodia: Issues and Prospects* (Griffith University, 1993) 47.
[552] Ibid 48.
[553] Lucy Keller, 'UNTAC in Cambodia – from Occupation, Civil War and Genocide to Peace' (2005) 9 *Max Planck Yearbook of United Nations Law* 127, 139.
[554] William Branigin, 'Cambodia Links Ransom and Robbery to Officials', *The Washington Post* (online, 9 August 1994) <https://www.washingtonpost.com/archive/politics/1994/08/09/cambodia-links-ransom-and-robbery-to-officials/7e9dcec4-460a-49f5-bed7-cea71cc90e41/>.

The Paris Peace Agreements on Cambodia, finalised in 1991, and the subsequent United Nations Transitional Authority in Cambodia (UNTAC), implemented between 1992 and 1993, represented the first multilateral attempt to disarm the Cambodian factions, canton their forces and work towards an environment in which elections could be held between the contesting parties to government in Cambodia.[555] As the first full transitional "takeover" of all of the functions of the state, the structure left little room for genuine local involvement.[556] As such UNTAC serves to demonstrate both the benefits and pitfalls of attempting to engage in democratisation through comprehensive multilateral intervention. Although initially hailed as a success by eager UN public information officials, the reputational legacy of the mission has actually deteriorated in hindsight because any gains made unravelled so quickly. It could therefore be placed on a long list of detrimental foreign interventions into Cambodia.[557]

The Paris Agreements comprised three instruments, the *Final Act of the Paris Conference on Cambodia,* an *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict* and the *Agreement Concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia*.[558] The focus was on a resolution of the conflict in Cambodia using a set of generalised provisions on withdrawal, disarmament of armed forces and refugee issues, rather than on laying the foundations for a pluralist multi-party democratic system.[559] Apart from that, the agreements exclusively used elections and their associated apparatus as the short to medium term solution to Cambodia's political problems, also in very generalised terms.[560] They dealt with the complex issue of elections in a total of just three articles covering self-determination, the establishment of a legislative assembly, the responsibility of the UN to conduct the elections and a commitment by the parties to respect the outcome.[561] An annex to the agreement covers the UNTAC mandate in some detail and outlines its role in the implementation of an electoral process.[562] The

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[555] *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict,* Signed 23 October 1991, 1663 UNTS 56 (entered into force 23 October 1991); Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (n 13) 73.
[556] Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (n 13) 74.
[557] Ibid 224.
[558] *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict,* (n 555).
[559] David Roberts, 'Democratization, Elite Transition, and Violence in Cambodia, 1991-1999' (2002) 34(4) *Critical Asian Studies* 520, 522.
[560] *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict,* (n 555) II, Art. 12-14.
[561] 'Framework for a Comprehensive Political Settlement of the Cambodia Conflict, Agreement On A Comprehensive Political Settlement of the Cambodia Conflict' (30 October 1991) Part II, Articles 12-14.
[562] *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict,* (n 555) Annex I .

mandate gave UNTAC responsibility for superficially defined key elements such as voter education, voter and political party registration, media, polling and counting and the resolution of complaints.[563]

The agreements also established a non-binding constitutional requirement for a particular system of government in Cambodia. The UN drafted *Principles for a New Constitution for Cambodia* specify in Article 4 that...

> *The constitution will state that Cambodia will follow a system of liberal democracy, on the basis of pluralism. It will provide for periodic and genuine elections. It will provide for the right to vote and to be elected by universal and equal suffrage. It will provide for voting by secret ballot, with a requirement that electoral procedures provide a full and fair opportunity to organise and participate in the electoral process*.[564]

UNTAC entered Cambodia in 1992 bringing with it some 22,000 military and civilian personnel divided into electoral, human rights, military, civil administration, civilian police refugee repatriation, rehabilitation, information and education components.[565] The duration was to be no more than 18 months and elections were mandated to be held by May 1993.[566] Despite the early departure of the Khmer Rouge from the process, a complete failure to disarm all of the warring factions as stipulated by the Paris Agreements, and widespread instances of political violence and voter coercion by all factions, UNTAC was determined to proceed with any form of ballot.[567] Elections were held between May 23-28, 1993, voter registration was estimated at 95% with a final election turnout of 85%.[568] The two main parties polled very closely, Funcinpec (aligned with the Sihanouk family) receiving 1,824,188 votes (45.47%) to the CPP's 1,533,471 (38.23%). In the final instance Funcinpec won 58 seats, the CPP 51, while the remainder of the 121 seats went to parties with ties to

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[563] Ibid D, Art. 1-6.
[564] Ibid Annex 5, 47.
[565] United Nations, *The United Nations and Cambodia, 1991-1995* (United Nations Department of Public Information, 1995) 12.
[566] *UNSC Res 745 (Cambodia UNTAC)* (n 275).
[567] Tom Martin, 'Cambodia after UNTAC: The Domestic Limits to International Intervention' (1997) 13(1) *Policy, Organisation and Society* 1, 11.
[568] United Nations, *The United Nations and Cambodia, 1991-1995* (n 565) 13.

Funcinpec.[569] On 29 May 1993 the elections were declared to be "free and fair" by special representative Yasushi Akashi.[570]

1.3. CPP Dominance

The CPP immediately refused to accept the outcome of the election, making falsified allegations of large scale fraud and bias by the UN in favour of the opposing party. CPP leader Hun Sen almost immediately gave instructions for the effective secession of the CPP controlled eastern provinces of Kompong Cham, Prey Veng and Svay Reng, where attacks on both national and international UNTAC staff took place.[571]

On 24 September 1993 under a cumbersome Co-Prime Ministership arrangement, the son of Prince Sihanouk, Prince Norodom Ranariddh and Hun Sen agreed to share power as first and second Prime Minister respectively.[572] This tense and unsatisfactory power-sharing arrangement lasted until 5 July 1997 when, after heavy fighting in the streets of Phnom Penh between Funcinpec and CPP military police, Hun Sen took complete control of the government as Ranariddh fled into exile.[573]

Each election since then has resulted in a further consolidation in the power of the CPP.[574] However, the 22 June 2017 Cambodian Communal Council election was a turning point in both the life of Cambodians and the CPP, because the ruling party suffered a large swing against it in favour of the opposition Cambodian National Rescue Party (CNRP).[575] In an outcome all too predictable, the months preceding the 2018 general election saw a full court-sanctioned outlawing of the CNRP.[576] Its leader Khem Sokha was jailed and the majority of its senior members escaped into exile in Thailand before they could be arrested.[577] Despite the fact that autocracy and political violence had been an aspect of government in Cambodia

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[569] Ibid 14.
[570] 'S/25879'; 'S/RES/ 835'; Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (n 13) 74.
[571] 'United Nations Transitional Authority in Cambodia (UNTAC) - Background', *United Nations Peacekeeping* (Web Page) <https://peacekeeping.un.org/mission/past/untacbackgr2.html>.
[572] Ibid.
[573] Roberts (n 559) 530.
[574] Sorpong Peou, 'Cambodia's Hegemonic-Party System: How and Why the CPP Became Dominant' (2019) 4(1) *Asian Journal of Comparative Politics* 42, 43.
[575] Aurel Croissant, 'Cambodia in 2017: Descending into Dictatorship?' (2018) 58(1) *Asian Survey* 194, 195.
[576] Morgenbesser, 'Cambodia's Transition to Hegemonic Authoritarianism' (n 5) 160.
[577] Aurel Croissant, 'Cambodia in 2018: Requiem for Multiparty Politics' (2019) 59(1) *Asian Survey* 170, 171.

since the withdrawal of the UN, local and international media interpreted this as the final act of a gradual shift towards open or "hegemonic" authoritarianism.[578]

In recent years the CPP has increasingly deployed a particular mythology, largely through its chief articulator Hun Sen.[579] The promoted story is that the Cambodian people were rescued from the Khmer Rouge by the Vietnamese army, in part led by Hun Sen, a story which (like all myths) has just enough truth in it to make it seem plausible.[580] It allows Hun Sen to whitewash the fact that he was actually once a senior Khmer Rouge military officer, by emphasising the narrative that he was a Khmer Rouge defector returning to liberate the Cambodian people from the Khmer Rouge. It also allows him to counter the persistent rumour amongst villagers that Hun Sen is more Vietnamese than Cambodian. Placed in an electoral context, the story is that Hun Sen and the CPP have liberated the Cambodian people from genocide, civil war and unrest, and that Cambodians live in fear of a return to the genocidal days of the Khmer Rouge.[581]

These myths reveal much about the reality behind any Western democratic veneer that has been superimposed over the system of kinship and patronage that still exists in Cambodia.[582] These structures, incorporating and building upon those installed by the Khmer Rouge regime between 1975 and 1979, have been successfully co-opted by Hun Sen and the CPP.[583] The narrative also plays on a persistent fear of foreign intervention in the Cambodian psyche, which is potentially well founded. Cambodia has experienced successive historical interventions from European colonial powers and its Thai and Vietnamese neighbours. Those incursions continue today along almost all of its border provinces. The theme is one of liberation, particularly from foreign interveners, and also about the stability required to promote economic development.

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[578] '"Descent Into Outright Dictatorship"' (n 528) 1; Morgenbesser, 'Cambodia's Transition to Hegemonic Authoritarianism' (n 5).
[579] 'Hun Sen Continues to Use Fiery Election Rhetoric, Aimed at Stoking Fear of Conflict', *VOA* <https://www.voacambodia.com/a/hun-sen-continues-to-use-fiery-election-rhetoric-amied-at-stoking-fear-of-conflict/3865410.html>.
[580] Ibid.
[581] Ibid.
[582] Peou, 'Cambodia's Hegemonic-Party System: How and Why the CPP Became Dominant' (n 574) 44.
[583] Ibid 46.

1.4. Post UNTAC Aftermath

UNTAC focused on a state-level electoral solution to the problem of local representation. If this sounds counterintuitive the result was the same, in that there were no major advances in local representation as a result of the process.[584] Whether inadvertently or intentionally, the international community in Cambodia only managed to formally lever into power and legitimise previously dominant groups. The post-1993 result was essentially a classic case of Zartman's "mutually hurting stalemate" between the CPP and Funcinpec, both elites - one a royal elite.[585] This brings into stark relief where the real focus of multilateral democratisation lies, in that it chiefly engages with dominant groups in a "capital focused" *modus operandi*. Peou has observed that the UN also brought an excessively competitive Western style political equation to a state with high levels of pre-existing distrust, thereby contributing to its own failure.[586]

As noted above, the goal of the Paris Agreements was not primarily to place Cambodia on a path to democratic governance, but to arrive at a localised resolution to a legacy war dating from a time of superpower rivalry.[587] At the local level the process also sought to unravel an intricate web of problematic relationships between the various domestic factions, their external sponsors and the Cambodian people.[588] By the time of international involvement the Khmer Rouge had become isolated both domestically and internationally, leading to their increasingly desperate tactics of kidnapping and murder.[589] However, as Tom Martin has noted, the disaffection in rural communities with city-based corruption and theft, which made the Khmer Rouge an attractive option in the first place, has never been properly addressed.[590]

If the goal of the Paris Agreements was a short-term solution to a long-term stand-off, then the mission of UNTAC was not to transform Cambodia into a multiparty democracy in 18 months. Maley has observed that through forcing Cambodia's accession to all of the major human rights treaties, creating a free press and civil society, UNTAC succeeded in bringing

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[584] Richmond (n 69) 67.
[585] I William Zartman, 'Ripeness: The Hurting Stalemate and Beyond' in Paul C Stern and Daniel Druckman (eds), *International Conflict Resolution After the Cold War* (National Academy Press, 2000) 228.
[586] Peou, 'The Limits and Potential of Liberal Peacebuilding for Human Security' (n 8) 51.
[587] Roberts (n 559) 522.
[588] Martin (n 567) 15.
[589] Ibid.
[590] Ibid 16.

Cambodia back into "the community of states".[591] Yet, in an outcome remarkably similar to the relationship between FRETILIN and the UN in Timor-Leste nine years later, UNTAC (and its leader Yasushi Akashi) also managed to legitimise and secure the place of the CPP (and Hun Sen) as the dominant political player in Cambodia.[592]

Despite its broad mandate, UNTAC's failure to fully disarm the Khmer Rouge, and to recognise that the CPP had already extended its influence into every corner of the Cambodian state, meant that in any post-election standoff Hun Sen would have the upper hand.[593] The result was that Hun Sen managed to intimidate the UN into a position where it had no choice but to conclude that its only job was to "stage" the election and leave the country in September 1993. In doing so it left behind unfinished business. In the post-election aftermath Hun Sen manipulated the outcome of the first election in order to become "Second Prime Minister".[594] By 1997 he had ousted Ranariddh to become the sole leader of Cambodia.[595] Cambodia's neo-feudal system of hierarchical patronage, often described as "corruption" by the international community, also demands lucrative government jobs to be distributed amongst the dominant party. This process has taken over twenty years for the CPP to consolidate and will always undermine the emergence of true pluralistic multi-party democracy in Cambodia.[596]

The agreement between the contesting parties in Cambodia relied on a premise that they would participate in the statebuilding process in good faith.[597] Peou has argued that while an elite-level agreement is necessary for ending a conflict, for a guarantee of security and for the staging of elections, it is not clear that it is necessary for the implementation of a genuine democratic transition.[598] The internationally driven process involves an initial military intervention, subsequent disarmament, and some form of domestic agreement to cease hostilities.[599] It also requires a balance of power in which all of the parties come to accept that the continuation of armed struggle will not be advantageous to their political position, or

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[591] Maley (n 14) 121; Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (n 13) 224.
[592] Un (n 527) 23.
[593] Roberts (n 559) 524.
[594] Ear (n 523) 1.
[595] Ibid 6–7.
[596] Roberts (n 559) 533.
[597] Peou, *Intervention and Change in Cambodia: Towards Democracy?* (n 5) 260.
[598] Ibid.
[599] Ibid 261.

mere survival.[600] In the case of Cambodia, the lack of genuine CPP participation prior to and during the electoral process contributed to the later breakdown of that process.[601] Additionally, UNTAC's failure to enforce the disarmament component of the Paris Agreement, and an inability to address the pre-existing CPP dominance of the Cambodian bureaucracy, contributed to an insecure foundation for the emergence of a pluralist democracy.[602]

While cooperation between the parties is clearly an important part of any democratisation process at an elite level, it is not the sole determinant of the success or failure of long-term democratisation. In most cases one or more of the parties will not fully cooperate with some or all of any agreement made. This focus on an elite-level agreement between the chief parties to the conflict is consistent with a technical approach to democratisation, in which an election is central and comes at the end of a series of steps.[603] It assumes that if each step of that process is carried out correctly, the desired outcome will be achieved and the international community will be able to depart.[604] Given the entrenched dominance of the CPP, it was unlikely that the Paris Accords would incorporate any form of participatory element. It is also likely that the CPP would have manipulated any attempt to bring genuinely expanded forms of enfranchisement to the Cambodian people. In practice, democratisation in Cambodia should have been one component of a broader peace-building process, involving not just political but also economic, social and cultural initiatives. As Tom Martin has observed, Cambodia in 1993 lacked the existence of a "civic culture conducive to democracy" which included a respect for tolerance, a shared political language and an orientation towards compromise, without a resort to violence or repression.[605] Given its recent history prior to the mission, these conditions were, to say the least, remote, and no single election was going to reinstate them.[606]

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[600] Ibid; I William Zartman, *Ripe for Resolution: Conflict and Intervention in Africa* (Oxford University Press, 1985).
[601] Croissant, 'The Perils and Promises of Democratization through United Nations Transitional Authority - Lessons from Cambodia and East Timor' (n 14).
[602] Ibid 644.
[603] Ibid 665.
[604] Ibid.
[605] Martin (n 567) 4.
[606] Ibid.

Maley notes the diverse range of views in the UN system on how to go about the business of statebuilding.[607] There are "those who are committed to allowing the locals to have a say, others who saw peacebuilding as a way to bring elites together", take for example the 1993 arrangement mentioned above, in which the UN allowed for Hun Sen to become "2nd Prime Minster".[608] As noted above, Maley argues that the work of the UN in Cambodia appeared to be less about democratisation and more about returning it to the community of states as quickly as possible.[609] The international community in Cambodia, from the moment of the Paris Agreement onwards, prioritised elections at a national level rather than building localised forms democratic representation. A large turnout on election day is considered a triumph in that it indicates that people wish to be heard, but a tragedy in the sense that it only reinforces the position of pre-existing elites.

Morgenbesser has observed how, in failing to ensure the local level in Cambodian society was not dominated by the CPP, the UN effectively facilitated their subsequent dominance of Cambodian politics, and became one of the institutions used by which the CPP secured power.[610] The July 1997 coup marked the end point of the liberal peacebuilding project in Cambodia and showed that it created not a pluralist democracy, but rather an authoritarian one-party state. By inadequate design and patchy implementation, UNTAC had enabled the CPP to strengthen its control of the state apparatus and failed to implement a plan for an effective transition to democracy after the 1993 electoral process.[611] As a beginning, this placed the CPP at the center of any peace-building process to be attempted in Cambodia from that point onwards.[612]

The Cambodian outcome brought into stark relief the problematic use of elections to secure power in a neo-patrimonial state, including environments in which authoritarianism is wielded without resistance.[613] Elections can no longer be seen as an end in themselves, and cannot legitimate processes which would otherwise be illegitimate.[614] The fact that a series of "free and fair" Cambodian elections since UN involvement have only served to concentrate

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[607] 'Thesis Proposal Review, On File with Author' (16 December 2016).
[608] Ibid.
[609] Maley (n 14) 121.
[610] Morgenbesser, *Behind the Façade: Elections Under Authoritarianism in Southeast Asia* (n 14) 65.
[611] Peou, 'Cambodia's Hegemonic-Party System: How and Why the CPP Became Dominant' (n 574) 56.
[612] Morgenbesser, *Behind the Façade: Elections Under Authoritarianism in Southeast Asia* (n 14) 65.
[613] Un (n 527) 23; Morgenbesser, 'The Failure of Democratisation By Elections in Cambodia' (n 5) 145.
[614] Morgenbesser, 'The Failure of Democratisation By Elections in Cambodia' (n 5) 169.

reinforces this point.[615] The people of Cambodia have not been offered an opportunity to determine how they are governed.[616]

2. The Elements at Work in Cambodia

2.1. The Presence of Deliberative Processes in Addition to Aggregative Democracy

2.1.1 Elections Since UNTAC

Each election since the withdrawal of the UN has allowed Hun Sen and the CPP to normalise competitive authoritarianism in Cambodia, so that generations of Cambodians think that "this is what democracy looks like", and accept it as the status quo.[617] Now that Hun Sen's first son Hun Manet, second son Hun Manith, son-in-law Dy Vichea and nephew-in-law Neth Savorum have been levered into positions of power, the stage is set for a generational hand-over.[618] The long-term democratisation envisaged by the international community in Cambodia is now an impossibility.

International interveners adopted a technical approach that placed an election at its core, providing uneven legitimacy to one pre-existing political entity in the CPP. That entity refused to accept the outcome of the first election, entered into a power-sharing arrangement (with the imprimatur of the international community) and then proceeded to take full control in a subsequent coup. UNTAC could have promoted additional deliberative democratic mechanisms to distribute power away from the capital and towards the districts.[619] The Constitution should have ensured that the Prime Ministership had a limited set of powers, dependent on party agreement and subject to review by an independent judiciary.[620] Engendering a tolerance for multiple political voices, protections for political parties from intimidation and a solid education system to embed intergenerational change could also have changed outcomes in Cambodia.[621]

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[615] Ibid 146.
[616] Un (n 527) 27.
[617] Morgenbesser, *Behind the Façade: Elections Under Authoritarianism in Southeast Asia* (n 14) 82.
[618] Ibid; Peou, 'Cambodia's Hegemonic-Party System: How and Why the CPP Became Dominant' (n 574) 56.
[619] Pierre P Lizée, 'Human Security in Vietnam, Laos, and Cambodia' (2002) 24(3) *Contemporary Southeast Asia* 509.
[620] St John (n 5) 424.
[621] Ibid 425.

Elections since UNTAC have also revealed increasing deficits in localised representation and electoral verification.[622] For the 2017 communal elections, in an effort to improve scrutiny of irregularities one Cambodian NGO sent out more than 1000 observers to polling stations around the country.[623] Many Cambodian NGOs are staffed by young people seeking to diffuse the monoculture of the dominant ruling party.[624] There is support amongst young people in Cambodia for the idea that the injustices in Cambodia are caused by the CPP.[625] Many of the political parties registered for the 2017 election also reflected a desire for greater levels of local representation.[626] For example, the Grassroots Democracy Party (GDP) campaigned on a platform of local representation and the decentralisation of power away from Phnom Penh.[627]

2.1.2 Electoral Structure and Strengthening the National Electoral Commission

The status of the National Electoral Commission (NEC) reflects many of the structural problems with democracy in Cambodia.[628] A 2008 report by the then Special Representative of the Secretary-General for human rights in Cambodia, Yash Ghai, on technical assistance and capacity building (with which Hun Sen did not cooperate) dealt in part with lasting failure in the electoral system, particularly with the NEC.[629] The Commission is not independent in that it has no constitutional status and its members are appointed by the National Assembly from a list provided by the Ministry of the Interior (MoI).[630] Commissioners hold no fixed term of office so effectively remain only at the discretion of the of the MoI.[631] Voter registration and the issuing of identity cards is not done by the NEC but

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[622] Interview with Sean Bunrith (Michael Morison, Committee for Free and Fair Elections in Cambodia, Phnom Penh, 2 June 2017).
[623] Interview with Sean Bunrith (Michael Morison, Committee for Free and Fair Elections in Cambodia, Phnom Penh, 22 June 2017).
[624] Ibid; Un (n 527) 25; Netra Eng and Caroline Hughes, 'Coming of Age in Peace, Prosperity, and Connectivity: Cambodia's Young Electorate and Its Impact on the Ruling Party's Political Strategies' (2017) 49(3) *Critical Asian Studies* 396, 406.
[625] Interview with Sean Bunrith (n 623).
[626] Interview with Senior International Electoral Consultant, 'Interview with Senior International Electoral Consultant, Phnom Penh, 06/06/2017.' (Michael Morison, National Democratic Institute, Phnom Penh, 6 June 2017).
[627]hro'Cambodian Communal Elections, 2017' <https://www.rfa.org/english/news/special/cambodia-commune-election2017/>.
[628] Interview with Sean Bunrith (n 622).
[629] *Technical Assistance And Capacity Building: Report of the Special Representative of the Secretary General, Yash Ghai* UN Doc A/HRC/7/42 (29 February 2008) 21.
[630] Ibid.
[631] Ibid.

by state officials, usually to favour the ruling party.[632] Problems exist with electoral administration, including campaign financing irregularities, vote buying, the involvement of village chiefs in complaints and appeals and the arbitrary application of electoral laws, again usually to favour the ruling party.[633] The NEC is essentially powerless to sanction or prevent any of these critical irregularities.[634] The media is overwhelmingly supportive of the ruling party, especially in the powerful social media, space including through the CPP mouthpiece *Fresh News*.[635]

Another issue is that the Japanese, EU and US electoral capacity building organisations were until recently embedded in the same building as the NEC, adding to an incorrect perception (based largely on rumour) that the Commission is unduly influenced by foreign entities.[636] As a result several of these NGOs were effectively outlawed and forced to leave the country at short notice in the days prior to the 2017 Communal election.[637] A senior international electoral consultant from one of these entities told the author that he and his colleagues had been followed and were sure that their phones and offices had been the subject of surveillance.[638] That NGO was subsequently ordered to shut its office in Cambodia and its staff expelled, amidst claims by the CPP that they were assisting opposition parties to "overthrow the government".[639] The accusation reveals much about the zero-sum approach to power taken by Hun Sen and the CPP. Power is absolute, not to be shared but to be hoarded and defended. Power is not to change hands, governments are to be overthrown.[640] An independent and constitutionally backed electoral commission would have helped to strengthen the foundations of emerging democracy in Cambodia.

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[632] Ibid.
[633] Ibid.
[634] Ibid.
[635] George Wright, 'In Bid to Muzzle Critics, CPP Exploits Facebook', *The Cambodia Daily* (online, 31 August 2017) <https://english.cambodiadaily.com/news/in-bid-to-muzzle-critics-cpp-exploits-facebook-134177/>.
[636] Interview with Senior International Electoral Consultant (n 626).
[637] Ibid.
[638] Ibid.
[639] 'Statement on Cambodian Government's Decision to Shut Down NDI's Office in Cambodia', *National Democratic Institute* (Web Page, 23 August 2017) <https://www.ndi.org/publications/statement-cambodian-government-s-decision-shut-down-ndis-office-cambodia>; Ananth Baliga, 'Breaking: NDI to Be Shuttered, Foreign Staff Expelled', *Phnom Penh Post* (online, 23 August 2017) <https://www.phnompenhpost.com/national/breaking-ndi-be-shuttered-foreign-staff-expelled> ('Breaking').
[640] St John (n 5) 408.

2.2. Recognition of Deliberative Legacies:

2.2.1 Reviving the Cambodian National Congress

The Cambodian National Congress was a constitutionally-backed national forum for citizens to bring issues to the direct attention of the king, and the government of the day. Whilst limited by Cambodian traditions of fealty towards royalty, the CNC allowed any Cambodian citizen to bring issues to the attention of the King and Government of the day. It provided a bi-annual interactive forum in which Cambodian citizens could engage in a deliberative format with decision-makers on any issue of relevance to them personally, or to their community. The mechanism was intended to be held in all parts of the country on a rotating basis, and was regularly used by King Norodom Sihanouk, who chaired a CNC every six months during his time as King.[641] In the late 1950's the Congress evolved into a representative body, peopled by delegates from various levels of regional administration, and from provincial capitals.[642] By 1957 decisions of the Congress were being ratified by the legislative body known as the National Assembly.[643] Such a process represented a form of direct democracy, allowing a relatively unmediated connection between ordinary people and the legislature.[644] The entity carried sufficient weight in Cambodia to cause the Khmer Rouge to have a Special National Congress on 25-27 April 1975.[645] The CNC therefore provided a pre-existing, constitutionally guaranteed, deliberative mechanism to encourage citizen engagement in Cambodia, which could have been used by UNTAC to promote national dialogue.

The revival of the CNC, which predates the re-drafting of the Constitution under UN guidance in 1993, would have required no constitutional amendment and would have been familiar to older Cambodians who would have recalled its use during the Sihanouk years. The CNC could have been revived as a broadly accepted pre-existing deliberative body with a

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[641] Michael Leifer, 'The Cambodian Opposition' (1962) 2(2) *Asian Survey* 11, 13.
[642] decisionsSiti Galang Keo, 'Writing the Postcolonial City: Phnom Penh and Modernity during Sangkum Reastr Niyum, 1955–1970' (Ph.D., University of California, Berkeley, 2019) 48 <https://www.proquest.com/dissertations-theses/writing-postcolonial-city-phnom-penh-modernity/docview/2315585442/se-2?accountid=8330>.
[643] Ibid 49; Astrid Norén-Nilsson, 'The Demise of Cambodian Royalism and the Legacy of Sihanouk' (2016) 31(1) *Sojourn (Singapore)* 1, 21.
[644] George Chigas, 'A New Sun Rises over the Old Land' [2021] *South East Asia Research* 1, 1.
[645] Khieu Sampan, 'Special National Congress of Cambodia: Text of Communique Dated 28th April, Signed and Read by Khieu Samphan — Ed.' (1975) 5(2) *Journal of Contemporary Asia* 248.

degree of legitimacy, for use as a mode of popular consultation across Cambodia. The relevant provisions read as follows:

> ***Article 147***
>
> *The National Congress allows the citizens to be freely informed on various affairs of national interest, to raise issues and to submit some suggestions to the state authorities for a solution. Khmer citizens of both sexes have the right to participate in the National Congress.*
>
> ***Article 148***
>
> *The National Congress shall meet once a year, early in the month of December upon the convening by the Prime Minister. The National Congress shall proceed under the High Presidency of the King.*
>
> ***Article 149***
>
> *The National Congress shall adopt suggestions to be submitted to the Senate the National Assembly and the state authorities for consideration. The organisation and the functioning of the National Congress shall be stipulated by law.*[646]

Asked about the fate of the CNC and the possible merits of reviving it, the CPP has indicated that "it is not necessary anymore because Cambodia is a multiparty system".[647] The now outlawed CNRP indicated that it would reintroduce the mechanism if it was elected to power, and the exiled opposition leader Sam Rainsy also called for its revival during his 2015 return to Cambodia.[648] No Congress has been held under Hun Sen and the CPP have expressed a desire to see it amended out of the Constitution.[649] The reality is that the dominance of the CPP, which sees the CNC as a threat, has meant that the CNC was never given a chance to work. A local NGO worker interviewed for this study has suggested that Hun Sen prefers to go to regional areas to hear complaints in carefully stage-managed consultative sessions, where the participants are vetted and the questions (and presumably the answers) are settled

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[646] *The Constitution of the Kingdom of Cambodia* [2015] [tr The Constitutional Council, October 2015] Chapter XIV, Art. 147-149, p.53.
[647] Meas Sokchea, 'Rainsy Calls for Nat'l Congress', *Phnom Penh Post* (online, 29 April 2015) <http://www.phnompenhpost.com/national/rainsy-calls-natl-congress>.
[648] Ibid.
[649] Say Mony, 'Sihanouk's National Congress Remembered', *VOA* (online, 1 November 2012) <https://www.voacambodia.com/a/sihanouk-national-congress-remembered/1536883.html>.

well in advance.[650] Foreign interveners could have used a pre-existing national consultative framework, one which could potentially have been built into a form of localised consultation and representation. Once instituted they would have been harder to remove.

2.2.2 Decentralisation and Cambodian Communal Councils: Reviving the "Khum".

Cambodia has a system of local representation in the form of the communal council system or "khum" (in rural areas) and "sangkat" in urban areas which, despite their foreign origins, could have provided a model of grassroots governance.[651] At various times the commune system has dealt with discussion and decision-making on issues relating to the building and maintenance of local infrastructure and, during periods of political turmoil, local security matters. First established by French administrators in 1908, the Cambodian khum was originally based on the *Marie* or *L'Hotel de Ville* system dating back to 18th century revolutionary France.[652] The system, also referred to by the collective title of "commune", served to shore up French colonial power and was largely used as a means by which to collect taxes.[653] Between its establishment and Cambodia's independence in 1953, the commune system move through a series of iterations, largely at the behest and for the benefit of French administrators.[654] From the establishment of the commune system, women were given a vote on the basis that the head of the household could vote regardless of gender.[655] This is a unique situation given that women were not able to vote in France until 1945. Records also exist of the conduct of local elections prior to the establishment of the Khum, providing evidence that Cambodia has a historic system of local democratically elected governance.[656]

The communal system was abolished by King Norodom Sihanouk on the country's independence in 1953, then revived in the 1980's by the Vietnamese administration, known as the People's Revolutionary Party of Kampuchea (PRPK) which ran Cambodia subsequent to the invasion that removed the Khmer Rouge regime.[657] The PRPK morphed its into what is

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[650] Interview with Sean Bunrith (n 623).
[651] Michelle Vachon, 'Communes Through Time', *The Cambodia Daily* (online, 2 June 2017) <https://english.cambodiadaily.com/features/communes-through-time-130846/>.
[652] Chheat Sreang, 'The Cambodian Khum from 1897 to 1919 and Its Contemporary Relevance' (MA Thesis, Royal University of Phnom Penh, 2004) 1, 90.
[653] Vachon (n 651).
[654] Ibid.
[655] Ibid.
[656] Sreang (n 652) 39.
[657] Chandler, *A History of Cambodia* (n 521) 184.

now known as the CPP in 1991.[658] Between 1975 and 1979 the Khmer Rouge chose to continue the operation of the three level system on a Maoist collective basis devoted to farming, security and military strategy.[659]

During the 1980's the CPP took the opportunity to stack the local council system with candidates who were chosen by, and loyal to it.[660] The drafting of the *Commune Administration Bill* in early 2001 cemented the role of the CPP in local councils.[661] Only counsellor candidates who were political party members could run in the elections and commune councils were becoming increasingly overseen by the interior ministry.[662] Since 2002 community elections have taken place every five years to choose communal counsellors on a party list/proportional representation basis.[663] The CPP holds the majority of seats in virtually all of the communes and thus operates the most widespread and entrenched system of patronage in Cambodia, dominating all public institutions and the activities of the majority of regional civil servants.[664] The country now has three levels of sub national administration at provincial, district, and commune level.[665] The focus of the provincial administration is to maintain security and social order, represent central government through the implementation of laws, and provide basic service delivery.[666] The district and communal levels largely implement within their jurisdiction the responsibilities of the provincial government.[667] A turning point in district government came in 2008 with the adoption of the *Law on Administration and Management of Capital, Provinces, Municipalities and Districts* (also known as the Organic Law).[668] The law created elected councils and grants the districts their own budget and unique functions.[669]

The dominance of the CPP in communal councils has been somewhat eroded over time, however CPP-sponsored clerks still attend all meetings and report to the Interior Ministry,

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[658] Vachon (n 651).
[659] Sreang (n 652) 70.
[660] Vachon (n 651).
[661] Ibid.
[662] Ibid.
[663] Netra Eng and Sophal Ear, 'Decentralization Reforms in Cambodia' (2016) 33(2) *Journal of Southeast Asian Economies* 209, 212.
[664] Ibid 213.
[665] Ibid 212.
[666] Ibid.
[667] Ibid.
[668] Ibid.
[669] Ibid.

which acts as a form of censorship and control over the independent activities of communal councils.[670] In addition, candidates are selected by political parties, thereby preventing any independent candidates from running. Once elected, officeholders vote along party lines because losing membership leads to automatic removal from office.[671] This also has the effect of reversing any attempts at decentralisation of power. Despite the political monoculture which prevails, there have been periods in which local communal councillors have done a good job at serving the interest of their constituents, and local government continues to be a lively democratic space in Cambodia.[672]

The establishment of local government was not an UNTAC priority. Cambodia's Constitution, drafted with the assistance of the UN, mandated that local elections were to be held by 1996, however those elections were repeatedly delayed until 2002, due initially to the power struggle between the royalist Funcinpec and the CCP.[673] Since then a form of local civil society has emerged at village level in Cambodia, in which local people are often empowered to engage in discussion on issues of relevance to them, including where it opposes the interests or wishes of village authorities.[674] There is also evidence of a continued tradition at local level to question both the decisions of administrators and perceived corruption.[675] This suggests that the vibrancy of local deliberation is increasing a sense of empowerment at local level in Cambodian life, including an incremental increase in the empowerment of women in a culture which has tended to place women in a subordinate position.[676] Cambodian local government is a space in which there is scope to introduce work within existing deliberative frameworks to increase levels of citizen empowerment.[677] Had this space been a focus from the outset in international efforts to develop democracy in Cambodia, especially in the lead up to and during the international intervention in 1993, the local level could have provided a counterweight to the centralising tendencies of the CPP.

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[670] Vachon (n 651).
[671] Ibid.
[672] Joakim Öjendal and Kim Sedara, 'Korob, Kaud, Klach: In Search of Agency in Rural Cambodia' (2006) 37(3) *Journal of Southeast Asian Studies* 507, 514; Eng and Hughes (n 624) 405.
[673] Eng and Ear (n 663) 217.
[674] Öjendal and Sedara (n 672) 518.
[675] Ibid.
[676] Ibid 525.
[677] Ibid 526.

3. Conclusion

Cambodian political history since 1993 reveals several weaknesses in the practice of UN democratisation. First, the holding of an election is not sufficient to engender a culture of democratic engagement. Cambodia's traumatic history required a strong understanding of the nature of Cambodia beyond simply the political, legal or economic. Cultural, ethnic, anthropological, psychosocial and socioeconomic understanding was also required to bring about a sustainable shift in civil society and a democratic political culture.[678]

A genuine understanding of those important elements of the democratic matrix such as power-sharing, constructive dissent and a loyal opposition would have taken a long period of time to engender into Cambodian political culture.[679] One solution could have been to admit this reality and seek to alter the system from within, by building structures to promote genuine deliberation at village level and thereby increasing the capacity of the system to achieve deliberative outcomes. This could have included putting in place whatever structures were required to minimise the dominance of the CPP, particularly at grassroots level, and ensuring that the NEC had a degree of constitutional independence going forward. Pre-existing systems of consultation and deliberation from village level up, such as the Cambodian National Congress and the Khum, were overlooked. In the process opportunities to embed quality interaction in decision-making process were passed over. If done intelligently and carefully with an eye to security, deliberative techniques may have allowed for a type of "democratisation by stealth" in this situation, in that localised power structures would have been built to compete with the dominance of the CPP. Sadly, it is now too late for Cambodia, particularly given the closing down of civil society and public deliberation as Cambodia pursues realignment with China.

[678] Wendy Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (2009) 3(1) *International Journal of Transitional Justice* 28, 47.
[679] St John (n 5) 423.

CHAPTER FIVE: SUPERFICIAL DEMOCRATISATION IN TIMOR-LESTE

Introduction

Democratisation occupied a central position in the work of the UN in Timor-Leste, beginning with a mission to conduct a 1999 referendum on independence (or "autonomy") from Indonesia (UNAMET 1999 - 1999). The successor mission, UNTAET (1999 - 2002), based on the transitional administration model used in Cambodia, included the staging of Timor Leste's first democratic elections. Subsequent missions including UNIMSET (2002 - 2005) and UNOTIL (2005 - 2006) rode the highs and lows of the first years of Timorese independence after August 2002.[680] UNMIT (2006 - 2012), sought to restabilise the state after the 2006 security crisis and oversee the 2007 election.

Despite a string of elections since independence in 2002, democracy in Timor-Leste remains brittle. Power has been concentrated amongst a small Dili-based elite largely made up of members of the "1975 generation" of independence fighters. Despite government commitments to the contrary, decentralisation of power to district and village level has stalled. Many Timorese feel that they are not being adequately represented by a government comprised of powerful families living in the capital and squandering wealth generated by the oil revenues of the Timor Gap.[681]

Like the analysis of Cambodia in the previous chapter, the purpose of this chapter is to examine missed opportunities to create conditions for the emergence of sustainable democracy in Timor-Leste, by applying the model of deliberative democratisation outlined in Chapter 2. Pre-existing systems which could have embedded deliberative processes at multiple levels of Timorese society were overlooked or negated by the international community. The focus of international political intervention instead centred entirely around the staging of an election, while opportunities to embed deliberative processes into multiple levels of Timorese society were overlooked. Existing systems of consultation and deliberation from village level up were not embraced, or were overlayed with imposed

[680] 'UNMISET: United Nations Mission of Support in East Timor - Background', *United Nations Peacekeeping* (Web Page) <https://peacekeeping.un.org/mission/past/unmiset/background.html>.
[681] Bardia Rahmani, 'The Looting of Timor-Leste's Oil Wealth', *The Diplomat* (Blog Post, 1 June 2019) <https://thediplomat.com/2019/05/the-looting-of-timor-lestes-oil-wealth/>.

structures, and in the process opportunities to embed forms of quality interaction in decision-making processes were lost.

1. The Historical Backdrop

1.1. Traditional Structures

Timor-Leste's traditional political structure consisted of a set of extended families at both village and "national" level.[682] Nationally it was made up of approximately 40 autonomous kingdoms with a "Liurai" (King) as its ruler. Each ruler and group of "royal" families is associated with a particular "house" arranged in order of their arrival in the area.[683] The Portuguese used the Liurais as a means by which to exercise power and communicate with the population. Attempts to disturb the arrangement, which also reflects a cosmological order, were met with resistance so were left intact.[684]

The end of Portuguese rule saw the emergence of political parties and a superficial challenge to the Liurai system which, at least in appearance, was supported by the Indonesians in their desire to see representatives elected democratically. In reality, the traditional powerholders were never removed and imposed change was simply worked around to maintain the position of the Liurais. The foreign introduced multi-party political system is equated by the Liurais with individualism, conflict and personalistic animosity.[685] This is one of the reasons why current Prime Miniter Xanana Gusmao has always been deeply wary of partisan politics.[686] Throughout the period of UN involvement the Liurai system resisted change at village level.[687]

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[682] Hohe (n 103) 571.
[683] Sofi Ospina and Tanja Hohe, *Traditional Power Structures and Local Governance in East Timor: A Case Study of the Community Empowerment Project (CEP)* (Graduate Institute of Development Studies, 2002) 8; Interview with Marcio Da Piedade (Michael Morison, Dili, 22 July 2017).
[684] Ospina and Hohe (n 683) 8.
[685] Ibid 9; Dennis Shoesmith, 'Party Systems and Factionalism in Timor-Leste' (2020) 39(1) *Journal of Current Southeast Asian Affairs* 167, 182.
[686] Sue Ingram, *Timor-Leste's Presidential Election: Several Firsts, but No Generational Change* (In Brief 2017/10, Coral Bell School of Asia Pacific Affairs, Australian National University, 2017) 1.
[687] Ospina and Hohe (n 683) 73.

1.2. Before the 1999 Referendum

Timor Leste came to the attention of the General Assembly in 1960 when it was added to the list of Non-Self Governing territories as a consequence of its administration by Portugal.[688] Under Art 74-3 of Chapter XI of the Charter those states with residual administrative control over former colonies were to assist those territories to move toward self-government. Even though 71 territories still remained on the list, Timor-Leste attained independence in 2002.[689]

In 1974, seeking to move East Timor towards independence, Portugal had attempted to establish a provisional government in Dili, which led to civil conflict between independence groups and those seeking integration with Indonesia. Moreover, with regime change issues at home, Portugal withdrew leading to an Indonesian invasion and integration in 1976, which remained continually unrecognised (and therefore illegitimate) by the UN.[690]

Between 1982 and 1988 the question of independence recurred on the yearly agenda of the General Assembly, thanks largely to the tireless work of the Timorese themselves, especially Nobel Laureate Jose Ramos Horta. A change of leader and political climate in Jakarta in 1998 led to an agreement with Indonesia, brokered on 5 May 1999, for a "popular consultation" to be held on 30 August 1999.[691] The agreement included little input from the Timorese themselves, which laid the foundations for minimal local Timorese involvement in later UN missions.[692] At this time Xanana Gusmao, the captured leader of the Timorese independence movement *Conselho National da Resistencia Timorense* (CNRT) was still in a Jakarta jail cell, and UN "ambassador" José Ramos Horta was a representative in exile.[693] While strongly supporting a move to independence under UN guidance, the Timorese expressed deep concern over any agreement that allowed Indonesia to maintain control over security during the referendum.[694] The UN mission engaged to supervise the vote, UNAMET, was also to oversee the transition period towards implementation of the decision.[695]

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[688] 'UNMISET: United Nations Mission of Support in East Timor - Background' (n 680).
[689] 'Non-Self-Governing Territories | The United Nations and Decolonization', *United Nations* (Web Page) <https://www.un.org/dppa/decolonization/en/nsgt>.
[690] 'UNMISET: United Nations Mission of Support in East Timor - Background' (n 680).
[691] Astri Suhrke, 'Peacekeepers as Nation-Builders: Dilemmas of the UN in East Timor' (2001) 8(4) *International Peacekeeping* 1, 3.
[692] Ibid.
[693] Ibid 4.
[694] Ibid.
[695] SC Res 1246, UN Doc S/RES/1246 (11 June 1999).

2. UNAMET, UNTAET, UNMIT and Timorese Democratisation

2.1 The 1999 Referendum and UN Involvement

On 30 August 1999, 98% of registered Timorese voted in favour of independence by a margin of 78.5%.[696] The announcement caused Indonesian supported pro-integration Timorese militias to engage in a campaign of killing, looting and destruction across the territory, which only ended on September 20 1999 with the intervention of the INTERFET multinational force led by Australia.[697] Amidst the violence, and the efforts to reign it in, the plan to give the Timorese a central role in the design and implementation of self-governance slipped further down the list of priorities.[698]

On 28 September 1999, authority over Timor Leste was transferred to the UN and UNTAET was established as an integrated multidimensional peacekeeping operation and transitional authority.[699] In order to keep the Indonesians on side and to promote regional stability, the role of the Timorese resistance in any transitional arrangements was limited in the lead-up to its establishment.[700] From the outset the mission had few elements built into it for local participation, a problem which only became more evident as this and successive UN missions unfolded.[701] The paradox of preparing a country for independence with so few opportunities for local participation was never fully resolved.[702]

Competing claims to authority between Indonesia, Portugal and the independence movement CNRT contributed to a vacuum in which the UN sought to retain impartiality. As a consequence, unlike similar multidimensional missions before it in Cambodia and Kosovo, the design of UNTAET treated Timor-Leste as a political *terra nullius* under Chapter XI, Art. 73(e) of the Charter.[703] This provided further justification for the adoption of a full transitional administrative model.

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[696] 'UNMISET: United Nations Mission of Support in East Timor - Background' (n 680).
[697] Ibid.
[698] Suhrke (n 691) 4.
[699] 'Security Council Resolution 1272 - UNSCR' <http://unscr.com/en/resolutions/1272>.
[700] Suhrke (n 691) 5–6.
[701] Ibid 2.
[702] Suhrke (n 691).
[703] Ibid 3.

As is reflected in the later "turf war" between UNTAET and the World Bank over the CEP project (discussed below), the planning for UNTAET took place amidst internal UN competition between the Department of Political Affairs (DPA) and the Department of Peacekeeping Operations (DPKO). The DPA had an historical involvement in the issue of East Timor, had become the UN hub for expertise, and favoured a high level of involvement by the Timorese themselves during the period of transition.[704] The DPKO on the other hand, saw the deployment of INTERFET as proof that it should lead any future UN involvement in the country. It believed that the UN should maintain a strong stance of neutrality in relation to local involvement and was subsequently successful in making that case, despite its paucity of experience in governance missions and in East Timor specifically.[705] The final plan for UNTAET put before the Security Council in late 1999 was a model for a mission almost entirely foreign in nature.[706] In line with DPKO priorities, professional staff were to be internationally recruited, support staff were to be engaged locally, and the budget was to favour military rather than governance elements.[707]

In advance of an election to determine the leadership of the nascent state, the UN also resisted recognition of CNRT as anything other than a political faction.[708] UNTAET therefore got underway with no official local partner, staffed largely by internationals and with little in-country experience or knowledge of local languages.[709] Jarat Chopra has argued that a better democratic outcome in Timor-Leste would have been achieved if the UN had taken a "light footprint" approach in this regard. [710] In the immediate post-conflict period CNRT remained overwhelmingly popular and was seen as the legitimate holder of Timorese sovereignty. Chopra, who worked in the mission as a District Administrator, suggests that if UNTAET had entered into a direct relationship with CNRT it could have circumvented the whole requirement for a costly transitional administration intervention.[711] The UN could have benefited from the legitimacy and saturation of the CNRT, avoiding the many negative effects of immersive UN involvement.

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[704] Ibid 6–7.
[705] Ibid 8.
[706] Ibid.
[707] Ibid 10.
[708] Ibid 11.
[709] Ibid.
[710] Chopra, 'Building State Failure in East Timor' (n 449) 996.
[711] Ibid 996.

The dominant UN commitment to neutrality and independent civil administration also served to slow any "Timorisation" of the mission. By the time of the establishment of East Timor Transitional Administration (ETTA) in early 2001 and the National Council in 2000, CNRT had been dissolved.[712] By 2000 the narrative that East Timor was a political blank slate had taken hold within UN bureaucracy, both locally, in New York and in many parts of the international media.[713] It was in this climate that Timor-Leste's first two elections took place in 2001 and 2002, resulting in the swearing in of its first government on 20 May 2002. For the first time since Portuguese colonisation, that same day it officially became an independent member of the international community.

As Chopra has argued, one consequence of poor local representation was that UNTAET undermined its own legitimacy by looking (and behaving) like a semi-authoritarian "kingdom", with the UN Special Representative at the top.[714] UNTAET sought to exercise all legislative, executive and judicial functions, relying on the panacea of "free and fair elections" as the sum total of national political participation, while making decisions in consultation with a local small elite.[715] By contrast both UNDP and the World Bank saw that there was considerable pre-existing professional capacity amongst the Timorese and sought to include them in development planning.[716] However, as will be discussed below, a rivalry between the two organisations hampered their influence and any possible program delivery.[717]

3. The Elements at Work in Timor Leste

3.1. Recognition of Deliberative Legacies

3.1.1 A Terra Nullius?

The accepted narrative amongst the international community on the arrival of the UN in Timor-Leste was that pre-existing systems of governance and dispute resolution had been erased by the "scorched earth" policies of the retreating Indonesians.[718] The UN district

[712] Suhrke (n 691) 12–13.
[713] Ibid 15.
[714] Jarat Chopra, 'The UN's Kingdom of East Timor' (2000) 42(3) *Survival* 27, 29.
[715] Chopra and Hohe (n 122) 289.
[716] Suhrke (n 691) 16.
[717] Ibid.
[718] Chopra, 'Building State Failure in East Timor' (n 449) 985.

administration model sought to exercise control over the territory on the assumption that there was neither centralised, nor devolved authority.[719] The reality was that socio-political structures in Timor-Leste not only existed prior to international involvement, but proved resilient during and after such involvement. [720] The Timorese had abundant experience during 25 years of oppressive Indonesian occupation in the maintenance of existing community structures.[721] As a consequence two parallel structures emerged, one traditional and one imposed.[722]

In 2000 the proposed solution to bridge the divide was an international District Administrator (DA) placed into each sub-district. The DA effectively controlled all of the functions of UNTAET except that of the military, including both executive and judicial functions.[723] Clearly the role required a special type of individual who could come to a rapid understanding of the complex systems to be found in each local situation.[724] The writer's experience of District Administrators was that they displayed varying levels of competence, honesty and capacity. Capable DA's were quickly redeployed or sought employment elsewhere within the global UN system. Less capable individuals dug in and tended to model certain behaviours they had learnt for survival in home countries, including secrecy, nepotism, corruption and alcohol abuse.

The types of problems with DA's in Timor-Leste have been more recently recognised in UN analysis. The 2015 HIPPO report indicated that each mission should have access to the "requisite local, cultural, linguistic and country expertise" of the host country, which suggests an appreciation of the need for UN staff to have a prior full understanding of the complex, interconnecting, political, economic, legal, social, cultural and historical context in which they intend to work.[725] Programs often suffer from language deficits amongst international staff, limited understanding of the original causes of the conflict and the cultural intricacies of the local context.[726] Many programs inadvertently fail to take into account the role of ideology, ethnicity, kinship and tribal allegiances, which can be difficult for an inexperienced

[719] Ibid.
[720] Hohe (n 103) 569.
[721] Ibid.
[722] Ibid 580.
[723] Chopra, 'Building State Failure in East Timor' (n 449) 987.
[724] Ibid.
[725] *Report of the High-Level Independent Panel on Peace Operations on Uniting Our Strengths for Peace: Politics, Partnership and People,* (n 120) 255.
[726] Chetail (n 32) 45–46.

outsider to understand.[727] As Hohe has observed, capacity building is not received onto a blank canvas, rather it is placed over a specific set of cultural assumptions built on tradition, historical development, gender relations, ethnicity, kinship and tribal allegiances.[728]

3.1.2 The Timorese National Truth and Reconciliation Commission (CAVR): A Model of Quality Deliberation

While experimental in its execution and mixed in its outcomes, the Timorese National Truth and Reconciliation Commission (*Comissão de Acolhimento Verdade e Reconciliação de Timor Leste* - CAVR) used a traditional discussion-based, reconciliation and truth telling model appropriate to local conditions, aspects of which could have been expanded and incorporated into the judicial system and government itself. It provided a working, resolved historical model for quality deliberation going forward in Timor-Leste and potentially in other post-conflict contexts.

In June 2000 a meeting of Timorese civil society representatives and the Catholic Church was convened to discuss a possible post-conflict transitional mechanism on a South African model .[729] In July the first national congress of CNRT unanimously recommended the establishment of a *Commission for Resettlement and National Reconciliation* (CRNR).[730] After extensive consultations with communities across Timor-Leste from September 2000 to January 2001, a *National Truth and Reconciliation Commission* was established under UNTAET regulation on 13 July 2001.[731]

The primary objective of the commission was to enquire into the nature of human rights violations in Timor-Leste between 25 April 1974 and 25 October 1999 and, where appropriate, to refer those violations to State prosecutors.[732] This included events surrounding the entry of Indonesia into Timor-Leste on 7 December 1975, the events occurring during the Indonesian occupation up to 25 October 1999 and the popular consultation of 30 August

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[727] Hohe (n 103) 570.
[728] Ibid 586.
[729] 'Formation of the Commission', *CAVR Timor-Leste* (Web Page) <http://www.cavr-timorleste.org/en/cavr.htm>.
[730] Ibid.
[731] *Regulation No 2001/10: On the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor* [2001] UN Doc UNTAET/REG/2001/10 (13 July 2001); 'Formation of the Commission' (n 729).
[732] *Regulation No. 2001/10: On the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor* (n 731) S.3, Cl.3.1(a),(e).

1999.[733] A comprehensive report was to be prepared, setting out the activities of the body, its findings and the evidence leading to those findings.[734] The body was to establish the truth of what occurred, restore the dignity of victims and promote reconciliation and re-integration.[735] The UNTAET regulation establishing the Commission gave three core responsibilities to the six Timorese Commissioners appointed to the body, the most important being truth seeking into human rights violations which occurred within the recognise timeframe.[736] Secondly, they were tasked with establishing a Community Reconciliation Process (CRP) which allowed alleged perpetrators to speak before panels of local community leaders in return for a degree of immunity from civil suit and criminal prosecution.[737] Lastly, Commissioners were to provide recommendations in the final report on how to prevent human rights abuses in the future.[738]

The second of these mandates, the CRP, overseen by a panel including local community representatives, proved to be one of the most effective processes undertaken by the commission. The UNTAET regulation allowed for any person responsible for a criminal or non-criminal act to provide the commission with a written statement of those acts, including an admission of responsibility, identification of the relevant community, a renunciation of further violence and a request to participate in a CRP with the relevant community.[739] The commission also had the ability to provide assistance with the preparation of statements.[740] The hearing process involved the alleged perpetrator (described only as *deponents*), the victims and any other members of the community involved in the events.[741] The process was overseen by a panel which had broad powers to determine how the hearing was conducted. As a result, proceedings were largely discussion-based, involving questions and answers in oral form on the matters at hand - a far more culturally appropriate way to go about an enquiry than a formal Western-style courtroom approach bound in the rules of evidence and procedure.[742] Subsequent to the hearing, the CRP panel could request an act of reconciliation

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[733] Ibid S.13, Cl.13.2,(a),(b).
[734] Ibid S.13, Cl.13.1(c); S.21, Cl.21.1-4.
[735] *Ibid S.3, Cl.3.1(b),(f),(g),(h); S.13, Cl.13.1-13.3.*
[736] Rowan McRae, 'Asia-Pacific: Truth-Seeking For Justice in East Timor' (2006) 31(3) *Alternative Law Journal* 169, 169.
[737] Ibid.
[738] Ibid.
[739] *Regulation No. 2001/10: On the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor* (n 731) S.23, Cl.23.1-4.
[740] Ibid S.23, Cl.23.2.
[741] Ibid S.27, Cl.27.1(a)-(c).
[742] Ibid S.27, Cl.27.2.

in the form of community service, reparation, public apology or other act of contrition, using a restitutionary rather than retributive model.[743]

One direct account of such a process details how elders sat together on the *biti bot* or *nahe biti*, a traditional large woven mat used as common ground in dispute resolution, listening to stories of victims and perpetrators.[744] After close questioning by the panel, and subsequent consultation with the victims, during which an appropriate act of reconciliation was discussed, the village leader explained how the perpetrators would be welcomed back into the community.[745] Their act of reconciliation being to assist, for example, the community in building a flagpole and raising the new flag of Timor-Leste, followed by a muted celebration.[746] The ceremony ended in the perpetrators circulating amongst the villagers in ceremonial embrace amidst collective tears.[747] It was a highly emotional and cathartic moment.

Lia Kent observed during fieldwork in 2004 that hearings often continued late into the night as the community discussed different interpretations of events, as if to amplify the contrast between criminal justice processes which do not allow for broad community participation and the use of narrative to put forward personal perspectives on often horrific events.[748] The process offers a degree of recognition, validation and resolution which is simply not available in more formal legal settings.[749]

The role of women within the truth and reconciliation process was however somewhat more complex.[750] Fewer women than men took part in the process, including hearings, reflecting traditional gender divides in Timorese society.[751] Fewer women had access to information as a consequence of being less involved in formal community organisations, combined with a sense that their stories were perhaps not as valid or important as those of men.[752]

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[743] Ibid S.27, Cl.27.7(a)-(d).
[744] McRae (n 736) 70; Lia Kent, 'The Serious Crimes Process and the Commission for Reception, Truth and Reconciliation: Justice Possibilities and Impossibilities' in *The Dynamics of Transitional Justice* (Routledge, 2012) 90.
[745] McRae (n 736) 70.
[746] Ibid.
[747] Ibid.
[748] Kent (n 744) 91.
[749] Ibid.
[750] Ibid 101.
[751] Ibid.
[752] Ibid.

Understandable stigma around the issue of sexual violence, which was widespread both during the occupation and during 1999, also limited the possibilities for women to give evidence and be validated.[753] Many women were forced into what was effectively sexual slavery by Indonesian military officers, thereby alienating them from their own Timorese culture and stigmatising them within Indonesian military circles.[754]

Timor-Leste continues to see instances of sporadic violence at sites of contestation between marshal arts groups, Easterners and Westerners, families, tribes and elites. Many transitional justice initiatives in Timor Leste suffered from the oversimplification of dividing participants into either perpetrators or victims, in a situation where events tended to cloud the differences between the two.[755] However, the innovative design of the CRP allowed it to go further in unravelling these complex webs of violence, and it was here that the process was at its strongest.[756]

The final massive Chega! report was presented to the then President of Timor-Leste Xanana Gusmano on 31 October 2005.[757] Unfortunately the report immediately sank under the rising tide of the *realpolitik* between the new Timor-Leste and its former coloniser.[758] In 2005 the role of the CAVR was eclipsed by a new "Truth and Friendship Commission" between Timor-Leste and Indonesia, tasked with seeking reconciliation and advancing the friendship between the two powers.[759] Widespread dissemination of the report and public education campaigns associated with its findings were one of the key recommendations of the commission itself.[760] None of this has taken place. As a consequence few steps have been taken towards delivering justice for past atrocities. The government of Timor-Leste has continued to delay implementing any of the recommendations made in the report and in many ways has sought to bury it.[761]

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[753] Ibid 102.
[754] Ben Larke, '". . . And the Truth Shall Set You Free": Confessional Trade-Offs and Community Reconciliation in East Timor' (2009) 37(4) *Asian Journal of Social Science* 646, 671.
[755] Ibid 673.
[756] Ibid.
[757] Comissão de Acolhimento, *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor (CAVR)* (Final Report, Uniya Jesuit Social Justice Centre, 7 February 2007).
[758] McRae (n 736) 170.
[759] Ibid.
[760] Ibid 171.
[761] Joseph Nevins, 'The CAVR: Justice and Reconciliation in a Time of "Impoverished Political Possibilities"' (2007) 80(4) *Pacific Affairs* 593, 601.

Despite these shortcomings, the CAVR allowed for a deliberative form of justice in a more culturally appropriate setting than a formal criminal justice process. As Lia Kent has noted, "the CAVR was able to encapsulate a more complex truth about the period of the Indonesian occupation that recognised the way in which violence had permeated community structures and relationships, exacerbating divisions and forms of discrimination."[762] It received a total of 1,541 statements from alleged perpetrators requesting to participate in community reconciliation processes: of those 1,371 cases were successfully completed through hearings.[763] Figures show that nearly 90% of all cases which were received proceeded to completion; the remaining were situations where the perpetrator did not appear, the hearing was adjourned or the matter was not approved for proceed to CRP.[764] It stands as an ideal model of quality deliberation in Timor-Leste and for future post-conflict applications.

3.2. The Presence of Deliberative Processes in Addition to Aggregative Democracy

3.2.1 The Installation of FRETILIN and Beyond

As in Cambodia, whether by intention or design, the international community again levered into power a pre-existing elite. The group which took power in May 2002 were largely made up of the same individuals who declared Timor independent for a brief moment in 1974. This "1974 Generation" have subsequently rotated the high offices of the state amongst themselves under the patronage of the political grouping known as FRETILIN (see p.3 above), adding to the view that they were going to take and hold power regardless of international influence. Bickerton has gone so far as to propose that the UN imposition of multi-party politics served only to distort the "on the ground" inevitability that FRETILIN was likely to inherit post-conflict power.[765]

The UN left in its wake a series of elites which can be classified broadly into two camps, consisting of an older and younger generation. The older generation in many cases held senior positions in the Portuguese administration and went on to either cooperate with or oppose Indonesian rule. Mario Carrascalao, who died in 2017, and Leandro Isaac sought to

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[762] Kent (n 744) 100.
[763] *Chega! The Report of the Commission for Reception, Truth, and Reconciliation Timor-Leste Executive Summary* (East Timor Action Network, 28 November 2005) 23.
[764] Ibid.
[765] Bickerton (n 80) 121.

cooperate with the Indonesian occupation. Jose Maria Vasconcelos ("Taur Matan Ruak"), Francisco Guterres ("Lu-Olo"), Mari Alkatiri, the current Prime Minister Xanana Gusmao, Jose Luis Guterres, Joao Carrascalao, Xavier do Amaral and the current President Jose Ramos Horta make up part of the remaining generation who fought against Indonesian occupation. This older generation have shown themselves to be politically pragmatic, ambitious, conservative, and strongly pro-Portuguese. [766] That pragmatism was demonstrated by the post-independence approach of Xanana Gusmao in particular, to relations with Indonesia. While the UN were still present, Gusmao pressed for the curbing and eventual dismantling of the *Serious Crimes Unit*, an entity established to investigate and prosecute international crimes committed by Indonesian-backed militias during the 1999-2000 violence, despite the fact that there was no mandate or widespread public support for its abolition.[767] Subsequently he has promoted reconciliation, political neutrality and minimal confrontation with Indonesia. He has visited, with messages of forgiveness, remnants of pro-autonomy militia groups resident in various parts of Indonesia.[768] Additionally, Alkatiri and Lu Olo have sought to reinforce their positions with voters by capitalising on FRETILIN'S position as central to the resistance. The FRETILIN party flag has become the national flag, its 1975 anthem the national anthem and Portuguese has become the national language, despite the fact it is spoken by less than 10 percent of the population.[769]

During the 2000's the "Mozambique group", led by the Secretary General of FRETILIN Alkatiri were the most powerful in Timorese politics, with allies Ana Pessoa and Rogerio Lobato elevated to high positions in the government. The group employed political strategies learned during the rule of *Frente de Libertação de Moçambique* (FRELIMO) in Mozambique, retaining a large majority in the parliament by taking advantage of the fact that the Timorese Constitution is based on that of Mozambique.[770] FRETILIN continue to be a dominant force in Timorese politics but they have learned to avoid outright confrontation by allowing for power-sharing arrangements.[771]

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[766] Fransisco da Costa Guterres, 'Elites and Prospects of Democracy in East Timor' (PhD Thesis, Griffith University, 2006) 207; Ingram (n 686); Shoesmith (n 685) 175.
[767] Guterres (n 766) 211.
[768] Ibid 212.
[769] Ibid 209–10.
[770] Ibid 219–20.
[771] Ibid 281.

More recently a younger generation have come to compete for power with FRETILIN and the older generation individuals behind it.[772] Other leaders have emerged such as Fernando de Lasama, Aniceto Guterres Lopes, Joao Mariano Saldanha, Avelino Coelho, Armindo Maia and Rui Araujo. Some were either part of what is known as the Clandestine Movement during the Indonesian occupation, or became involved in politics after the occupation. Some were educated in Australia, Portugal or New Zealand and are more aligned to the international language of human rights. They are critical of the appeasement of the older generation but have often been co-opted into FRETILIN'S orbit by the lure of lucrative government posts or political positions.[773]

3.2.2 The 2007 Crisis and the Importance of Provincial Politics

The 2007 Parliamentary Elections took place in the wake of the most serious security crisis in the short history of post-independence Timor-Leste, and represented a rare temporary setback for the dominance of FRETILIN.[774] Conflict between factions in the military and police, in some cases supported by government ministers, boiled over into open warfare on the streets of Dili and other parts of regional Timor-Leste.[775] The conflict mirrored a struggle for power between President Xanana Gusmao and Prime Minister Mari Alkatiri, with the eventual resignation of the latter. The eventual winner of the Presidency after a run-off was Jose Ramos Horta who took office on 20 May 2007. The parliamentary elections resulted in FRETILIN, led by Mari Alkatiri, taking just over 29 percent of the vote (down from the 57 percent of 2001) and the newly reconstituted CNRT, led by Xanana Gusmao taking just over 25 percent of the vote. With 21 and 18 seats respectively, neither party was able to form a majority in government.[776] After much political wrangling, a CNRT coalition led by Gusmao came to power on 6 August 2007.[777] The crisis of 2007 eventually came to a head in 2008 with the attempted assassinations of President Jose Ramos Horta and Prime Minister Xanana Gusmao and death of the rebel Alfredo Reinado.[778]

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[772] Ibid 282.
[773] Ibid 214.
[774] Emily Toome, Damian Grenfell and Kathryn Higgins, *Local Perspectives on Political Decision-Making in Timor-Leste* (Globalism Research Center, RMIT University, 2012) 9.
[775] Ibid.
[776] Toome, Grenfell and Higgins (n 774).
[777] Ibid 12.
[778] Ibid 9.

The 2007 crisis was largely driven by elements outside the capital of Dili. Correspondingly, a study of contrasting voter attitudes between Dili and the district of Venilale during the 2007 election revealed a set of significant results. In Venilale it found little penetration of mass media and therefore political commentary. Face-to-face discussion and political interaction factored much more heavily at district level, and the physical presence of political parties was therefore an important factor.[779] Particular candidates were largely rated on personal traits, personality and reputation and to a lesser extent on policies and capacity. Participation against the resistance to the Indonesians also played an important part in voter preference.[780] Evidence also emerged to suggest some voters will change their preferences for political party based on personality rather than politics.[781] Linked to this was a suggestion from some respondents that photos of individuals on ballot papers, rather than the symbol of their political party, would influence voter behaviour.[782] This suggests that politics is largely played out at district and village level despite the centralised nature of Timorese administration.

The role of campaigning is important at district-level, manifested particularly by that most visible of political phenomena in Timor-Leste, the mass rally. The mass rally played a crucial part in influencing voter behaviour rather than ideological affinity, particularly where a tangible benefit is provided such as the distribution of money, food, clothing or cigarettes.[783] This may explain FRETILIN'S strong use of the mass rally from its outset. Respondents noted FRETILIN'S historical association with resistance, while the use of the mass rally to capitalise on this played a prominent role in their decision to vote for them.[784] There was also later evidence that the emergence of a more diverse range of political parties, and a resulting departure from voting for FRETILIN, could be equated with conflict and a potential breakdown of national unity. A sense of personal responsibility for "backing the wrong party" and a fear of local retribution for doing so, were also a factor in promoting votes for FRETILIN.[785]

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[779] Ibid 24.
[780] Ibid.
[781] Ibid 25.
[782] Ibid 26.
[783] Ibid 30.
[784] Ibid 29.
[785] Ibid 39.

3.2.3 Events Since 2017

The 20 March 2017 Presidential election and the events that have followed have seen business as usual in Timorese politics, with the exception that some new political parties have emerged. FRETILIN candidate and resistance figure Francisco Guterres (Lu Olo) won the election with a majority of 57.1 percent on his third attempt.[786] All of Timor's Presidents, (Gusmao, Horta, Taur Matan Ruak) have been male former resistance figures from the "1975 generation".[787] A new generation, some of whom belong to the clandestine movement, are keen to take over the reins of power. The runner-up to the 2017 election, Antonio da Conceição, is one of these individuals.[788] The 2017 parliamentary elections resulted in a near draw between FRETILIN and Xanana Gusmão's reconstituted *Congresso Nacional de Reconstrução de Timor* (CNRT).[789] A FRETILIN/ *Partido Democrático* (PD) coalition emerged on 15 September 2017, making Mari Alkatiri once again Prime Minister of Timor-Leste.[790] After several years of upheaval involving electoral competition between FRETILIN, CNRT, PD and other minor parties, which included several dissolved coalitions, Timor-Leste today finds it self in a tense power-sharing situation between CNRT, the youth oriented *Kmanek Haburas Unidade Nasional Timor Oan* (KHUNTO) party and the *People's Liberation Party* (PLP) of Taur Matan Ruak.[791] Future governments will most likely be similarly made up of coalitions between the major players and minor emerging parties.[792]

3.3. Capacity or "Reach" of Deliberation in a System

3.3.1 Decentralisation, The World Bank and the CEP

Decentralisation, or *desenvovlimento*, a term which echoes around the administrative corridors of the new Timor-Leste, represents an attempt to devolve power from a centralised "capital focus" model to the district, sub-district or local level.[793] In the post-independence

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[786] Ingram (n 686) 2.
[787] Ibid.
[788] Ibid.
[789] 'Timor-Leste Elections Suggest Reframed Cross-Party Government' <https://www.lowyinstitute.org/the-interpreter/timor-leste-elections-suggest-reframed-cross-party-government>.
[790] 'Timor-Leste Heads for Minority Government' <https://www.lowyinstitute.org/the-interpreter/timor-leste-minority-government>.
[791] 'East Timorese Politics in Flux | Michael Leach', *Inside Story* (18 February 2021) <https://insidestory.org.au/east-timorese-politics-in-flux/>.
[792] Ibid.
[793] The International Bank for Reconstruction and Development / The World Bank, *Community Driven Development in the Context of Conflict-Affected Countries: Challenges and Opportunities* (No 36425-GLB, 20

period, the World Bank's Community Driven Reconstruction (CDR) model sought to encourage "local choice and accountability" in post-conflict reconstruction and electoral processes.[794]

Decentralisation can be a central component of a deliberative approach to democratisation in that it allows for a transfer of power to those whom centralised decisions will affect the most. As the nascent state of Timor-Leste came into being, the World Bank and Asian Development Bank sought to extend the comparatively successful decentralisation programs it had trialled in the provinces of Indonesia into the districts of Timor-Leste.[795] The resulting Community Empowerment Project (CEP) introduced various innovations including the establishment of local level "Community Councils" designed to bring consultative and deliberative decision making to village level.[796] As an indicator of the bank's commitment to local empowerment, it commissioned early research on the use of existing power structures to encourage legitimate decision-making - but it is unclear whether it was ever used.[797] The writer facilitated a district visit of the delegation conducting the study, which provided monetary grants in response to development priorities devised and submitted by villages through a deliberative process.[798] Planned to start in 1998 as the crisis of governance in Timor-Leste was coming to a head, the project eventually gathered momentum in 2002.[799] The emerging CEP scheme appeared to mesh well with the existing district administration system.[800] UN Volunteers (UNV's) who had been involved in the 1999 vote were also redeployed into the 13 districts under the DA model, linked into the CEP project building a local Timorese administration from village level upwards.[801] A National Consultative Council (NCC) also emerged in 1999 which included representatives from pro-independence

June 2006) <http://siteresources.worldbank.org/INTCDD/Resources/CDD_and_Conflict.pdf> ('*Report No. 36425 - GLB*'); *Timor-Leste Strategic Development Plan 2011 - 2030* (Report, Democratic Republic of Timor-Leste, 2011) 114.

[794] The International Bank for Reconstruction and Development / The World Bank (n 793).

[795] John Braithwaite, Hilary Charlesworth and Adérito Soares, *Networked Governance of Freedom and Tyranny: Peace in Timor-Leste* (Australian National University Press, 2012) 119.

[796] Ibid.

[797] Ospina, S., Hohe, T., and Institut universitaire d'études du développement, *Traditional Power Structures and Local Governance in East Timor: A Case Study of the Community Empowerment Project (CEP)*, vol. no. 5., Book, Whole (Geneva: Graduate Institute of Development Studies, 2002).

[798] Braithwaite, Charlesworth and Soares (n 795) 119.

[799] Ibid.

[800] Chopra, 'Building State Failure in East Timor' (n 449) 992.

[801] Ibid 998.

and pro-integration groups, although the latter did not participate a great deal due to their isolation in West Timor.[802]

With its origins in the Indonesian *masyarakat pembangunan* concept of bolstering community capacity and power, the Timorese CEP initiative emerged from similar programs in Indonesia run by Mercy Corp, Caritas and the Japanese International Cooperation Agency JICA).[803] In the Indonesian context the World Bank specifically sought to shift international assistance frameworks towards community control over planning, implementation and resource allocation, as opposed to traditional top-down approaches to development.[804] The term "community driven development" identified projects which sought to reverse the traditional models of aid and development delivery, to provide greater community control over planning, implementation and resource allocation.[805]

The specific program which fed into the CEP was the Kecamatan Development Program (KDP) funded by the World Bank, which started with work in 25 Indonesian villages in 1997 to eventually comprise 28,000 villages by 2003.[806] Despite tensions between the center and districts, the program recognised that Western-style centralised economic development was not appropriate to local needs.[807] In particular, that a certain degree of what the West describes as "corruption" but is in fact a system of patronage, needed to be recognised and built-in to the structure of the program.[808] The CEP in Indonesia had a particular focus on women and vulnerable members of the community, and the model was also subsequently applied to the reconstruction of Aceh after a 2004 tsunami destroyed over 800 km of coastline.[809]

The Timorese CEP project was extraordinarily progressive in its vision. One example of this was the fact that funding conditions demanded that women make up half of the elected members of the Community Councils, and that half of the projects funded were to be drawn

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[802] Ibid 990.
[803] Sue Kenny, Azwar Hasan and Ismet Fanany, 'Community Development in Indonesia' (2017) 52(1) *Community Development Journal* 107, 109.
[804] Aniruddha Dasgupta and Victoria A Beard, 'Community Driven Development, Collective Action and Elite Capture in Indonesia' (2007) 38(2) *Development and Change* 229, 230.
[805] Kenny, Hasan and Fanany (n 803) 109.
[806] Ibid.
[807] Ibid.
[808] Ibid.
[809] Ibid 113.

from women's groups.[810] Additionally a central part of the framework was that Community Councils would become focal points for donors to directly channel funds into locales without needing to pass through the corruption and administrative dysfunction of state delivery.[811] The model was designed to combine a channel of local democracy and village guided reconstruction in which accountability resided at village level. This effectively reversed the traditional approach in which those responsible for local level delivery were held accountable in a hierarchy where control derived from capital level.[812]

Despite being well-intentioned and based on previous successful trials, the process fell victim to a series of problems which were both possible and impossible to anticipate. Unsurprisingly, given the competition for resources in a post-conflict state such as Timor-Leste, the project was marred by waste, financial misappropriation and poor delivery.[813] It shared this characteristic with many other programs in Timor-Leste. Problems also emerged as a result of insufficient subdistrict infrastructure to connect networks at a local governance level, let alone to district centres or the capital.[814] By far the most fatal problem however was a struggle for control of the program from a surprising quarter - the UN itself. This "turf war" between the World Bank and the UN on the fate of this innovative participatory intervention model has been well documented, and is an interesting demonstration of how certain models can be seen as a challenge to the existing order.[815]

Put simply, the project became a battle for control between "centrists" and those advocating for village empowerment. UNTAET officials saw an Asian Development Bank (ADB) backed plan for elected participatory subdistrict and village councils linked to the NCC as a direct threat to the centralised control of UNTAET.[816] UNTAET officials argued that multiple elections at a subdistrict, and local level would create confusion with the national electoral process.[817] The reality behind this was that the UNTAET saw any non-UN supervised elections as a direct challenge to its plan for a centralised national electoral process, reflecting the underlying view that the primary way to provide the Timorese with

[810] Braithwaite, Charlesworth and Soares (n 795) 251.
[811] Ibid 254.
[812] Chopra, 'Building State Failure in East Timor' (n 449) 992.
[813] Braithwaite, Charlesworth and Soares (n 795) 119.
[814] Ibid.
[815] Chopra, 'Building State Failure in East Timor' (n 449) 993.
[816] Ibid.
[817] Ibid.

self-determination (and to provide the UN with an exit strategy) was to engage in a national electoral process and its accompanying political theatre.

Continued undermining by UNTAET meant that the CEP essentially collapsed and was overrun by the UN sponsored processes run from capital level. The result was an entrenched lack of "reach" into village level by the UN administration.[818] As a consequence, villages continued to use local power structures which were not within sight of international actors, which further encouraged the emergence of a dominant single national political player in the form of FRETILIN.[819] The party then succeeded in achieving an overwhelming result in the first Constituent Assembly elections of August 2001.[820] Given its historical links to the original 1975 Timorese administration and its links to the resistance, this outcome was inevitable.

For the time, the CEP model was highly innovative at village level.[821] One goal was to give the Timorese prior experience of local level democratic processes before the first elections in 2001. The requirement that representation comprise 50% women was actually voted down by the UN in New York, which advocated for a top-down system. [822] Further support was sought from Alkatiri for the erosion and eventual extinguishment of the program, on the basis of a view amongst international staff that the CEP would compete with the UN district administration.[823] Despite that, the World Bank has subsequently applied a similar model successfully in Laos, the Philippines, Afghanistan, Morocco, Bolivia and Nigeria.[824]

As a result of the politicisation of local level administration under UNTAET, the confused process of rolling out village level elections and a lack of anthropological knowledge of local power dynamics, village elders were effectively shut out of the ability to run for office if they were not a member of a political party.[825] This exclusion had multiple effects. Firstly, the exercise of power by the right person in a Timorese village is linked to a cosmological order

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[818] Ibid.
[819] Ibid 994.
[820] Ibid.
[821] Interview with Chris Dureau (Michael Morison, Dili, 25 July 2017, 25 July 2017).
[822] Ibid.
[823] Ibid.
[824] 'Community-Driven Development', *World Bank* (Web Page) <https://www.worldbank.org/en/topic/communitydrivendevelopment>.
[825] Chopra and Hohe (n 122) 296.

not easily grasped by outsiders.[826] Any upheaval of that order (in reality) can also result in a spiritual upheaval, such as the failing of crops or illness amongst villagers.[827] Secondly, younger linguistically capable persons who were elected to CEP positions were not able to exercise legitimate authority reserved in perpetuity for the Liurais. The exclusion was misunderstood by, and alienated the *Liurais* and their supporters, who interpreted it as both a personal attack an overturning of hundreds of years of tradition.[828]

3.3.2 The Need to Understand Conflicting Paradigms

Like most new initiatives the proposed CEP system brought with it unintended consequences. It sought to introduce younger, apparently meritorious candidates of both genders into the decision-making process, a process which undermined the role of traditional, overwhelmingly male, elders who had inherited their roles. A dilemma therefore exists between utilising or reinforcing existing power structures with all of their potential power and gender inequality, to replace them with a parallel structure which potentially undermines traditional authority.[829] Clearly there is thus a need to obtain as great as possible an understanding of existing decision making and dispute resolution systems prior to any attempt at intervention. These systems should then be respected, while leaving open the possibility that complementary initiatives may need to be sensitively meshed with pre-existing traditional structures. A greater degree of anthropological understanding feeding into forward planning will arrive at some form of compromise in this situation.[830]

In an analysis of the structures put in place by the UN, Tanja Hohe has concluded that a great deal more could have been done to recognise and employ pre-existing localised representation as part of its state building exercise in Timor-Leste.[831] Instead it unwittingly created three conflicting paradigms of local, district and national leadership.[832] She concludes that increased grassroots participation in the choice of local government will result in a greater sense of "ownership" of state building processes, and that conflicting paradigms must

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[826] Ibid.
[827] Ibid 297.
[828] Braithwaite, Charlesworth and Soares (n 795) 120.
[829] Chopra and Hohe (n 122) 297.
[830] Chopra, 'Building State Failure in East Timor' (n 449) 999.
[831] Tanja Hohe, 'The Clash of Paradigms: International Administration and Local Political Legitimacy in East Timor', *Contemporary Southeast Asia* 24, no. 3 (2002): 581.
[832] Ibid 581.

be unified in order to encourage genuine "choice" amongst populations.[833] She further suggests that longer-term transitions will allow for genuine participation in the development of administrative and regulatory bodies at a local level.[834]

At mission level the traditional and the introduced will need to be reconciled in future interventions to avoid the risk of the collapse of both. The traditional can suffer as a result of conflict with an externally imposed structure, and the introduced under the weight of dwindling legitimacy in the face of a refusal by populations to accept alien and obviously inappropriate models. This latter problem is exacerbated by the fact that the traditions of populations targeted by democratisation initiatives frequently do not have liberal democratic principles built in to them.[835]

3.3.3 District Marginalisation and Decentralisation

Timor-Leste remains a highly centralised country, politically and in terms of resource distribution. Socially and culturally however it remains strongly regionalised, each district and region displaying distinctive differences in terms of dialect, social organisation, housing, language and even cuisine. Those who have worked in the country can feel the differences between the cities of Dili and Baucau and the East and West. The political marginalisation of the districts which persists today partly has its roots in the highly centralised structures put in place during the UN occupation. UNTAET managed to prevent the establishment of local constituencies and elections as part of its ultimately successful struggle against the CEP program. A proposal for elected local councils died with the project and resulted in a limited reach for the mission into the subdistrict level, where the majority of the population was to be found.[836] The political legacy is that there effectively exists no official local constituencies, so members of Parliament are not directly accountable to their voters.

The DA structure put in place was deficient in its policy framework, and rushed appointments produced incumbents of patchy quality drawn from the internationals.[837] This was also the

[833] Ibid 587.
[834] Chopra and Hohe (n 122) 289.
[835] Hohe (n 103) 570.
[836] Chopra, 'Building State Failure in East Timor' (n 449) 993.
[837] Sue Ingram, 'The Structural Marginalisation of the Districts Under UNTAET' (Conference Paper, Timor-Leste: The Local, the Regional, and the Global, 9-15 July 2015) 160.

experience of the author in working under a DA between 2001 and 2002, in that case maladministration stemming from poor candidate selection and low level corruption were some of the problems. Timorese leaders argued strongly for the recruitment of local personnel to these positions, which did result in a system in which local administrators worked alongside international staff. In many cases however local staff were overborne by internationals. While an outline of a district structure was put in place, head offices in Dili maintained real control over the distribution of resources and administrative functions across the district, meaning decentralisation in any practical sense did not occur.[838]

The process of decentralisation and establishing some form of sub-national governance in Timor-Leste has been on the agenda since independence.[839] Since then it has never been fully realised, becoming embroiled at various times in political competition between UNTAET, the World Bank, FRETILIN and CNRT. Decentralisation has consistently been complicated by the tension between hierarchical Western democratic principles and the inherent legitimacy of pre-existing local hierarchies.[840] The approach pursued by the UN used a centralised national electoral structure over a localised approach, entrenching a lasting centralism in the political structure of the country. Had the process been reversed by pursuing elections for localised representative bodies in the first instance, leading up to a nationalised election strategy, some of these tensions may have been minimised, or at least controllable.[841]

The 2011 Timor-Leste Strategic Development Plan made decentralisation a key target by 2015.[842] This specifically involved the introduction of a new tier of municipal government by merging existing subdistrict administrative jurisdictions and extending service delivery throughout the country. The 2016 *Dili Declaration on Decentralisation*, signed by representatives of the 13 administrative divisions of Timor-Leste demonstrated a commitment to the principal but forwarded no concrete action plan to achieve it.[843]

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[838] Ibid.
[839] Rui Graça Fejió, 'Timor-Leste: The Adventurous Tribulations of Local Governance after Independence' (2015) 34(1) *Journal of Current Southeast Asian Affairs* 85, 94.
[840] Ibid 106.
[841] Chopra, 'Building State Failure in East Timor' (n 449) 999.
[842] *Timor-Leste Strategic Development Plan 2011 - 2030* (n 793) 114.
[843] *Dili Declaration,* (signed and entered into force 18 August 2016).

One way forward could be a hybrid system in which pre-existing hierarchies are fused with electoral competition, allowing traditional leaders to emerge into political prominence.[844] This approach would allow for the pursuit of electoral processes with elements of customary legitimacy incorporated into it. In effect this would mean the transformation of existing community institutions into local extensions of the state administration, each dealing with a well-defined areas of local community need.[845]

3.4 Existing Electoral Structure

The existing electoral structure also mitigates against local representation. The institution of a Western-style competitive party political model means that a single national constituency was adopted with a closed list of candidates for whom constituents must vote.[846] This means that members of Parliament owe their positions to the political party that assigned them a winnable position on the ticket - and not to any form of direct accountability to voters in the districts. There is no one representative who is locally based and to whom local people can take issues. Most importantly there is no way that an individual's performance can be assessed directly by local people at the ballot box. This means that membership of a political party is a pre-requisite to membership of the parliament and that there was no possibility of a local leader emerging outside of the party system. All of this contributes to the isolation of the districts and a concentration of power in the capital.[847] It also contributes to a situation in which aggregative democracy takes priority over opportunities for participation and deliberation in the form of local involvement in decision making.

4. Conclusion

Despite an extensive history of democratisation, and a string of electoral events since independence in 2000, democracy in Timor-Leste remains fragile. Power is concentrated in a small number of hands, and continues to be centralised despite the government's publicly stated commitment to diffuse certain powers to the districts. Despite contrary perceptions amongst elements of the international community, Timor-Leste had extensive pre-existing

[844] Fejió (n 839) 107.
[845] Ibid 106.
[846] Ingram (n 686) 163.
[847] Ingram (n 837) 163.

systems of consultation and decision-making. In the early stages of international intervention some recognition emerged that this was the case, and the international community sought to build on those structures in the process of creating a democratic polity in Timor-Leste. However, existing electoral structures, put in place during the period of international involvement, mitigate against the decentralisation of power and the promotion of localised forms of representation. Recent Timorese history includes examples of systems which could have been used as models for deliberative practice going forward, such as the CAVR.

CHAPTER SIX: ELEMENTS OF DELIBERATIVE DEMOCRATISATION IN NEPAL

Introduction

International involvement in the democratisation of Nepal included a variety of consultative initiatives, particularly in its constitutional drafting process, which represented a genuine attempt to introduce a deliberative element. This chapter looks at whether the use of those techniques had a tangible effect on political outcomes, and left a lasting legacy which improved the situation for ordinary Nepalese.

A tendency towards political, cultural and resource concentration towards the Kathmandu Valley has been a point of tension in Nepal since the 1950's.[848] As a consequence, decentralisation and participation, particularly amongst women and rural minorities, have been a flash point.[849] Historical attempts to involve a broader range of citizenry in decision-making have fluctuated, partly due to their origins in a centralised system.[850] Traditional elites in Kathmandu have tended to dominate the agencies of the state, contributing to a Maoist uprising originating in the regions, particularly the North, between 1996 and 2006.[851] This conflict drew on high levels of dissatisfaction amongst cultural, linguistic and geographic minorities.[852] As a result, state restructuring, decentralisation and federalism were a live issue during Nepal's democratisation process, and one which drove a strong participatory agenda which has consequently been woven into Nepalese politics. Co-option by elites aside, a conscious effort was made from the beginning of Nepal's 2006 Comprehensive Peace Agreement (CPA) to make the constitutional drafting process, the constitution itself and the representative structures that flowed out of it, as engaging as

[848] *Functioning of, and Participation in, Provincial Assemblies* (Periodic Report No 8, Democracy Resource Center Nepal, February 2020) 1.
[849] Interview with Bishnu Adhikari (Michael Morison, Kathmandu, 20 November 2018).
[850] *Functioning of, and Participation in, Provincial Assemblies* (n 848) 1.
[851] Ibid.
[852] Ibid.

possible.[853] It therefore represents the leading edge of what might be attempted in a model of democratisation which seeks to empower populations at all levels.[854]

1. Historical Backdrop

1.1. Early Democratic Awakenings

In 1951 one of a series of civil uprisings ended the autocratic rule of the Rana dynasty and restored the Nepalese Shah monarchy. [855] This moment is considered a turning point in the democratic awakening of Nepal, through the mobilisation of social movements. In 1959 a constitution was promulgated to establish a parliamentary democracy in the country. Despite that the first elected government was overthrown by a royal coup, led also by the Shah dynasty in 1960, which formed the foundation for the three decades of absolute monarchy which followed.[856]

Between 1960 and 1990 the Nepalese monarchy in Nepal under King Mahendra initiated a system of district village and municipal governance known as "Panchayats".[857] Modelled on similar systems found in India, Pakistan, Bangladesh and Sri Lanka, these entities were supposedly free from party politics and ideology, which according to advocates encouraged individual engagement in Panchayat representation.[858] In fact, the system went so far as to ban the existence of political parties on the basis of ideology.[859]

Initially the Panchayat system sought to encourage rural development by dividing the country into 14 zones and 75 districts.[860] Layered over this were five development regions aimed at reducing geographic inequalities.[861] A strong historical bias towards centralisation eventually

[853] 'Comprehensive Peace Accord Signed between Nepal Government And the Communist Party of Nepal (Maoist), 22 November 2006 (Prachanda (Communist Party of Nepal), Girija Preasd Koirala (Government of Nepal).' Art. 3.4, 3.5, 3.9.
[854] Interview with Andres del Castillo Sanchez, UNDP (n 24).
[855] Megumi Makisaka, Sasiwan Chingchit and Victor Bernard, 'Nepal' in *The State of Conflict and Violence in Asia* (The Asia Foundation, 2017) 118.
[856] Ibid.
[857] Yam Bahadur Kisan, 'Participatory Democracy and Social Inclusion in Nepal' in *Participatory Democracy Practices and Reflections* (ActionAid Nepal, 2014) 64.
[858] Ibid.
[859] Ibid.
[860] *Formation and Functioning of Provincial Institutions in the Federal Structure* (Periodic Report No 5, Democracy Resource Center Nepal, September 2019) 2; Interview with Bishnu Adhikari (n 849).
[861] *Formation and Functioning of Provincial Institutions in the Federal Structure* (n 860) 2.

killed off the more utopian aspects of the Panchayat system.[862] As one author has noted, the 14 zones were reduced to number plates on motor vehicles and the five development regions declined into a few regional offices lacking any real authority.[863]

In reality Panchayatism was a Hindu driven movement with a strong nationalist bent, illustrated by its slogan "one language one dress one country". [864] In contrast to a later tendency in the Nepali politics to redistribute power away from Kathmandu, partly driven by the Maoist insurgency, Panchayatism also carried with it a strong current towards the centralisation of power.[865] The system maintained the hegemony of Nepali languages and increased the rate of Hindu influence through the internal migration of Nepalese speaking hill people to other areas of the state. One particular target was the lowland region bordering India that comprises over one fifth of the territory of Nepal, known as the Terai, where people of Indian and indigenous Nepalese tribal origin dominate. Panchayatism sought to create a fictional, culturally homogenous state but succeeded only in stoking ethnic and minority resentment, ultimately also contributing to the Maoist uprising.[866]

Following the re-establishment of the multi-party system in the early 1990's, the *Local Self-Governance Act 1999* was specifically drafted to foster decentralisation.[867] The act sought to encourage rural development, involve citizens more closely in the processes of governance and make local institutions more accountable by implementing development plans at local levels.[868] Despite these initiatives, the lack of enthusiasm for decentralisation in the capital resulted in poor implementation of the Act.[869]

In June 2001 ten members of the royal family were shot to death during a family party at the royal palace, allegedly by Crown Prince Dipendra, who subsequently shot himself. The King's brother Prince Gyanendra declared himself absolute ruler in 2005, and immediately set about restricting the media, suppressing civil liberties and temporarily cutting off Nepal

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[862] Ibid.
[863] Ibid.
[864] Uddhab P Pyakurel, 'Nepal: Transition from Cast Based to Multicultural Society' in *Participatory Democracy: Practices and Reflections* (ActionAid Nepal, 2014) 56.
[865] Interview with Bishnu Adhikari (n 849).
[866] Pyakurel (n 864) 56–7.
[867] *Formation and Functioning of Provincial Institutions in the Federal Structure* (n 860) 1.
[868] Ibid.
[869] Interview with Anubhav Ajeet (Michael Morison, Democracy Resource Center, Kathmandu, 21 November 2018).

from the outside world. After growing dissatisfaction with the monarchy expressed by another civil uprising, the King reinstated parliament in April 2006.[870]

Between 1996 and 2006 Nepal was riven by a civil war, driven by the Communist Party of Nepal (CPN Maoist) with the intention of overthrowing the monarchy and establishing a communist government.[871] In 2006, after a series of negotiations between various parties, a Comprehensive Peace Accord (CPA) was brokered between the warring groups. The agreement brought the CPN Maoist and the remaining political parties together, marking the end of armed conflict.[872] The accord allowed the CPN Maoist to take part in government in return for disarmament and the cantonment of its soldiers in UN supervised camps until they could be integrated into the Nepalese army. The signature of the CPA saw an increase in violence in the border districts of the Terai, the most densely populated part of Nepal outside Kathmandu, on the basis that Madhesi groups believed that the agreement only further entrenched their political, economic and social exclusion.[873]

In 2008 Nepal abolished its monarchy and held its first Constituent Assembly (CA) election with the subsequent assembly tasked to draft a new constitution. In 2012 the first CA failed to meet a deadline to draft that constitution, leading to widespread protests, strikes - and its eventual dissolution.[874] A second CA election was held in November 2013, also marred by widespread strikes and popular unrest, largely led again by Maoist factions, during both the campaign period and the election itself.[875]

1.2. The Madhesi Issue

A major difficulty with the establishment of a new Nepalese constitution had always been the dilemma of how to adequately recognise and give a voice to the many regional, ethnic, caste based and tribal groups which make up modern Nepal. Of particular significance in this regard is the people of the aforementioned region known as the Terai, which forms the entire

[870] Makisaka, Chingchit and Bernard (n 855) 118.
[871] Ibid.
[872] Ibid 119; 'Comprehensive Peace Accord Signed between Nepal Government And the Communist Party of Nepal (Maoist), 22 November 2006 (Prachanda (Communist Party of Nepal), Girija Preasd Koirala (Government of Nepal).' (n 853).
[873] Makisaka, Chingchit and Bernard (n 855) 121.
[874] Ibid 120.
[875] Ibid 117.

lowland southern border with the Indian states of Bihar and Uttar Pradesh - known as the Madhesi.[876]

How to adequality recognise the Madhesi has been a factor in Nepalese politics and cultural life since the early 1950's.[877] At that time a regional party called the Terai Congress demanded a Terai autonomous region within a federal structure. An enquiry produced recommendations on possible autonomy in 1957 but the federalist idea did not take hold as a popular concept and declined in the public consciousness soon after.[878] The issue has ethnic and linguistic elements similar to the ethnic secessionist disputes seen in countries such as Sri Lanka and Indonesia. The choice of language used as the medium of instruction in local schools, representation in any centralised Nepalese legislative body, access to employment and the distribution of resources from Kathmandu all became contentious.[879] The removal of malaria from the area in the 1950's saw a huge population influx from both the hilly areas of Nepal and Northern India.[880] This also led to the indigenous locals feeling swamped, intimidated and threatened by the large number of newer ethnically different arrivals.[881] The 1980's saw the formation of the region's first political party and since that time the Madhesi have become gradually more assertive, leading to a greater degree of influence over political outcomes in Kathmandu.[882] The post CPA negotiation period during the first CA saw the Madhesi parties unsuccessfully campaign, often violently, for a single Madhesi province running unbroken across the whole flatland Terai border region abutting India in the south of Nepal[883]

The unrest over the new Constitution had its focus on the border crossing town of Birganj in the Parsa district.[884] In September 2015 the locals used one of the few direct levers of power

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[876] Ibid 120.
[877] Interview with Ramesh Parajuli, 'Interview with Ramesh Parajuli, Kathmandhu 22/11/2018' (Michael Morison, Martin Chautari, Kathmandu, 22 November 2018).
[878] Budhi Karki, 'State Restructuring and Federalism Discourse in Nepal' in Budhi Karki and Rohan Edrisinha (eds), *The Federalism Debate in Nepal: Post Peace Agreement Constitution Making in Nepal* (United Nations Development Programme (UNDP) and Support to Participatory Constitution Building in Nepal (SPCBN), 2014) 3.
[879] Interview with Bhaskar Gautam (Michael Morison, Kathmandu, 22 November 2018).
[880] Hom Nath Gartaula and Anke Niehof, 'Migration to and from the Nepal Terai: Shifting Movements and Motives' (2013) 2(2) *The South Asianist* 28, 34.
[881] Interview with Bhaskar Gautam (n 879).
[882] Ibid.
[883] Michael G Breen, 'Nepal, Federalism and Participatory Constitution-Making: Deliberative Democracy and Divided Societies' (2018) 26(3) *Asian Journal of Political Science* 410, 417–8.
[884] Makisaka, Chingchit and Bernard (n 855) 120.

available to them by establishing a blockade of imported goods from Northern India, most notably oil on which Nepal is heavily dependent.[885] The Madhesi Border Blockade, as it became known, lasted until February of 2016 and led to accusations by Nepalese authorities of Indian interference in support of the Madhesi.[886] The period since the end of the blockade has seen a gradual decrease in the number of armed groups and civil unrest in the region but the issue remains ever-present in Nepali politics.[887] The lead-up to local, provincial and national elections (May to September 2017) was characterised by protest, labour strikes and disruptive political rallies, including the death of 5 people on March 6, 2017. [888]

1.3. Federalism, Decentralisation and the Constitutional Drafting Process

A migration to a Federalist structure was a key element of the 2006 CPA.[889] The CPA and the interim constitution behind it mandated the CA to end the heavily centralised Nepalese unitary state and move towards progressive state restructuring, to promote "the inclusion and empowerment of excluded communities".[890] The CPA also stipulated that Nepal should be a secular and inclusive democratic republic.[891] Particular issues around the transition to Federalism were assigned to thematic committees of the CA, such as the demarcation of provinces, the design of the electoral system and the adoption of a Presidential system, as opposed to a parliamentary executive model or a hybrid semi-presidential compromise.[892]

The constitutional drafting process and the restructuring of Nepal into a federal state is one of the single biggest issues which has contributed to political difficulties in Nepal post-CPA and divisions on the issue reflect broader divisions in Nepali society. [893] In practice the process was not perfect in that it was co-opted by Kathmandhu based elites.[894] Groups that thought

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[885] Ibid.
[886] Ibid.
[887] Ibid 121.
[888] Ibid 123.
[889] Budhi Karki and Rohan Edrisinha (eds), *The Federalism Debate in Nepal: Post Peace Agreement Constitution Making in Nepal* (United Nations Development Programme (UNDP) and Support to Participatory Constitution Building in Nepal (SPCBN), 2014) i.
[890] Ibid.
[891] Ibid.
[892] Ibid.
[893] Marcus Brand, 'Federalism and Decentralised Governance: Preparing for the Transition to Federalism and Implementation of Nepal's New Constitution' in *The Federalism Debate in Nepal: Post Peace Agreement Constitution Making in Nepal* (United Nations Development Programme (UNDP) and Support to Participatory Constitution Building in Nepal (SPCBN), 2014) 227.
[894] Interview with Anubhav Ajeet (n 869).

their rights were going to be infringed upon staged violent protests for the whole duration of the drafting process.[895]

The CPA of 2005 contained a "12 Point Understanding" which laid the foundation for the interim Constitution of 2007. This document indicates that political, economic, social and cultural issues referred to in the preamble were to be resolved through state restructuring, including eliminating differences based on class, caste, language, culture and region. The Madhesi movement saw the 2007 interim Constitution as lacking a federalist element and forced it's inclusion.[896]

The CPA of November 2006 between seven Nepali political parties and the Communist Party of Nepal contained a cease-fire provision, but also included a commitment to engage in a progressive restructuring of the Nepali state into a federal system by devolving power to a number of provinces. A prominent motivating factor in this was a (quite revolutionary) desire to bring women, oppressed and neglected minority communities into the process of government by ending discrimination on the basis of gender, caste, language, culture, religion and region.[897] The CPA also instituted an interim parliament, one role of which was to draft an interim constitution, agreed on in 2007.[898]

That constitution outlined the key tenets of the new state of Nepal as "republican, secular, federal, inclusive and democratic".[899] The 601 member CA elected in 2008 was the most representative legislative body elected in Nepal's history, based as it was on elaborate electoral quotas and a system of proportional representation. That CA was then tasked to set about devising a permanent constitution, a deadline for which was extended several times due to an inability to agree on key elements of the document.[900] UNDP Support to the Participatory Constitution Building in Nepal (SPCBN) played a key role in supporting the participatory drafting process and in planning for the transition to a federal structure including in the maintenance of relationships with international donors.[901]

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[895] Brand (n 893) 232.
[896] Karki (n 878) 1.
[897] Brand (n 893) 229.
[898] Ibid.
[899] 'Constitution of Nepal' Art.4(1); Brand (n 893) 538.
[900] Brand (n 893) 230.
[901] Ibid 231.

1.4. The First Constituent Assembly

The first CA between 2008 and 2012 agreed on a division of powers and functions between central, provincial and local tiers of government. It also agreed that the country should be divided into provinces on both economic and identity grounds. However it could not agree on boundaries, names, population or number of provinces prior to the end of its term in 2012, leading to a political stalemate and fresh elections to appoint a second CA in November 2013. [902] While less representative of minority groups than the first CA, the second CA sought to build on the work of the first, eventually accepting identity and economic viability as the foundation for any federal structure.[903] In November 2011 a State Restructuring Commission (SRC) was formed with priority backing from the CPA and UNDP established the Centre for Constitutional Development (CDD) under the SPCBN project. The CCD provided resources to support Nepal's Constitution making process by providing training opportunities, expert advice, information, discussion space and the promotion of public awareness.[904]

A prominent background issue is that Nepal's high dependence on foreign aid means that many resources are distributed under government approval from a centralised source, usually Kathmandu.[905] In the absence of their own economic resources, the provinces of Nepal remain heavily dependent on the centre, especially given that historically Nepal has experienced a lack of meaningful devolution of power and authority to local bodies.[906] As such, decentralisation is at the heart of attempts to establish participatory democracy in Nepal because it devolves power (and control of resources) to the local level, and erodes the hegemony of those ruling elites which have traditionally dominated the center.[907]

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[902] Rohan Edrisinha, 'The Federalism Debate in South Asia: Lessons for Nepal' in *The Federalism Debate in Nepal: Post Peace Agreement Constitution Making in Nepal* (United Nations Development Programme (UNDP) and Support to Participatory Constitution Building in Nepal (SPCBN), 2014) 346.
[903] Ibid.
[904] Siera Tamang, 'Nepal's Transition and the Weak and Limiting Public Debates on Rights' in Budhi Karki and Rohan Edrisinha (eds), *The Federalism Debate in Nepal: Post Peace Agreement Constitution Making in Nepal* (United Nations Development Programme (UNDP) and Support to Participatory Constitution Building in Nepal (SPCBN), 2014) 25–6.
[905] Ibid 29.
[906] Ibid 26.
[907] Pitamber Sharma, 'State Restructuring in Nepal: Context, Rationale and Possibilities' in Rohan Edrisinha and Budhi Karki (eds), *The Federalism Debate in Nepal: Post Peace Agreement Constitution Making in Nepal* (United Nations Development Programme (UNDP) and Support to Participatory Constitution Building in Nepal (SPCBN), 2014) 102–3.

During the period of the first CA the goal was to reach an agreement between the parties as to the structure of the new state and its democratic system. [908] Nepal is a geographically and ethnically diverse country of 26 million people drawn from 100 different identity groups based around ethnicity, caste and language. The dominant group is a minority of high caste Hill Hindus known as "Pahadis" who form an elite in combination with the indigenous Janajati people of the Kathmandu Valley also known as "Newars".[909] Beneath these groups cascade a hierarchy of ethnically, religiously and regionally sorted groups which form a nation-wide system of ranking and discrimination, which laid the foundations for the dissatisfaction fuelling Nepal's Maoist insurgency.[910] Combined with a high level of mobility and migration between these groups, this stratification and diversity created a situation where deliberation and consensus building came to be an enormous challenge.[911]

Issues relating to the restructuring of the state and the distribution of power were at their most contentious during the negotiating phase of the first CA. Great expectations were established under the CPA around the potential for inclusive democratic restructuring of the state and the empowerment of minority groups. Naturally such high expectations were difficult to fulfil. Differences of opinion on the demarcation of states and their directly oppressed minority groups were great and in many ways reflected similar differences in the society itself. [912] The failed outcome of the initial SRC process for establishing provincial demarcations came about due to an unrealistic attempt to cater to every group. The final heavily politicised SRC report fractured even the previously united Madhesi groups, adding further obstacles to any outcome.[913] The dissolution of the first CA and the establishment of a second CA became the only way to break the deadlock. Subsequently the Madhesi's began to step back from their previously strongly held position that there should be only one state along the southern plains, however the parties eventually descended into a stalemate which was only broken by the 2015 earthquakes.[914]

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[908] Michael G Breen, 'The Origins of Holding-Together Federalism: Nepal, Myanmar, and Sri Lanka' (2017) 48(1) *Publius: The Journal of Federalism* 26, 410.
[909] Ibid 27.
[910] Breen (n 883) 413.
[911] Interview with Bhaskar Gautam (n 879).
[912] Breen (n 883) 417.
[913] Ibid.
[914] Ibid 418.

1.5. 2015 Earthquakes, the New Constitution and First Elections

Two massive earthquakes in April and May 2015 decimated parts of Nepal. The major political parties such as the Nepali Congress (NC), the Communist Party of Nepal - Unified Marxist Leninist (CPN UML), the Communist Party of Nepal (Unified) and the Communist Party of Nepal (Maoist) rapidly agreed to a draft constitution in the confused political atmosphere of the aftermath. Subsequent nationwide protests by ethnic and minority groups opposing the draft, on the basis that they had been alienated, had no effect on the rushed acceptance and adoption of the constitution in September 2015.[915]

That Constitution mandated the establishment of seven provinces (or states) and created a Local Level Restructuring Commission (LLRC) which created 753 local units across Nepal, each with its own government.[916] Once completed, Nepal would effectively have three levels of government: federal, provincial and local. The legislature is made up of two houses, a House of Representatives and a National Assembly.[917] The House of Representatives includes 275 members, of which 165 are elected using a "first past the post" method, each drawn from 165 electoral constituencies based on geography and population.[918] One hundred and ten political party members are elected on a proportional basis from a single national constituency.[919] The National Assembly comprises 59 members drawn from an electoral college of the provincial assemblies, village councils, mayors and deputy mayors of municipal councils.[920] Voting is weighted in favour of provincial and municipal members, and eight representatives of each province must include at least three women, one Dalit and one with a disability or from a minority.[921] Three further members, including at least one woman, are nominated by the President on the recommendation of the federal government.[922] The tenure of the House of Representatives and National Assembly is five years and six years respectively.[923]

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[915] Makisaka, Chingchit and Bernard (n 855) 120.
[916] Susan Ostermann, 'Nepal in 2017: Democracy's Festive Return' (2018) 58(1) *Asian Survey* 134, 134.
[917] 'Constitution of Nepal' (n 899) Art.83.
[918] Ibid Art.84(1)(a).
[919] Ibid Art.84(1)(b).
[920] Ibid 86(2)(a).
[921] 'Constitution of Nepal' (n 899) Art.86(2)(a).
[922] Ibid Art.86(2)(b).
[923] Ibid Art. 85(1), 86(3).

The new constitution required that elections to the three restructured levels of government must be concluded by January 21, 2018, on the basis that the second CA was to be automatically dissolved on that date.[924] The first separate set of elections to local units were conducted in three phases, the first phase on May 14, the second on June 28 and the third on September 18, 2017.[925] These were the first local level elections in 20 years, and in a sign that Nepalese politics was maturing, the Maoist party leader voluntarily transferred power to the leader of the Nepali Congress. In another first that year, Nepal also held its first legislative elections under its new 2015 constitution.[926]

A continuing issue in the background, as discussed above, was Madhesi disquiet in the Terai. Madhesi groups resisted strongly any attempt to divide their territorial areas and were willing to violently protect their interests during the whole constitutional drafting process. State boundary negotiations took place while the country was being ruled by an unlikely partnership of the Nepali Congress Party under Sher Bahadur Deuba and the Communist Party of Nepal (Maoist Centre) under Pushpa Kamal Dahal (Prachanda).[927] As noted above, the former was to hand over to the latter after the staging of local government elections, an agreement which eventually held. Those May and June local level elections occurred in three phases with a voting rate of between 73 and 78% of the electorate. In the final instance the Communist party of Nepal (United Marxist Leninist, CPN-UMN) took the majority of seats in the four categories of mayor, deputy mayor, ward chair and ward member. The Nepali Congress took second place in all four categories with the CPN-MC third[928]

In November and December 2017 Nepal held its first legislative election under its 2015 Constitution, amidst protests by various parties on the basis of alleged ballot irregularities and challenges from Maoist groups, who argued that Prachanda had compromised Maoist ideology in order to take his party in a mainstream direction.[929] The elections for members of the House of Representatives (HOR) and members of seven Provincial Assemblies were conducted together in two phases, the first phase on November 26 and the second on

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[924] Ibid Art.296(1).
[925] *Findings on Functioning of Local and Provincial Governments in Nepal* (Final Report, Democracy Resource Center Nepal, August 2018) 1.
[926] Ostermann (n 916) 134.
[927] Ibid 135.
[928] Ibid.
[929] Ibid 136.

December 7, 2017.[930] Elections to the 59-member National Assembly were held on February 7, 2018.[931] At that point Nepal had elected representatives in all three levels of government, backed by a constitutional mandate.

In the House of Representatives the CPN-UML/CPN-MC leftist alliance managed to secure 116 of 160 seats, with the Nepali Congress taking 23 seats and the remaining 26 going to smaller parties. The result provided a clear mandate to the alliance of the two leftist parties.[932] The National Assembly results produced a wider distribution of votes amongst the major parties on the basis that voting was not along party lines. In this case the CPN-UML won 41 seats, the Maoist Centre 17 and the Nepali Congress 40. Smaller parties split 12 seats between them.[933]

Due to the decisive victory of the two major Communist parties (now merged and known as the Nepal Communist Party) in 2017, Nepal has benefited from a period of political stability after a long period of upheaval. Despite that relative stability, the ongoing devolution process to seven provincial and 753 local governments continues to encounter difficulties. Many public services are being transitioned in a situation where government reach into the subnational level is limited and where there are ongoing historical disputes over taxation, revenue sharing and expenditure.[934] While not jeopardising the structure as a whole, those difficulties have continued up to the present day, including confusion over jurisdictional limits, shortages of resources and a lack of technical capacity amongst existing staff.[935] Many of these issues can be seen as teething problems, which have improved over time.

Notwithstanding those difficulties, the finalisation of elections to local units, Provincial Assemblies and the federal House of Representatives between May and December 2017 (under the new constitution) represented a major advance in Nepal's lengthy transition to democratic governance.[936] Analysis of the process in the year after the elections revealed that

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[930] *Findings on Functioning of Local and Provincial Governments in Nepal* (n 925) 1.
[931] Ibid.
[932] Ostermann (n 916) 137.
[933] Ibid.
[934] *Nepal: 2018 Article IV Consultation-Press Release; Staff Report; and Statement by the Executive Director for Nepal* (Country Report No 19/60, International Monetary Fund Asia and Pacific Department, 2019) 4.
[935] *Functioning of Local and Provincial Governments in Nepal* (Periodic Report No 3, Democracy Resource Center Nepal, January 2019) vi; *Functioning of Local and Provincial Governments in Nepal* (Periodic Report No 4, Democracy Resource Center Nepal, April 2019) 1.
[936] *Findings on Functioning of Local and Provincial Governments in Nepal* (n 925) iv.

citizens felt the most positive aspects of the new structure were improved access to basic services such as the distribution of social security, and the perception that citizens could access elected officials easily without having to go to District Headquarters (DHQ).[937] Early analysis also revealed that the federal government continued to resist devolution, in a situation where it was unable to relinquish its centralising tendencies.[938] Despite that, Nepal now has comprehensive federal, provincial and local governments.[939] At the provincial level a Council of Ministers is headed by a Chief Minister.[940] At the local level the executive is headed by a Mayor along with a Rural Municipal Executive headed by a Chairperson.[941] A legislative body in each of the seven provinces is made up of members from the municipal and rural municipal assemblies. A rural Municipal Assembly exercises legislative power at the local level.[942] Having provided that outline, this analysis will now turn to certain aspects of the international democratisation effort in Nepal, and the circumstances in which deliberation added value to that process.

2. The Elements at Work in Nepal

2.1. The Presence of Deliberative Elements in Addition to Aggregative Democracy:

2.1.1 A History of Centralisation and Recent Local Representation

In addition to the Panchayat system described above, Nepal does have a history of more authentic, if rudimentary, engagement and contestation. For example, the Tribhuvan Village Development Program (TVDP) during the 1950's was built around rural development but relied on mobilisation and (in some cases) financial contributions from the rural populace.[943] Over the years, other proposals have emerged for the removal of underperforming or corrupt local officials by popular special election, by direct recall, by petition from constituents or by a preparatory assembly composed of electoral officials.[944] Also proposed have been referendums, forms of mandatory consultation and public hearings in which the

[937] Ibid.
[938] Ibid viii.
[939] Ibid 4.
[940] Ibid.
[941] Ibid.
[942] Ibid 5.
[943] 'Local Governance and Democratization in Nepal' in *Participatory Democracy – Practices and Reflections* (ActionAid Nepal, 2014) 32.
[944] Ibid 35.

implementation of local government programs would have input from local civil society, especially in regard to basic services.[945]

Nepal also has a history of decentralisation which assisted in providing a foundation for later attempts to devolve power to the districts. During the Maoist insurgency a parallel state structure, which had emerged as early as the 1950's, was expanded into a set of regional autonomous systems in which courts, administration, taxation, representative bodies and services such as health were included. Under Maoist tutelage the system eventually spread to 68 of the 75 districts of Nepal. [946] The 2006-7 Madhesi uprising also gave impetus for the push to decentralisation and autonomy from Kathmandu. Maoist and Madhesi influences contributed to a political climate which would later turn towards a federalist push.[947]

Unique challenges were faced by Nepal on the path to its new system of government. The mountainous state is strongly divided along geographic, religious, ethnic, social and political lines, amplifying contestation and making the consensus necessary for participation much harder to achieve. One NGO working in Nepal has argued that consensus appeared more likely to emerge in communities which had traditions of egalitarianism and a tolerance of difference.[948] Nepal's challenge was to reverse centuries of top down feudalised central power and accept real input into the structure of the state from the bottom up.[949] While not perfect as it stands at the moment this appears to have been for the most part successful.

2.1.2 Participatory Constitution Making: Constituent Assemblies I and II

The first CA was a participatory and inclusive institution, combining a proportionally elected group of representatives made up of differing caste, ethnic and religious groups and importantly more than 33% women. Additionally, a range of forums providing many opportunities for engagement were put in place with the goal of drafting the first constitution.[950] The second constituent assembly elected in November 2013, while not as

[945] Ibid.
[946] Breen (n 908) 38–9.
[947] Breen (n 883) 417.
[948] *Participatory Democracy Practices and Reflections* (ActionAid Nepal, 2014) 32.
[949] *Ibid 7.*
[950] Breen (n 883) 414.

inclusive as the first assembly, retained representation from Madhesi's, Dalits ("Untouchable"), women and indigenous Nepalese.

In the first assembly, discussion occurred at a local level and at a centralised level, promoting a close connection between the two, in itself a sign of potential deliberative capacity. The UN also conducted regional federalist dialogues amongst the then proposed 14 provinces. Those dialogues were divided into information and discussion-based proceedings, the latter involving actual analysis of particular issues. Targeted attendance at these sessions was sporadic, but each dialogue managed to produce deliberated outcomes and agreed suggestions for subsequent feedback to the Constituent Assembly. [951] NGOs also staged similar forums including what were known as the Democratic Dialogues which sought in particular to give around 50,000 marginalised people a voice.

The 601 member CA was the main deliberative body seeking consensus on issues related to the drafting of the Constitution, only moving to a vote requiring a two thirds majority where no consensus could be achieved. The CA was highly discursive, holding thematic committees, cross-party courses, federalism dialogues, and democratic dialogues.[952] The assembly also put in place 11 thematic committees and three procedural committees with 43 assembly members in each committee.[953] The thematic committees were given the job of producing a publicly available preliminary draft of dedicated aspects of the Constitution, while procedural committees were responsible for consultation with the population. Ten out of the 11 committees were able to reach consensus with one requiring a vote to arrive at a determination, a remarkable outcome. The thematic committees did not continue under the Second Assembly, partly because most of their work had been done but also because certain ethnically contentious issues relating to the number of new federal provinces and their names remained unresolved.[954]

The Constituent Assembly itself produced a series of public consultation questionnaires, organised approximately 2000 meetings and processed over 500,000 returned questionnaires from individuals and organisations in local areas.[955] The questionnaire asked for opinions on

[951] Ibid 416–7.
[952] Ibid 414–5.
[953] Ibid 415.
[954] Ibid.
[955] Ibid.

issues such as the term of office for the provincial head and the allocation of particular powers to particular levels of government.[956] A similar process was pursued by the second Constituent Assembly in its nationwide consultation program on the draft constitution.[957] Public education also played an important role. There were a variety of public participation campaigns to improve citizens understanding of, and engagement with, the drafting process.[958]

While the cross-party thematic committees displayed elements of a deliberative nature, the Constituent Assembly proved itself somewhat less able to do so, becoming prone to manipulation and bargaining between elite elements.[959] These same groups also used political communication as a way to advance their own agendas in the Assembly.[960] This behaviour contributed to rifts in the understanding of federalist discourse, especially between minority groups such as hill castes, lowland groups, and other political, ethnic and religious groups including Maoists, Pahadis, Janajati, Brahmins and Chhetri.[961] Furthermore, the legitimacy and potential outcomes of the process were compromised by that fact that deliberation conducted at a local level still came to rest in discussions and decision-making at elite level.[962] The process managed to solve the majority of problems (apart from the most difficult issue of provincial division) and the participatory ideals built into the Nepali federalist process provided a strong connection between deliberated outputs and the final Constitution. There was also a clarity to the final deliberated positions put by people at a lower level into the discourse at higher levels. Deliberation therefore reduced the overall levels of polarisation in the debate itself and contributed to a greater understanding of the issues.[963]

2.1.3 Deliberative Constitutional Drafting in Context

While the Nepalese process was unique and comparatively successful, the opportunities provided by deliberative constitutional drafting should be kept in perspective, particularly

[956] Ibid 416.
[957] Ibid 417.
[958] Ibid 419.
[959] Interview with Anubhav Ajeet (n 869).
[960] Ibid.
[961] Breen (n 883) 420.
[962] Aleksi Eerola and Min Reuchamps, 'Constitutional Modernisation and Deliberative Democracy: A Political Science Assessment of Four Cases' (2016) 77(2) *Revue Interdisciplinaire D'études Juridiques* 319, 335.
[963] Breen (n 883) 422.

where some of the studies do not support such claims.[964] For example, there exists the problem of sample selection bias, in that any country engaging in deliberative constitution making, even under the partial tutelage of foreign experts, has already been selected away from other autocratic regimes which would not tolerate such intervention.[965] This automatically increases the chances of success before the program has begun. The other issue is that democratisation projects are "idiosyncratic" or country specific to the circumstances on the ground in a particular country context.[966]

Conversely, there is empirical evidence to support the proposition that greater degrees of citizen engagement in the early stages of a constitution making process can result in better public "buy-in" to the process overall.[967] Meaningful and transparent involvement in the process is therefore more likely to contribute to sustainable forms of democratisation. A study across 138 new constitutions in 118 countries between 1974 and 2011 shows that a systematic effort to increase participation during the constitution-making process will have an impact on levels of democracy after the promulgation of that Constitution.[968] The study shows that efforts placed at the "front end" of the constitutional drafting process are more beneficial than attempting to rectify problems at the "back-end" through negotiation and later referenda.[969] The study also shows that citizen engagement in constitutional drafting enhances support for post-promulgation democracy as a whole.[970]

2.1.4 UN and NGO Programs

UNDP have been involved in every Nepalese election since the signing of the CPA in 2006. Electoral support projects came in two phases from 2008 to 2011 and from 2012 to 2016.[971] Despite access and participation being listed as outcomes, the prominent strategic development in Phase I of the UNDP electoral support project was a transition to an electoral cycle approach based largely on building the capacity of the Election Commission of Nepal

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[964] Ellen Lust and David Waldner, 'Democracy Promotion in an Age of Democratic Backsliding' (2020) 18(1) *Democracy and Autocracy* 16, 16.
[965] Ibid.
[966] Ibid 17.
[967] Todd A Eisenstadt, A Carl LeVan and Tofigh Maboudi, 'When Talk Trumps Text: The Democratizing Effects of Deliberation during Constitution-Making, 1974–2011' (2015) 109(3) *American Political Science Review* 592, 592.
[968] Ibid.
[969] Ibid 593.
[970] Ibid 606.
[971] Interview with Andres del Castillo Sanchez, UNDP (n 24).

(ECN). Support to the electoral process as a cyclic activity was seen as more sustainable.[972] For example the 2014 Annual Report for the project indicates that "the provision of event-driven support is no longer sustainable and effective in terms of cost-benefit and achieving enduring results, thus the impact of electoral support on broader governance and development goals must be taken into account".[973]

The claim is that this approach seeks to look at the broader development context as part of a comprehensive strategy to assist the growth of democratic processes.[974] The chief goal is largely institutional in that it supports the professional development of the ECN, and as a secondary goal seeks to promote democratic participation amongst under-represented and disadvantage elements in Nepali society. [975] The terms "democratic participation" and "gender inclusion" are used extensively through the project documents, particularly in the context of improving levels of engagement with under-represented groups.[976] The full extent of public engagement in the project is still just public outreach and voter education activity.[977] Furthermore, citizen participation is still supported only by public outreach and education campaigns.[978]

Phase 2 of the project did not depart greatly from the above model, retaining a strong institutional and technical focus. The project did include some support for gender, social inclusion and vulnerable groups.[979] Outcomes relating to these groups were generally poor but expenditures were high, with projected costs running at USD$3,621,022.[980] These amounts, regardless of how well spent, could go a long way to encouraging deliberative engagement direct from stakeholders in the process. In contrast, the UNDP Support to the Participatory Constitution Building in Nepal (SPCBN) initiative sought to assist Nepal's

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[972] UNDP, 'UNDP Electoral Support Project Institutional Strengthening and Professional Development for the Election Commission of Nepal' 9.
[973] *UNDP Electoral Support Project Phase II: Institutional Strengthening and Professional Development Support to the Election Commission of Nepal* (Project Document, United Nations Development Programme, 2014) 3.
[974] UNDP (n 972) 8.
[975] Ibid 10–11.
[976] Ibid 11.
[977] Ibid 21.
[978] Ibid 29.
[979] *UNDP Electoral Support Project Phase II: Institutional Strengthening and Professional Development Support to the Election Commission of Nepal* (Project Document, United Nations Development Programme, 29 November 2012) 43.
[980] Ibid 67–70.

2008 Constituent Assembly with the development of a new Nepalese constitution.[981] This included consultation with as broad a range of groups as possible, including women, and Dalits and Janajati people historically excluded from Nepalese political and administrative life.[982] The SPCBN developed a dedicated website, a Facebook page and a program of community consultation across eight districts, which targeted local communities. The process engaged with over 2 million people across Nepal and drew more that 15,500 comments to its various forums. International IDEA also has an ongoing program which seeks to promote deliberation in local government decision-making.[983]

2.1.5 A More Participatory and Accountable Electoral System

As noted above, subsequent to its participatory constitutional drafting process, Nepal now has provisions which guarantee principles of social inclusion and participatory democracy. The country also has a set of local government provisions such as the *Local Self-Governance Act* 1999, which reinforce political inclusion, representation and participatory democracy.[984] The *Civil Service Act* 2007 guarantees representation of minority groups in the civil service and the Ministry of Local Development has policies on gender responsive and socially inclusive budgeting. A variety of committees are dedicated to women's inclusion, the uplifting of the Dalit people of the Terai and a variety of other minority groups.[985]

The Nepalese electoral system is unique in that it allows for 275 seats in the legislature to be filled in two ways, 165 on a single member simple-plurality basis and 110 on a closed list proportional representation basis. The single member system allows for grassroots representation through the election of leaders on the basis of what they have done (or promised to do) at village level. Regardless, there is still provision in the closed list system for the election of candidates who will further the legislative agendas of particular political parties. This combination of forms of representation is well adapted to a country with complex social, ethnic and territorial diversity.[986]

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[981] 'Support to Participatory Constitution Building in Nepal (SPCBN)', *UNDP Nepal* (Web Page) <https://www.np.undp.org/content/nepal/en/home/operations/projects/closed-projects/peacebuilding-and-recovery/spcbn/home.html>.
[982] Ibid.
[983] Phanindra Adhikary, 'Strengthening Democratic Governance through Deliberation in Nepal | International IDEA', *International Institute for Democracy and Electoral Assistance* (News Article, 19 June 2019) <https://www.idea.int/news-media/news/strengthening-democratic-governance-through-deliberation-nepal>.
[984] Kisan (n 857) 67.
[985] Ibid.
[986] Ostermann (n 916) 136–7.

2.1.6 Deliberative Thematic Committees

The Nepalese Constitution also provides for the establishment of special or thematic committees to deal with issues of relevance to the provinces and the provincial assemblies.[987] Interestingly, they are also referred to as "mini parliaments".[988] Thematic Committees are proposed to be temporary and allow for discussion of the merits of proposed legislation in a small group format.[989] The committees also allow for close analysis of an issue in a situation where the main provincial assembly is concerned with issues of procedure, which can limit extensive discussion of legislation relevant to the local citizenry.[990]

Various NGOs such as Nepal's Youth Innovation Lab (YILab) have also sought to improve the quality of Nepalese political accountability. YILab is a technology-based social enterprise which has developed various platforms including a disaster information management system, an SDG-aligned system for the promotion of social ventures by young Nepalese and a tool for the promotion of community entrepreneurship and innovation.[991] The flagship project of YI-Lab maintains profiles of all Nepalese elected representatives and the promises made to the voters during campaign periods.[992]

2.2 Capacity or "Reach" of Deliberation in a System

2.2 1 An Inclusive Constitution

The Nepalese Constitution indicates that the House of Representatives and National Assembly should be made up of representatives proportionally drawn from a closed list of women, Dalit and other minority groups (including Madhesi's) on an equitable geographical and provincial basis.[993] While the system guarantees inclusion, the actual implementation of that principle has encountered difficulties which perhaps could have been anticipated given Nepal's cultural and historical background.[994]

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[987] 'Constitution of Nepal' (n 899) Art.193; *Functioning of, and Participation in, Provincial Assemblies* (n 848) 25.
[988] *Functioning of, and Participation in, Provincial Assemblies* (n 848) 25.
[989] *Ibid.*
[990] Ibid.
[991] 'Our Mission', *Youth Innovation Lab* (Web Page) <https://youthinnovationlab.org/index>.
[992] Ibid.
[993] 'Constitution of Nepal' (n 899) Art.84(2).
[994] Ostermann (n 916) 136.

From the early stages, the higher numbers of women and Dalit members in decision-making positions were slow to translate into real participation.[995] Members of these groups were placed by political parties into mandatory positions without training in political and leadership processes.[996] Many also complained that they lacked an understanding of their roles and responsibilities due to inadequate training, and that their positions had been undermined by male mayors and chairpersons.[997] Many new women and Dalit members indicated that they did not participate in discussions and simply signed documents placed in front of them, largely by men.[998] Others complained that they lacked an understanding of their roles and responsibilities (due to minimal training), and that their positions had been undermined by male colleagues.[999] Husbands were noted to have interfered in the activities of their wives who had been elected to representative positions, while Dalit women had reported discrimination in both public and private settings.[1000] Despite these issues, women and Dalit representatives were determined to forge ahead and make a place for themselves in the new system.[1001] For example, in some localities women had worked around this problem by building informal networks to share experiences and improve an understanding of their new roles and responsibilities.[1002]

2.2.2 Deliberative Provincial Assemblies and Special Committees

Membership of localised representative bodies, known as Provincial Assemblies, is open to all Nepalese.[1003] As with the federal parliament, the Constitution guarantees that women, Dalits and indigenous minorities are to be proportionally represented in the assembly.[1004] Due to their novelty, Provincial Assemblies were not excepted from the broad period of adjustment experienced by the Nepalese political system in the first two years after the 2015 Constitution.[1005] They experienced difficulties with a lack of employees and employee mobility, difficulties with a lack of physical infrastructure and other resources such as

[995] *Findings on Functioning of Local and Provincial Governments in Nepal* (n 925) 27.
[996] Ibid 28.
[997] Ibid.
[998] Ibid.
[999] Ibid.
[1000] Ibid.
[1001] Ibid.
[1002] Ibid iv.
[1003] Ibid.
[1004] 'Constitution of Nepal' (n 899) Art.175(6).
[1005] *Functioning of, and Participation in, Provincial Assemblies* (n 848) 35.

information technology.[1006] These bodies also spent much of the first two years establishing important laws on procedure and practice.[1007] Despite those early issues, Provincial Assemblies actively went about passing legislation and engaging in oversight of the provincial executive through various thematic committees on accountability.[1008] Some of the difficulties with staffing and member inexperience in the new structure came about for good reasons, in that many people belonging to marginalised groups were for the first time included in the decision-making process.[1009]

The Nepalese Constitution provides for the formation of thematic or special committees drawn from Provincial Assemblies.[1010] Regulations relating to the provincial assemblies are developed and implemented by the assemblies themselves.[1011] Provincial Assemblies are therefore sovereign and can act independently in the development of their own processes and procedures.[1012] In the final instance the regulations of all seven Provincial Assemblies allow for members of those assemblies to engage in a discussion and interrogation of any issue of public importance that falls within the jurisdiction of the provincial government.[1013] Subsequently, the relevant minister must answer those questions to the parliament within a set time period, either in person or in writing.[1014] This represents a unique form of citizen engagement in the operation of the federal government.

2.2.3 Direct Citizen Representations to Provincial Assemblies

The Provincial Assembly regulations allow for citizens to present motions on matters of public interest in the form of a letter to the assembly.[1015] In this situation if the decision is within the jurisdiction of the provincial government and affects a citizen residing in the province, the citizen may place a motion before the body in the public interest. Certain provinces require the request letter to be signed by one hundred individuals, while at least

[1006] Ibid.
[1007] Ibid.
[1008] Ibid.
[1009] Ibid.
[1010] 'Constitution of Nepal' (n 899) Art. 193; *Functioning of, and Participation in, Provincial Assemblies* (n 848) 4.
[1011] *Functioning of, and Participation in, Provincial Assemblies* (n 848) 4.
[1012] Ibid.
[1013] Ibid.
[1014] Ibid.
[1015] Ibid 6.

one province requires seven hundred signatures, a higher barrier to access.[1016] As of January 2020 this provision had not been used in any provincial assembly, however there was a willingness within the executive to make the provision more widely known amongst the provincial citizenry.[1017] Such petitions provide an opportunity for citizens to have direct input on matters of relevance to them within the purview of the provincial assembly.[1018]

The Nepalese Democratic Resource Centre has indicated that Nepal's decentralisation has proceeded reasonably well since international involvement.[1019] Provincial Assemblies have continued to enact laws and perform their oversight function of provincial governments through committee systems.[1020] Despite predictable difficulties with political, gender and class diversity, extensive open discussion of proposed legislation has taken place.[1021]

3. Conclusion

The use of discussion-based methods in the Nepalese context has left a lasting beneficial legacy. The Nepalese have a high level of active engagement with politics and decision-making, and a thriving civil society sector. Despite ongoing political ructions, it remains a pluralist multi-party state, has remained relatively peaceful and stable since international involvement and has not tended to revert to a high level of authoritarianism. The Nepalese experience is therefore one of the more successful and sustainable international efforts at democratisation thus far achieved for two main reasons. Firstly, regardless of whether the main goal of the CPA was to remove or appease the Maoist elements which formed part of the insurgency, the result was that those elements were brought into the mainstream and continue to peacefully contribute their perspectives to political deliberations in Nepal. Secondly, despite the continued dominance of certain political parties, contemporary Nepalese governments are now always made up of coalitions which include a variety of political groupings, contributing to a degree of broad representation.

[1016] Ibid.
[1017] Ibid.
[1018] Ibid.
[1019] Ibid 35.
[1020] Ibid.
[1021] Ibid 36.

CHAPTER SEVEN: COMPARING CAMBODIA, TIMOR-LESTE AND NEPAL: RECOMMENDATIONS FOR STRENGTHENING DEMOCRATISATION THROUGH DELIBERATION

Introduction

The three case studies analysed above demonstrate that the international community has a record of raising expectations of transformative democratic change, then delivering outcomes that can decrease rather than deepen democratic representation. After extensive democratisation, Cambodia has become an autocratic one-party state run by a small collection of families on what is effectively an organised crime model. In Timor-Leste, where the writer has been engaged in a series of electoral initiatives since the beginning of international involvement in the year 2000, one political entity has dominated the political landscape, allocating key state positions on a rotating basis to a small group of largely male former resistance fighters.[1022] In both Cambodia and Timor-Leste any long sought after decentralisation of power seems as elusive as ever, and people at village level are still shut out of most collective decision making processes. In both Cambodia and Timor-Leste a lasting legacy of democratisation has been the installation and strengthening of a pre-existing elite. Elements of the community who did not previously have a voice are still largely voiceless.

Ongoing multilateral democratisation efforts in Nepal are showing greater promise. The introduction of deliberative elements into the drafting process for the nation's first post-conflict constitution and an innovative consultative process for the development of its constitution have created a political foundation upon which to build the nation. A set of deliberative provisions have been integrated into its constitution and the process of decentralisation is tangibly moving ahead, albeit slowly and not without teething problems. While the future of its democracy remains fragile, the Nepalese experience could represent a baseline upon which to build a model for use in future initiatives.[1023]

[1022] Johnstone, 'Beyond Hybridity: A Feminist Political Economy of Timor-Leste's Problematic Post-Conflict Peacebuilding' (n 63).
[1023] 'Oli's Power Grab Endangers Nepal's Fragile Democratic Transition' (n 12).

This chapter draws on the findings from the case studies set out in the three previous chapters to compare and contrast how each element of deliberative democratisation was advanced or neglected, thus strengthening or weakening efforts to generate sustainable democratisation. By panning out from the detailed analysis and placing the four elements front and centre, the chapter identifies critical insights for future efforts towards sustainable, deliberative democratisation.

1. Recognition of Deliberative Legacies

A recognition of deliberative legacies seeks to recognise and build upon the value of pre-existing structures or entities, be they political, constitutional, legal, social or cultural. It calls for a multidisciplinary understanding of the mission destination with the goal of achieving greater ownership by local populations. It strives to engender more sustainable long-term outcomes that may incorporate elements of legal pluralism, complexity, hybridity, deliberative cultures and responsive democratisation.

1.1 Cambodian Communal Councils and the CEP in Timor-Leste

Cambodia has a system of local representation in the form of the communal council system or “khum” (in rural areas) and “sangkat” in urban areas which, despite their foreign origins, could have provided a model of grassroots governance.[1024] Similarly, the UNTAET District Administrator network was superimposed over a pre-existing localised "administration" in the form of the “house” family structure linked to the leadership of the Liurais. The Luirais did not disappear, and thus two parallel systems emerged. UNTAET could have worked with (or simply better recognised) such pre-existing networks of governance and dispute resolution.

The Community Empowerment Project (CEP), first suppressed then abandoned under UNTAET, had introduced various participatory innovations including the establishment of local community councils, designed to bring decision-making to village level. For example, funding conditions for the project had demanded that half of the elected members of community councils were to be women and half of the projects funded were to be drawn

[1024] Vachon (n 651).

from women's groups. Community councils were to become focal points for donors to directly channel funds into locales without needing to pass through the corruption and administrative dysfunction of state delivery. However, the politicisation of local level government under UNTAET led to the "shutting out" of local village elders if they were not members of political parties, thereby upsetting pre-existing hierarchical arrangements at village level. While imperfect in its initial execution, the CEP model had allowed for a combination of localised reconstruction in which accountability existed at village level. This helped to reverse the institutional top-down approach in favour of one in which local entities were held accountable for the allocation of priorities and funds. This would not have completely removed the possibility of corruption or patronage, but would at least mean funding priorities were determined at a local level. The CEP presented a unique opportunity to build a system of localised representation on a pre-existing foundation. Localised models should be explored further in future democratisation processes.

The Timorese National Truth and Reconciliation Commission (*Comissão de Acolhimento Verdade e Reconciliação de Timor Leste* - CAVR) used a traditional discussion based, reconciliation and "truth-telling" model more appropriate to local conditions, which could have been expanded and incorporated into the judicial system and (if appropriate) government itself.

The structure of the UNTAC and UNTAET missions did not include any appreciable large scale understanding of pre-existing "political" systems, forms of representation or dispute resolution. Planning for both missions was undertaken largely by professionals from a legal, political or economic background. As noted previously, sites of democratisation are not a cultural, legal or political *tabula rasa*. All cultures have pre-existing systems of representation, political articulation and dispute resolution.

1.2. Nepal's History of Local Representation and Engagement

Nepal has a history of local representation of varying origin, motivation and efficacy, such as Panchayatism, the Tribhuvan Village Development Program and the parallel state put in place by the Maoists during their occupation of parts of the country. This history of local representation and consultation better acclimatised Nepal to engagement in processes as part of its democratisation. The planning for the Nepal process included an understanding that the provision of election-focused assistance without ongoing holistic or systemic support was

unsustainable.[1025] The Nepalese constitutional drafting process attempted to incorporate a nation-wide program of consultation by which to allow the citizenry from village-level upwards to have input into the drafting of its first Constitution. This in part drew from a historical tradition of devolved government and administration going back to the 1950's.[1026] The process benefited from an understanding of this history. This would suggest that a greater degree of understanding, particularly multidisciplinary input, involving not just legal, political or economic considerations but also anthropological, sociological and historical perspectives could result in a more sustainable outcome for democratisation initiatives. Such a multidisciplinary approach could allow for a better understanding of how pre-existing systems of representation and consultation can build on or integrate with forms of consultation introduced from outside the culture.

Such an approach could be characterised as a form of "inclusion" in that it encourages local ownership of democratisation processes by reducing the sense of imposition often felt in external interventions, while at the same time increasing a sense of familiarity with any system under construction. The approach can also embrace the "hybrid political orders" model discussed above and, crucially, allows for a flexible approach to the forms of communication which can comprise popular engagement in a given system. In this formulation truth and reconciliation processes, storytelling, gossip, silence, games and folklore can all be accommodated in a representational or dispute resolution system.[1027]

Cambodia and Timor-Leste retained legacy structures which could have been but were not productively utilised to incorporate deliberative elements into their respective democratisation processes. Certain consultative elements were in fact built in to the Nepalese democratisation process. In general, and where appropriate and practical, such pre-existing entities or structures should be incorporated into the mission plans behind democratisation efforts. Democratisers could also seek to build on any tradition of local governance or previously instituted structure, whether native or introduced. A history of previous attempts at decentralisation and the creation of local governance structures may increase the prospects of efforts to achieve a redistribution of decision-making to a local level.

[1025] UNDP (n 972).
[1026] Pyakurel (n 864) 55.
[1027] Sass and Dryzek (n 151) 8.

2. The Presence of Deliberative Processes in Addition to Aggregative Democracy

Where deliberative techniques complement aggregative techniques in democratisation, synergies are created which draw on the inherent qualities of both techniques. This makes room for deliberative innovation in systems undergoing democratic transition, while recognising the primacy of aggregative democracy.

2.1 The CPP in Cambodia and FRETILIN Timor-Leste

In Cambodia, each election since UNTAC has further consolidated the power of the CPP. The CPP dominate localised representation and therefore dominate localised electoral verification. Up until the June 2017 Cambodian community council election there was strong growth in the development of localised political parties in Cambodia, especially those established by young people. Since the crackdown prior to the 2018 general election and the outlawing of the CNRP, grassroots political parties providing localised representation have been suppressed. Aggregative democracy more easily allowed for the entrenchment of the CPP and the eventual emergence of Cambodia as a one party state. Where power transfer was purely electoral, the CPP was easily able to manipulate outcomes to reinforce its position over a series of elections held since the end of multilateral international involvement under UNTAC. A broader spread of modes of engagement through the system could have avoided this.

The National Electoral Commission is not independent and has no constitutional status. Moreover its members are appointed by the national assembly from a list provided by the Ministry of the interior. The NEC presides over a purely electoral system, with a limited mandate which excludes voter registration and the issuing of identity cards. At its establishment no deliberative or consultative methods were built into the work of the NEC. Had the NEC been established with deliberative or consultative mechanisms built into its processes, it could have been less prone to influence by the CPP, more transparent and more accessible to the average Cambodian.

In Timor-Leste, as in Cambodia, the international focus on aggregative democracy at the expense of the establishment of a system of localised representation resulted in a greater ability for the ruling FRETILIN party to entrench its position and dominate Timorese

politics. The collapse of the early World Bank Community Empowerment model only entrenched this further. An excessive focus on electoral process reduced the possibility for the emergence of other forms of deliberative engagement, especially at the village level. It also increased the possibility that existing elites would manipulate the electoral process in order to entrench their position. The full application of the Community Empowerment model would have added a deliberative component in addition to the existing aggregative component.

2.2.Nepal

The first Nepalese Constituent Assembly was a highly participatory and inclusive institution, incorporating differing caste, ethnic, religious groups and more than 33% women. A comprehensive system of consultation was put in place as part of the drafting process for the first Nepalese constitution. The constituent assembly itself was also strongly deliberative in its process. While not perfect in practice or outcome, this entrenched a tradition of localised engagement in Nepalese political life and increased familiarity with discussion-based decision making processes. The participatory constitutional drafting process further entrenched a participatory culture into Nepalese political life

The UNDP SPCBN in Nepal assisted the participatory constitutional drafting process from the outset and therefore diffused the reliance on aggregative democracy. This program exists as a good model for the establishment of deliberative processes as part of a democratisation process.

The focus on aggregative democracy in both Cambodia and Timor-Leste encouraged the entrenchment of dominant political players and reduced the possibility for the emergence of other forms of deliberative engagement, especially at village level. Deliberative systems built into the Cambodian state by UNTAC could have shared the load with electoral democracy and potentially reduced the overt manipulation of aggregative outcomes by more broadly distributing decision making. It is possible that an exclusive focus on aggregative democracy could be damaging to the sustainability of a given electoral system. While politics in Nepal is still highly contested, a historical tradition of deliberation and consultation was carried through to Nepalese democratisation, leading to a greater respect for participatory culture in Nepalese political life.

3. Capacity or "Reach" of Deliberation in a System

3.1 The CPP in Cambodia and Decentralisation in Timor-Leste

The UN focus on an electoral process as the chief articulation of democratic governance only made it easier for the CPP to come to dominate Cambodian political and social life. The Cambodian one party state reduces the degree of deliberative capacity. It uses the electoral process to manipulate outcomes resulting in little opportunity for popular input. From the outset there was not enough deliberative capacity in the system to prevent the emergence of a one party state and that entity's subsequent alignment with China. Instituting a variety of processes, including deliberative models could have reduced the ability of one party to dominate political processes. It could have increased the deliberative capacity of the state and provided a more varied system of political representation, particularly at village level.

The use of the electoral process by the CPP to manipulate outcomes also reduced opportunities for popular input through other conduits, and therefore the degree of deliberative capacity in the system. Cambodian dependence on international aid, much of which contains coded neoliberal conditionalities, has served to suppress the emergence of popular movements for democratic change. This situation has only worsened with the entry of China into the Cambodian aid equation.

In Timor-Leste the CEP sought to build on the principle of decentralisation to establish local level community councils and thus to bring consultation and decision making to a village level. It allowed for financial empowerment through the direct donor funding of local initiatives, without having to go through the corruption and administrative dysfunction of state delivery. District marginalisation and failed decentralisation reduced the degree of deliberative capacity in Timor-Leste. The districts remain marginalised, a legacy of the highly centralised structures put in place during the UN occupation. Local constituencies need to be established so that local representatives are directly accountable to voters. The process of establishing some form of sub-national governance in Timor-Leste needs to be accelerated and completed as soon as possible. The existing electoral structure reduces the scope of deliberative capacity and constrains the infrastructure and systems available for deliberative discussion and engagement. The installation of Western style competitive party politics means that a single national constituency was adopted with a closed list of candidates for whom constituents must vote. Members of parliament owe their allegiance to the political

party that assigned them a winnable position on the ticket but do not have any current form of direct accountability to voters in the districts. The establishment of some form of decentralised government in which representatives are directly accountable to the district level may partially alleviate this problem. Timor's political monoculture in which one party has come to dominate the political landscape causes a reduction in the capacity of the system to deliver deliberated outcomes.

3.2. Local Representation in Nepal

Nepal has a history of local representation in the Panchayat system and the Tribhuvan village development program, and the parallel state structure which emerged under the Maoist insurgency also provided a model for decentralisation. The first Constituent Assembly was intended to be a participatory and inclusive institution. The participatory Constitution making process in Nepal also allowed for broad input into the drafting of the final Nepalese Constitution. Structures were put in place to host genuine engagement and discussion as part of the constitutional drafting process. Future democratisation initiatives should take this into account. The Constitution now contains provisions which guarantee principles of social inclusion and participatory engagement, including mandatory requirements for the representation of minority groups in the civil service. The Nepalese parliament is built on mechanisms which encourage direct representation and accountability of leaders to the individual districts.

3.3. Aggregative Democracy, Limited Deliberative Capacity and Aid Dependency in Cambodia and Timor Leste

As has been the case in Timor-Leste and Nepal, international assistance to support democratisation has been articulated in Cambodia though short-term stability efforts such as elections and the supporting of electoral management bodies (EMB's). Additionally, UN involvement further entrenched an already serious problem with aid dependency in Cambodia. Over the years, Cambodia has been the site of a variety of aid and development experiments with varying degrees of success, much of it actually preventing sustainable development.[1028] The short-term nature of these programs has limited the building of

[1028] Ear (n 523) 10.

structures to host genuine deliberation and has therefore reduced the capacity of the system to deliver deliberative outcomes.

In the period since UNTAC departed, the corrupt re-direction of large aid flows has helped the CPP, through the distribution of patronage, to strengthen its position. Net official development assistance received into Cambodia has risen from US$41.3 million in 1990 to US$396.4 million in 2000, to US$734 million in 2010 and then to US$842.9 million in 2017.[1029] Even the OECD Country Programmable Aid (CPA) measure, considered a more conservative but accurate measure of actual aid flows, indicates an increase from just over US$400 million in 2000 to just under US$800 million in 2019.[1030] In 2024 aid as well as trade with China continue to be a dominant force in the Cambodian economy.[1031]

A large proportion of all this, both during UNTAC and in the years since, has been earmarked for "governance", including electoral administration and individual elections. Much of this aid is short term and technical in nature, directed at specific aspects of the electoral cycle, rather than as long term strategies to increase representation at local and regional levels. The CPP has been able to distribute this largesse through political party networks to voters, government officials and business people.[1032] With these aid flows in mind, the 1993 decision that allowed Hun Sen into a power sharing agreement with Funcinpec (Ranariddh and Hun Sen as first and second Prime Minsters) was in retrospect a particularly egregious error.[1033] The political culture in Cambodia was strangely resistant to power-sharing in the early 1990's and remains so today because of the scarcity of resources and competition between elite families for the spoils of aid, natural resource exploitation and economic growth.[1034] Additionally, any transition from single party to multi party state requires satisfying the needs of the losing elite with wealth-creating positions.[1035] Despite Cambodia's increasing hostility to democratic reform and a similar shift towards

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[1029] 'World Development Indicators - Country Profile: Cambodia', *World Bank* (Web Page) <https://databank.worldbank.org/data/views/reports/reportwidget.aspx?Report_Name=CountryProfile&Id=b450fd57&tbar=y&dd=y&inf=n&zm=n&country=KHM>.
[1030] 'Country Programmable Aid (CPA) - OECD' <http://www.oecd.org/dac/financing-sustainable-development/development-finance-data/cpa.htm>.
[1031] 'China's Continuing Influence over Cambodia's Economy | East Asia Forum' (1 May 2024) <https://eastasiaforum.org/2024/05/01/chinas-continuing-influence-over-cambodias-economy/>.
[1032] Ear (n 523) 110.
[1033] Morgenbesser, 'Misclassification on the Mekong: The Origins of Hun Sen's Personalist Dictatorship' (n 5) 199.
[1034] Roberts (n 559) 526.
[1035] Ibid 533.

authoritarianism, the international community has continued to provide aid flows into Cambodia. A belief on the part of the international community that continued aid would facilitate a greater commitment to reform in Cambodia has proven to be an expensive mistake. In the absence of civil-society resistance and a strong opposition in Cambodia, certain political elites in Cambodia were always likely to use extensive kinship and neopatrimonial structures to take and hold power by force.[1036]

Simon Springer has drawn a link between the global hegemony of neoliberal economics and its infiltration into developing states through donor conditionality. In the Cambodian context the neoliberal policies of international donors, coded through aid conditionalities, have promoted intense domestic marketisation and a culture of deregulation.[1037] Counterintuitively, this has been supported by authoritarian policies that reinforce the order and stability so strongly valued by investors.[1038] These restrictions have served to suppress the emergence of popular movements, particularly when they seek to express themselves in Cambodian public space.[1039]

China's increased influence and its massive injections of tied aid have changed the landscape once again in Cambodia, and further limited the scope for national conversations on issues important to Cambodians.[1040] Since the visits of Jiang Zemin in 2000 and Xi Jinping in 2008, Chinese money, tourists and political influence have flowed into Cambodia.[1041] Correspondingly, Chinese support has allowed Hun Sen to play off US and EU influence against the growing regional might of the Chinese.[1042] Hun Sen publicly advocated for the "One China" policy, thereby repudiating the Taiwanese, who were previously large investors in Cambodia.[1043] He provided Chinese firms virtually unlimited access to Cambodian land and resources, barred the Dalai Lama from entry to Cambodia and deported activists wanted

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[1036] St John (n 5) 423.
[1037] Springer (n 5) 138.
[1038] Ibid 139.
[1039] Ibid 138.
[1040] Hillel Joseph Cohen, 'Unconditional Aid and Hybrid Democracy: The Case of Cambodia' (2019) 11(2) *Asian Journal of Public Affairs* 1, 4.
[1041] Peou, 'Cambodia's Hegemonic-Party System: How and Why the CPP Became Dominant' (n 574) 56.
[1042] Amy Sawitta Lefevre and Prak Chan Thul, 'Cambodia Faces U.S., EU Action after Banning Opposition', *Reuters* (online, 17 November 2017) <https://www.reuters.com/article/us-cambodia-politics/cambodia-faces-u-s-eu-action-after-banning-opposition-idUSKBN1DH033>; Phillip Blenkinsop, 'EU Begins Process to Hit Cambodia with Trade Sanctions', *Reuters* (online, 11 February 2020) <https://www.reuters.com/article/us-cambodia-eu/eu-begins-process-to-hit-cambodia-with-trade-sanctions-idUSKCN1Q015D>.
[1043] Cheunboran (n 524) 75; Joel Brinkley, *Cambodia's Curse: The Modern History of a Troubled Land* (Public Affairs Press, 2011) 324.

by Beijing in direct contravention of its obligations under the Refugee Convention.[1044] Hun Sen made a series of visits to Beijing, in the months preceding the 2018 elections. It appears that he was given certain financial assurances which meant that Cambodia would no longer need to rely on international aid to support its economy.[1045] As a consequence Hun Sen and the CPP no longer needed to comply with human rights oversight mechanisms that usually accompany aid from the EU and US donors.[1046] This has further limited the scope for civil society to engage in democratic discussion.[1047]

The Cambodian democratisation process did not seek to encourage decentralisation of power, or extend deliberative processes into provincial structures. Likewise in Timor-Leste early opportunities to introduce decentralised decision-making through internationally-led local initiatives were not pursued. However, in Nepal while ongoing decentralisation efforts also remain highly contested, its history of decentralised power has entrenched a strong motivation in the political culture for such a diffusion. This demonstrates the need to build deliberative capacity into a system from the outset, and the benefit of existing supportive historical systems.

Clear agreement amongst all stakeholders as to the parameters and lifespan of governance projects could prevent the sorts of destructive competitive behaviours which took place in the Timorese context. If these issues had been better addressed, the CEP program may have had a better chance of survival. Projects need to have a sufficiently long time-frame to be effective. Existing power structures involving village elders and other people in authority should be properly incorporated into projects. Quotas should be applied to ensure sufficient representation by women and young people in any community based body. The Timorese CEP and other participatory initiatives could have improved the capacity of the system to deliver deliberated outcomes, keeping in mind that a one party state reduces the capacity of the system to deliver such outcomes. It may be impossible at the reconstruction stage to prevent the emergence of one dominant political entity. Peacebuilders should do what they can to ensure a diversity of political entities in a system.

[1044] Strangio (n 460) 216.
[1045] Cheunboran (n 524) 189.
[1046] Chan Thul Prak and Matthew Tostevin, 'China's Big Money Trumps U.S. Influence in Cambodia', *Reuters* (online, 11 September 2017) <https://uk.reuters.com/article/uk-cambodia-politics-aid-idUKKCN1BM1BY>; Strangio (n 528); Morgenbesser, 'Cambodia's Leader Just Cracked down on the Opposition, and the Consequences Will Be Dramatic' (n 528).
[1047] Cohen (n 1040) 5.

4. The Quality of Any Deliberation Present

4.1. Models for Quality Local Government in Cambodia, Timor-Leste and Nepal

Cambodia has a system of local representation in the form of the communal council system or "khum" (in rural areas) and "sangkat" in urban areas which, despite their foreign origins, could have provided a foundational model of quality deliberation. From the establishment of the commune system, women were given a vote on the basis that the head of the household could vote regardless of gender. This is a unique situation given that women were not able to vote in France until 1945. Records also exist of the conduct of local elections prior to the establishment of the Khum, providing evidence that Cambodia has a historic system of local democratically elected governance.

The establishment of local government was not an UNTAC priority, which set a self-imposed deadline of a national election by the end of 1993. Cambodia's Constitution, drafted with the assistance of the UN in the same year, mandated that local elections were to be held by 1996. However those elections were repeatedly delayed until 2002, due initially to the power struggle between the royalist Funcinpec and the CCP. After that a strong local civil society emerged at village level in Cambodia, in which local people were often empowered to engage in discussion on issues of relevance to them, including where it opposed the interests or wishes of national authorities. There is also evidence of a continued tradition at local level to question both the decisions of administrators and perceived corruption.[1048] This suggests that the vibrancy of local deliberation is increasing a sense of engagement at local level in Cambodian life, including an incremental increase in the empowerment of women in a culture which has tended to place women in a subordinate position. Cambodian local government is a space in which there is scope to expand deliberative frameworks to increase levels of citizen empowerment. Had this space been a focus from the outset in international efforts to develop democracy in Cambodia, especially in the lead up to and during the international intervention in 1993, the local level could have provided a counterweight to the centralising tendencies of the CPP

While imperfect in its execution and outcomes, the Timorese National Truth and Reconciliation Commission (*Comissão de Acolhimento Verdade e Reconciliação de Timor-*

[1048] Öjendal and Sedara (n 672) 514; Eng and Hughes (n 624) 405.

Leste - CAVR) used a traditional, discussion based, reconciliation and truth telling model appropriate to local conditions, aspects of which could have been expanded and incorporated into the judicial system and government itself. The Commission provided a working, resolved historical model for quality deliberation going forward in Timor-Leste and potentially in other post-conflict contexts. Despite some shortcomings the CAVR allowed for a deliberative form of justice in a more culturally appropriate setting than a formal criminal justice process. It stands as an ideal model of quality deliberation in Timor-Leste and for future post-conflict applications.

The Nepalese Parliament has benefitted from a history of participatory initiatives which provide a model for democratic engagement in the present day. The Nepalese *Democratic Resource Centre* has indicated that Nepal's decentralisation has continued well since international involvement. Many NGOs such as Nepal's *Youth Innovation Lab* (YILab) seek to improve the quality of Nepalese political conduct.

5. Challenges to Deliberative Democratisation

Introduction

The present work is the first step of a longer journey to build a productive relationship between peacebuilding and deliberation. It is a unique journey, bringing together multidisciplinary, often disparate, forms of scholarship into a new interpretation of an old problem. However, the challenge of placing the theory and practice of deliberation into the complex political, cultural and logistical environment of peacebuilding cannot be underestimated. The task is made more challenging because it brings together history, politics, development theory and deliberative theory. The following is a discussion of some of the possible challenges a process of deliberative democratisation might encounter.

5.1. Appropriation of Deliberative Democratisation by Elites

Deliberative and participatory processes can provide pathways to address issues of structural justice, however they will not be immune to manipulation or misuse by elites. They may also give the impression of 'doing something' while failing to address broader structural

issues.[1049] Elites may therefore see deliberative democracy as a threat in the same way that technocratic engagement through elections can invite further reactionary forces.

5.2. Isn't Democratisation Dead?

Much has changed in the last decade in regards to democracy worldwide. Regimes around the world have tended towards a greater degree of authoritarianism and away from the traditional hallmarks of democratic governance. This suggests that the global democratisation project, which had its peak in the mid 2000's, has lost its momentum. The concept of a "right to democratic governance" is clearly now in complete retreat or dead and buried.[1050] It is also possible that not enough is known about the translation of elements of democracy into new contexts to draw solid conclusions as to how to successfully engage in the practice.[1051] A series of studies have shown that there is little evidence that large scale interventions such as transitional administrations result in significant long-term democratic benefits, as opposed to non-intervention.[1052] The same studies conclude that smaller scale projects with modest goals operating at grassroots level, tend to produce tangible results and a greater level of efficiency.[1053]

5.3. Was it Ever Alive?

Some scholars, particularly from the postcolonial school, have concluded that interventions suffer from a fatal structural flaw which cannot be solved by greater degrees of cultural appropriateness, hybridity or participation.[1054] The dilemma is that the persistent asymmetries of wealth and power between colonisers and the colonised will simply continue to produce various forms of failure.[1055] Given the limited success of more than thirty years of democratisation initiatives, there is a compelling argument that it may not be possible to export democracy at all.[1056] The existing models of democratisation struggle to include all

[1049] Cooke and Kothari (n 19).
[1050] Marks (n 46).
[1051] Lust and Waldner (n 964) 19.
[1052] Ibid 20.
[1053] Ibid.
[1054] Meera Sabaratnam, *Decolonising Intervention: International Statebuilding in Mozambique* (Rowman & Littlefield International, 2017) 4; Anghie (n 36) 247; Rajagopal (n 35) 135; BS Chimni, 'Third World Approaches to International Law: A Manifesto' (2006) 8(1) *International Community Law Review* 3, 4.
[1055] Bickerton (n 80) 103.
[1056] Zeeuw (n 14) 481.

constituents. Democratisers may therefore simply be exporting the same political dysfunction seen in Western democracies. As has been noted above, despite this fundamental criticism, this thesis assumes the intrinsic value of democratisation and seeks to propose a solution to some of the problems it faces in the 21st Century. The future of democratisation probably lies somewhere between large-scale top-down interventions and microlevel initiatives with goals that are so modest as to be almost unquantifiable.[1057]

5.4. The Normative Trap

A risk in the observation that democratisation in the three case studies has fallen short, and in the forwarding of a model to remedy that deficiency, is the possibility of setting what can be called a normative trap. That is, proposing to overthrow one approach to democratisation only to replace it with another approach with no guarantee of success, raises the question as to why one system will be better for ordinary people than any other? Having explained what the proposed model seeks to accomplish, an appropriate response is to explain what the model does not propose to do. The model does not seek to evaluate or address the overall success or failure of the broad practice of statebuilding, peacebuilding, governance programs or democratisation, which is a project for a later date. Nor is it seeking to assert any link between autocracy and international interventions, a causal link which may be impossible to establish in any event.[1058] The work must however engage normatively in order to build an argument that a more effective system of democratisation is possible.

The project is not proposing a complete replacement of the existing models and practice of democratisation. Rather, it seeks to extend, enhance and strengthen democratisation by drawing on insights from deliberative democratic theory and practice. One of the advantages of using a deliberative framework in such a context is that, like good public deliberation itself, deliberative democracy is a reflexive project that accommodates the recognition of failures as scope for adaptation.[1059] The project is also an inquiry into what might work well, and not so well, if a deliberative approach is applied to the particular problems of peacebuilding and democratisation. It therefore represents a foundation for ongoing study

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[1057] Carothers, 'Democracy Assistance: Political vs. Developmental?' (n 14) 18.
[1058] Simon Chesterman, 'Consultation and Accountability: Building Democracy Through Benevolent Autocracy' in *You, The People: The United Nations, Transitional Administration, and State-Building* (Oxford University Press, 2004) 126.
[1059] Curato et al (n 165) 32.

into the strengths and pitfalls of the approach, and in what circumstances deliberation will add value.

5.5. Deeply Divided Societies

The study of deliberation can be highly abstract in nature, partly because it needs to generalise across a broad range of systemic political landscapes. This is not to say that deliberative democracy lacks practical expressions (techniques and methods), some of which are described in Appendix 1 of this thesis. The difficulty lies in trying to operationalise something which is essentially theoretical, within the highly practical context of democratisation and peacebuilding. In this regard, perhaps the most obvious critique of the possible application of deliberative methods in developing country situations would be that barriers such as language, culture and politics will preclude free deliberation in cross cultural settings, particularly in adverse, or "deeply divided" post-conflict political environments.[1060] For example, various aspects of Gutman and Thompson's requirements for the democratic resolution of disagreement such as *reciprocity*, *publicity* and *accountability* may have never been foundational values for divided societies.[1061]

Deeply divided societies, particularly those recovering from conflict, are fragile and may be prone to violence, particularly where sensitive issues are sought to be traversed using deliberative techniques. Political, ethnic, tribal and historical grievance can be rife in any post-conflict environment (and not just in developing countries) and can all serve to reduce the potential for starting any form of inter-group dialogue, let alone coming to a resolution.[1062]

[1060] Mike Kesby, 'Retheorizing Empowerment-through-Participation as a Performance in Space : Beyond Tyranny to Transformation: New Feminist Approaches to Social Science Methodologies' (2005) 30(4) *Signs: Journal of Women in Culture and Society* 2037; Amy Gutmann and Dennis F Thompson, *Democracy and Disagreement* (Belknap Press, 1998); Chantal Mouffe, 'Deliberative Democracy or Agonistic Pluralism?' (1999) 66(3) *Social Research* 745; Iris Marion Young, *Inclusion and Democracy* (Oxford University Press, 2002); John S Dryzek, 'Deliberative Democracy in Divided Societies: Alternatives to Agonism and Analgesia' (2005) 33(2) *Political Theory* 218; Ian O'Flynn, *Deliberative Democracy and Divided Societies* (Edinburgh University Press, 2006); Ian O'Flynn, 'Divided Societies and Deliberative Democracy' (2007) 37(4) *British Journal of Political Science* 731; Ugarriza and Caluwaerts (n 151).
[1061] Gutmann and Thompson (n 1060).
[1062] Breen (n 883) 412.

There exists a rich literature in relation to deliberation in deeply divided societies, a full survey of which is beyond the scope of this work.[1063] However, some observations relevant to the use of deliberative techniques may be worthwhile. Mouffe argues that, due to the extremity of belief that led to the conflict in the first place, actors in such situations may be incapable of sufficient empathy for other positions to allow reconciliation by deliberative means.[1064] Dryzek notes that deliberation needs to deal with "the toughest kinds of political issues, the mutually contradictory assertions of identity that define a divided society".[1065] As a way to overcome such division, Young argues for policy settings and practical strategies to increase levels of societal inclusion, but does not seek to apply the approach into a post-conflict setting.[1066] Dryzek advocates for an approach in which contentious issues are moved out of institutional settings and into the public sphere, where a broader range of perspectives are recognised, such as "assumptions, judgements, contentions, dispositions and capabilities".[1067] In a later work Dryzek, drawing on the work of Ben Reilly, advocates for deliberative citizen engagement focused on issue specific networks and "centripetal" politics promoted by forms of ballot such as preferential voting, rather than first past the post contests.[1068] The former tend to encourage a collective move towards the political center, while the latter can entrench candidates at extremes.[1069] These could be based around ranking systems such as alternative supplementary or single transferable votes.[1070] Keeping such deliberation and citizen engagement at a distance from the state avoids entanglement with contests for sovereign authority.[1071]

Ian O'Flynn builds upon Lijphart's 'grand governing coalition' model in advocating for what he calls a "consociational" compromise allowing elites, opposition groups and civil society to work together. However, O'Flynn does not sufficiently canvas the possibility that such

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[1063] Dryzek, 'Deliberative Democracy in Divided Societies: Alternatives to Agonism and Analgesia' (n 1060); O'Flynn, *Deliberative Democracy and Divided Societies* (n 1060); Robert C Luskin et al, 'Deliberating Across Deep Divides' (2014) 62(1) *Political Studies* 116; Jürg Steiner et al, *Deliberation Across Deeply Divided Societies: Transformative Moments* (Cambridge University Press, 2017); Ugarriza and Caluwaerts (n 151).
[1064] Mouffe (n 1060) 755.
[1065] Dryzek, 'Deliberative Democracy in Divided Societies: Alternatives to Agonism and Analgesia' (n 1060) 219.
[1066] Young (n 1060) 13.
[1067] Dryzek, 'Deliberative Democracy in Divided Societies: Alternatives to Agonism and Analgesia' (n 1060) 223.
[1068] Ibid 227.
[1069] Allison McCulloch, 'Does Moderation Pay? Centripetalism in Deeply Divided Societies' (2013) 12(2) *Ethnopolitics* 111, 112.
[1070] Dryzek, 'Democratization as Deliberative Capacity Building' (n 107) 239.
[1071] Dryzek, 'Deliberative Democracy in Divided Societies: Alternatives to Agonism and Analgesia' (n 1060) 234.

groups may use consociationalism as a simple tool to gain power.[1072] As a proposed "work around", Curato has proposed a sequential or disaggregated approach to deliberation in contexts of "suboptimal political conditions".[1073] This allows for the establishment of certain foundational preliminaries prior to any form of institutional argumentation, and for "shifts in roles and transitions" to be made at each stage of the sequence, which is not necessary linear.[1074] The initial "confrontation" stage is an open exchange of differences or agreement, followed by an "opening" stage in which a decision is made to resolve differences and where adversaries can be recharacterised as "peers", thirdly is the argumentation stage in which differing arguments are made in an open and honest manner, and finally followed by a concluding stage in which an agreement is made on the basis that it may be challenged in the future depending on changing context.[1075] The separation of the stages allows for more emphasis to be placed in a particular area or anticipated difficulty.[1076] This approach takes into account the often unpredictable nature of negotiation in post-conflict settings.

Another potential difficulty is that while the thesis strongly advocates for a more accessible form of politics, it can be hard particularly for foreigners with limited skills in the local language, to find out what is truly "local".[1077] Local political structures can be impenetrable, "free and fair deliberation amongst equals" can be hard to measure and, if there is money to be made, people sometimes produce their own "local political structures". Local forms of representation can be impartial or discriminatory and "hybrid" political structures are just as prone as Western ones to being dominated by elites to reproduce marginalisation.[1078] Another problem relates to what Robert Michels has described as the "Iron Law of Oligarchy", which in simplified form states that most people have little interest in political involvement, those who want power will get it eventually, and that power will always concentrate in certain hands.[1079]

[1072] O'Flynn, *Deliberative Democracy and Divided Societies* (n 1060) 11–12.
[1073] Curato, 'A Sequential Analysis of Democratic Deliberation' (n 153) 423.
[1074] Ibid 440.
[1075] Ibid 429–436.
[1076] Ibid 439.
[1077] Cedric de Coning, 'Understanding Peacebuilding as Essentially Local' (2013) 2(1) *Stability: International Journal of Security* 1, 3.
[1078] Boege et al (n 10) 602.
[1079] Robert Michels, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy* (Free Press, 1962).

Lastly, studies have shown the success or failure of any attempt to introduce deliberative elements into a political system depends heavily on the attitudes of those in power.[1080] Linked to this is the simple fact that in most cases the introduction of deliberative techniques relies on the approval of politicians themselves, and it may not always be in their interests to do so.[1081] Those elite attitudes are one example of what can be characterised as the limited "capacity" of a system to deliver deliberated outcomes. Some theorists believe that it is difficult to change the competitive nature of democracy because disagreement and confrontation may be one of its best assets. For example, Mouffe has argued that deliberative approaches will always struggle because these are undeniable components of a political landscape characterised as "agnostic pluralism".[1082] However, this thesis would argue that where adversarialism and partisanship are harming democracy, deliberative approaches may be most beneficial.[1083]

6. Conclusion

None of the above problems is fatal to the goal of attempting to bring people greater levels of political involvement in a particular national context. On the plus side it may be that deliberation suits communitarian societies better than individualised Western models, which are predominantly based on power and coercion rather than consensus. It may also be that communitarian societies have a tradition of discussion and negotiation as a means by which to arrive at an agreement, power-sharing arrangement or the resolution of a dispute. The positive Timorese experience with truth-telling and reconciliation after the militia violence of 1999 supports that conjecture.

Both Cambodia and Timor-Leste retained historical structures which could have provided a model for quality deliberative practice within a democratisation process. For differing reasons outlined in this work, few of these models were drawn upon by the international community to strengthen levels of democratic engagement, particularly at village level where they could be most effective. By contrast, a historically embedded culture of decentralisation, consultation and deliberation was drawn upon to democratise Nepal. While the Nepalese

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[1080] Dryzek, 'Democratization as Deliberative Capacity Building' (n 107) 1389.
[1081] Nicole Curato, Marit Hammond and John Min, *Power in Deliberative Democracy: Norms, Forums, Systems* (Palgrave Macmillan, 2019) 19; Jane Mansbridge et al, 'The Place of Self-Interest and the Role of Power in Deliberative Democracy' (2010) 18(1) *Journal of Political Philosophy* 64, 80.
[1082] Mouffe (n 1060) 754.
[1083] Ibid 745.

process continues to experience both successes and failures, at the very least that culture has been woven into Nepalese political life, facilitated by the identification and utilisation of pre-existing appropriate models of quality deliberation.

CONCLUSION

Western democracy is in crisis. It is plagued by low voter turnout and short-termism. Its outcomes are dominated by older demographics, captured by elites and prone to manipulation by special interest groups and algorithms. Many of its constituents feel divorced from its processes because elections seem to be the only way populations can express their political will. The same Western states struggling with the limitations of their democratic systems often have billion dollar democracy-building programs which seek to export the same institutional frameworks to other countries. This phenomenon is identified in this thesis as democratisation.

Historically, democratisation in the aftermath of conflict has involved the deliberate restructuring of national political and regulatory institutions by international actors to make them directly accountable to voters in regular free and fair elections. A large number of national and international organisations are involved in this work, however historically the UN has taken the lead role in the promotion of democratic governance. For this reason much of the focus of this thesis has come to rest on the work of the UN, however its conclusions apply to all organisations seeking to engage in democratisation in any national context.

This thesis and its model have sought to contribute to an improved strategy, design and implementation of post-conflict democratisation in future, leading to more sustainable an participatory outcomes. For historical background and given a notable lack of literature in the area, the thesis has provided a summary of milestones in the history of democratisation, dating from its inception early in the 20th century up to the present day. International actors have in that time had an ambiguous relationship with democracy promotion, characterised by an early paternalism, a later interventionist stance, and more recently, to a nominally participatory approach. Most importantly for the argument made in this thesis, it is clear that democratisation has never sufficiently considered the imperative to involve local populations at micro-level in its design and implementation.

The thesis has argued that despite its patchy record, and Western democracy's current malaise, democratisation can still improve the lives of individuals and societies across the globe. To do that it must prioritise the improvement of political engagement at all levels, to

give a greater say to ordinary people in the decisions that affect them. In order to achieve these objectives a new approach is required, therefore this thesis has proposed a novel and workable theoretical framework it has called deliberative democratisation. The framework is also designed to increase the likelihood that future efforts will facilitate the development of sustainable, engaged democracy. It also seeks to decrease the danger that these initiatives create democracies in name but not in nature.

The model comprises four elements; a recognition of deliberative legacies which may be built upon to promote discourse; the use of deliberative processes in addition to traditional aggregative processes (such as the tallying of votes); the promotion of deliberative capacity or "reach" in a system and; a focus on quality deliberation once it is in engendered into a system. Future research can expand and refine those elements and the details of the model and its potential application to many other national contexts.

To illustrate its application, three regional countries have been studied in the context of the proposed model. Interventions to promote democratisation in Cambodia, Timor-Leste and Nepal have produced mixed results, despite the substantial human and financial commitments made to the introduction of democratic governance there. Cambodia has reverted to a one party state led by an autocratic ruler. Timor-Leste's democracy is brittle and subject to the dominance of a small group of individuals drawn from a particular generation, largely male and largely from one political party. On a brighter note, in the once war-torn mountain state of Nepal, efforts to build the foundations of a democracy there appear to have borne some fruit. The Nepalese Constitution, drafted in a consultative and participatory process, includes deliberative elements in its parliamentary procedure as well as requirements for village-level input into government decision-making. Nepal's decentralisation process is continuing apace and, despite initial teething problems, seems to have increased the capacity of all Nepalese, including those at the lowest levels of society, to have a say in government decisions. While these processes are not perfect, and progress is not always linear or orderly, from the outset Nepal has chosen a path in which consultation and deliberation is not just valued but expected. This continues to stand Nepalese democratisation in good stead.

In order to guide the central argument, this thesis has been structured around three central research questions. Firstly, has the pursuit of democratisation in Cambodia, Timor-Leste and Nepal promoted the emergence of deliberative norms and institutions? If so, to what extent

has it done this? The answer ultimately given was that there have been highly variable degrees of success in this regard. Secondly, could a deliberative approach in these cases have promoted the emergence of democratic norms and institutions? If so, in what ways? Thirdly, could a deliberative approach better account for success, rather than failure, in democratisation than a purely electoral (aggregative) approach? The thesis argues that it could, and puts forward a series of deliberative elements and indicators of deliberative capacity that could be built into a development framework for application to other national contexts.

So what lessons can be drawn from this study and how might it contribute to improved design, strategy and implementation of post conflict democratisation in future?

Firstly, a strong understanding of social, cultural, and political history is required by democratisers prior to entering into any national country context. In particular, an understanding of any pre-existing models or entities which may be adapted or redeployed into democratisation initiatives is essential. To achieve this, initiatives need to be built not just by politicians, economists and lawyers. They also require input from (local or foreign) historians, anthropologists, sociologists, health professionals such as a paediatricians and geriatricians and any other stakeholders who can validly contribute to the process, regardless of their discipline. Democratisation needs to be redefined away from a purely politico-legal process to a broader multi-disciplinary approach. As the thesis has noted, democratisation requires broad social change in addition to political and legal change.

Secondly, deliberative techniques must complement aggregative techniques in order to generate synergies which draw on the qualities of both. Elections are recognised globally as a legitimate way for populations to express their political will, but their legitimacy has been eroded by manipulation, ideology and political expediency. The theory and practise of deliberative democracy has the potential to move democratisation forward from its currently stalled state and provide a new way to engage in the process of giving a voice to people at all levels of a society.

Thirdly, methods need to be found to encourage the emergence of a variety of different political entities and positions in a given political landscape. Allowing one entity to come to

dominate, sometimes perversely through aggregative democracy itself, can result in a manipulation of the political landscape to entrench a position.

Lastly, deliberative techniques should be built as early as possible into mission planning. In order to be successful and sustainable, democratisation efforts must be more nuanced and responsive, remaining open to the likelihood that democracy will flourish in different ways and at a different pace in different situations. A revised set of indicators and strategies is also needed to re-define what constitutes successful democratisation. Local populations need to be given ownership of the processes of democratisation by being involved at the inception, implementation and evaluation stages of the democratisation process.

Future Research Directions

This thesis creates a valuable foundation for future research on specific contexts and the systemic approach to democracy promotion by the UN more broadly. As further UN missions incorporating elements of democratisation are devised, implemented or completed, the model should be used to shape and analyse those missions in a deliberative context. Relevant completed missions should include those to Sudan, Haiti, Afghanistan and Myanmar. Where United Nations democratisation is proposed for application to other national contexts, the deliberative elements and indicators of deliberative capacity outlined in the research should be built into the development framework. The practical techniques outlined in Appendix 1 provide an introduction to a range of possible “on the ground” methods to be used in applied deliberative democratisation. As existing techniques are refined, or newer innovative techniques devised, those techniques should be incorporated into future democratisation initiatives. Theoretical developments in deliberative democracy and participation should also be reflected in the evolution of the model

As democratisers rush to make important decisions in chaotic post-conflict environments, the author hopes that as a foundational document in deliberative democratisation, this thesis might assist them to understand the vital role these elements could play in promoting sustainable democracy.

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APPENDICES

Appendix I: Deliberative Techniques for Democratisation

The following is a selection of practical techniques which could be adapted for use in democratisation initiatives.

Direct Democracy

Forms of direct democracy allow for the direct engagement of the citizen in decision making or the business of governing, as opposed to the election by citizens of representatives to act for them in similar processes. Perhaps the most recognisable to many citizens would be referenda which have a limited history in Australia but are used very frequently in Switzerland to decide issues of both national and local importance.[1084] Referenda can take the form of direct voting on proposed changes to the constitution, non-binding advisory referenda to the legislature, votes initiated by citizens on a matter of import or to remove a particular representative from office.[1085] Opinions remain divided as to the efficacy of various forms of direct democracy and online deliberation.[1086]

Online consultations and e-petitions are another form of direct democracy that allow for direct engagement by citizens with government. Internet petitions work in a similar way to written petitions except that technology such as smart phones (now ubiquitous in developing country settings) can be used to cheaply and widely gauge the position of an electorate on a particular issue. E-petitions are a way to describe internet supported participation in the process of government, which can include service delivery, decision-making and policy-making.

Crowdsourcing and Crowdmapping

Crowdsourcing is a tool whereby an organisation or group call upon a broad population (of both experts and non-experts) to solve a problem, design a product or analyse large amounts of data. Used mainly to date in private for-profit applications, the process uses the large

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[1084] 'Direct Democracy', *Participedia* (Web Page) <https://participedia.net/method/191>.
[1085] Ibid.
[1086] Janette Hartz-Karp and Brian Sullivan, 'The Unfulfilled Promise of Online Deliberation' (2014) 10(1) *Journal of Deliberative Democracy* 1, 1.

numbers of participants which internet or mobile communications technology can access. The process uses either internet or mobile (smart) phone technology to access participants. Wikipedia is a form of crowdsourcing which uses a form of internalised non-coercive peer-review to contribute to its accuracy.

An appropriate example is the Kenyan Ushahidi organisation, which has now gone global. Ushahidi is "free open-source software to crowdsource, map and visualise information in real time for emergency response, social activism, and public accountability". It achieved this through a "crowdsourcing and situation awareness platform" which allows for data collection, management and visualisation. The platform collects, monitors, analyses and responds to real time incidents and allows for engagement with stakeholders. The platform allows for engagement with multiple sources including SMS, email and twitter. The platform emerged during the 2007 Kenyan post-election violence, in which many people wanted to know what was happening in their local areas and nationally. A web-based platform was devised in which first-hand reports could be aggregated on to a map accompanied by geolocation and a timestamp. This provided a real-time visual representation of the "on the ground" situation made up of over 40,000 reports. [1087]

Deliberative Mini-Publics

The concept of mini-publics was first proposed by Robert Dahl as "minipopulous", as mechanisms for involving citizens in dealing with public issues.[1088] Mini-publics are made up of randomly selected citizens chosen by lot from a source such as the electoral roll. Stratified random sampling (SRS) may be used to gain a cross section of the population to ensure a range of demographic characteristics is represented.[1089] SRS involves the drawing of random lots from subgroups based on age, gender, ethnicity, disability, income, geography, religion or education, to ensure a representative cross-section of the population. Proceedings are facilitated and experts on the topic of deliberation can be in attendance to provide

[1087] 'Ushahidi', *Ushahidi* (Web Page) <https://www.ushahidi.com/>.
[1088] Dahl, *Democracy and Its Critics* (n 182) 340.
[1089] 'Tag Archives: Mini-Publics', *Citizen Participation Network* (Web Page) <https://oliversdialogue.wordpress.com/tag/mini-publics/>.

information and be cross-examined by participants. The events are often issue-specific and participants are remunerated in some form.[1090]

Citizens' Assemblies and 21st Century Town Meetings

Citizens' Assemblies are a form of mini-public and made up of either deliberately or randomly selected citizens, chosen to represent a cross-section of age, gender, ethnicity, disability, income, geography, education or religion. Those participating citizens could be remunerated. Discussion can be facilitated through a leader. In some cases the meeting could be addressed by experts, who are subsequently cross-examined by members of the assembly. Such assemblies are larger groups of citizens brought together to deliberate on a particular issue in order to provide a set of recommendations or a decision to the convening body.

The mandate of the body varies and has been used in cases of electoral reform, Brexit and state financial collapse issues. The goal is for the participants to make an informed decision free from the possible biases of political interest or lobby groups.[1091] A good example is the Irish Citizens Assembly established by the Irish government in October 2016. [1092] The assembly dealt with five issues of importance to the Irish Republic going forward: issues associated with an ageing population, parliamentary terms, forms of referenda and the Irish approach to the challenge of climate change.[1093] The assembly produced a sequence of high-quality deliberated conclusions. Feedback from participants was overwhelmingly positive, however the Irish government has been slow to implement some of the recommendations emerging from the assembly.[1094]

"21st Century Town Meetings" are a means by which citizens can come together to deliberate and make decisions on political issues. The reference to century is a pointer to the use of advanced technologies to assist with the deliberation. The process has been pioneered by the organisation AmericaSpeaks, which sets demographic targets using census and other

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[1090] Oliver Escobar and Stephen Elstub, *Forms of Mini-Publics: An Introduction to Deliberative Innovations in Democratic Practice* (Research and Development Note No 4, newDemocracy, 8 May 2017) 1.
[1091] 'Citizens' Assembly', *Participedia* (Web Page) <https://participedia.net/method/4258>.
[1092] David M Farrell, Jane Suiter and Clodagh Harris, '"Systematizing" Constitutional Deliberation: The 2016-18 Citizens' Assembly in Ireland' (2019) 34(1) *Irish Political Studies* 113, 114.
[1093] Ibid.
[1094] Ibid 118–19.

relevant data. Recruitment is done in conjunction with community organisations. Meals, childcare, transport and translation can be offered to allow for maximum participation.[1095]

Participatory Budgeting

Participatory budgeting allows for citizens to deliberate and make decisions over the allocation of public resources. Such processes can be initiated by governments, NGOs or CSOs or citizens themselves. The process seeks to promote transparency and legitimacy in the way public resources are allocated and to allow for participant education and empowerment in regards to resource allocation. It is an ideal way to include marginalised groups in the resource allocation decision making process.[1096]

Deliberative Polling and Workshops

Deliberative polling seeks to examine what the public would think if given an opportunity to be informed of competing arguments and to deliberate with their peers on topics of social and public policy. Participants conduct pre and post-surveys to ascertain whether the deliberation process has changed their opinion on the topic.[1097] The aim is less about exploring whether people's opinions change, but more about deliberating a topic to arrive at some decisions. Deliberative workshops can take anything from a few hours to several days to conduct and typically involve between 20-50 participants.

Deliberative Mapping

Deliberative mapping combines qualitative and quantitative methods to assess how participants rate different policy options against a set of defined criteria. The emphasis of this process is not on integrating expert and public voices, but understanding the different perspectives each offer to a policy process.

Consensus Conferences

Consensus conferences are events that encourage discussion between the public and experts. During a such an event, complex issues tend to be explored, often on scientific or

[1095] '21st Century Town Meeting', *Participedia* (Web Page) <https://participedia.net/method/145>.
[1096] 'Participatory Budgeting', *Participedia* (Web Page) <https://participedia.net/method/146>.
[1097] 'Deliberative Polling', *Participedia* (Web Page) <https://participedia.net/method/147>.

technological subjects. Conferences usually last 3-4 days and involve around 10-20 participants. The media play a key role and are invited to attend parts of the event. The main difference between Consensus Conferences and Deliberative Workshops is the intended outcome of arriving at a consensus opinion.
1098

Citizens' Juries

Citizens' juries are small groups of randomly selected citizens who come together to deliberate and reach an informed decision or recommendation on a policy issue. While random, the selection of participants is controlled to the extent that it reflects the diversity of the affected population. The jury is often given a specific question to answer, or public policy issue to deal with. The process is intended to lend legitimacy to any eventual decision made, on the basis that it has been made by a cross-section of the affected population. Jurors hear from a variety of experts, cross-examine them, deliberate about the topic and present their findings at the end of the event.[1099]

[1098] 'Consensus Conference – Participedia' <https://participedia.net/method/163>.
[1099] 'Citizens' Jury', *Participedia* (Web Page) <https://participedia.net/method/155>.

Appendix II: Participant Information Sheet and Participant Consent Form

PARTICIPANT INFORMATION SHEET

REIMAGINING DEMOCRATISATION THROUGH DELIBERATION: UNITED NATIONS PEACEBUILDING IN TIMOR-LESTE, CAMBODIA AND NEPAL

PRIMARY RESEARCHER

My name is Michael Morison. I am a PhD candidate based in the College of Law at the Australian National University (ANU) in Canberra, Australia. I am the primary researcher for this PhD project. I have over ten years experience as an electoral, legal and civil affairs officer working for the United Nations and other organisations. I have worked in Timor Leste, Sri Lanka and Cambodia.
PROJECT OUTLINE

Description and Methodology
This project will study previous and existing governance projects in Cambodia, Timor Leste and Nepal. It will also assess the use of deliberative democratic tools such as Citizen Parliaments, Constitutional Assemblies, E-Petitions, Smart Phone Crowd Sourcing into existing and future program frameworks. The project will also propose a revised set of democratic indicators to measure the efficacy of democratisation projects. These will be built into a development framework for use in other appropriate national contexts.

Participants
The survey method involves semi-structured interviews with local or international personnel engaged in activities related to governance, democratisation or civic engagement. The target participant group are workers involved in locally (and internationally) driven democratisation projects in Cambodia, Timor Leste and Nepal. Approximately 40 participants are expected to be interviewed for the project.

USE OF DATA AND FEEDBACK

The data from this research will be used as the empirical work in my PhD thesis on democratisation in the three case study sites. It may also be used as a case study for journal articles. I may provide relevant draft sections of this research to interviewees for comment, clarification, and further input. The findings of this research will be made available to all participants through a website, the address of which will be provided once the research is completed.

PARTICIPANT INVOLVEMENT

Voluntary participation & withdrawal
Participation in this research is voluntary. There is no compensation or remuneration to be gained by taking part. You may decline to take part or withdraw from the research at any time before the work is prepared for publication without providing an explanation. You may refuse to answer part or all of my questions. If you do withdraw, all data collected directly from you will be destroyed.

What does participation in the research entail?
Interview questions will relate to your area of professional expertise. Your contribution may be audio recorded only if you agree to this. If not, notes will be taken during the interview. Information may be transcribed if the interview is audio recorded. Please advise the interviewer if you wish to receive the recording and/or transcript after the interview.

Location and duration
The location of interviews will be determined in consultation with participants on a case-by-case basis. Face-to-face interviews are preferred, although interviews by telephone may be necessary for participants in locations to which I do not travel as part of this project. Each interview is expected to last no longer than one hour.

Risks
Participants should avoid disclosing sensitive political information that might place themselves or others at serious risk, and should avoid disclosing details of illegal activities. Participants are not expected to discuss incidents or events that are psychologically distressing to them and should feel free to decline any questions that make them uncomfortable or might prompt distress.
Participants in Cambodia looking for resources to support their psychological wellbeing may find useful materials at *http://tpocambodia.org/wp-content/uploads/2015/09/Clinic-TPO-leaflet-Khmer-24-02-2011.pdf.*
Participants in Timor Leste looking for resources to support their psychological wellbeing may find useful materials at *http://www.pradet.org/contact.*
Participants in Nepal looking for resources to support their psychological wellbeing may find useful materials at *www.topnepal.org.*

Benefits
The project will make democratisation and/ or civic engagement projects more relevant and useful to the local communities in which they are delivered. The research will also be of benefit to Australian and international development practitioners involved in democratisation and civic engagement programs. It will also be of benefit to academics and students interested in peacebuilding and democratisation.

Confidentiality
Organisations and individuals will be asked to confirm their consent to participate in this research, either verbally or in the form of a written, signed form that will be retained by the interviewer. Audio recordings of interviews will only take place with the consent of organisations and participants. For organisations and participants not wishing to be identified by name, the researcher and the interviewer will agree on a suitable form of reference (e.g. “a locally-engaged development worker in Cambodia/ Timor Leste/ Nepal”). Participants may also request to be identified by pseudonym, or may request not to be attributed within published materials. The names of participants will only be recorded upon agreement, whereupon notes and transcripts will be identified with a code only, and will not identify the interviewee by name. Hard copy records of interviews will be destroyed once digitised and stored securely. Every effort will be taken within the law to ensure the confidentiality of participants and of data collected during this research. Only my supervisor and I will have access to this research data. Regardless, participants should avoid disclosing overly sensitive data that might place themselves or others at serious risk, and should refrain from providing details about illegal activities.

PRIVACY NOTICE
In collecting your personal information within this research, the ANU must comply with the Australian *Privacy Act* 1988 (Cth). The ANU Privacy Policy contains information about how a person can:
Access or seek correction to their personal information;
Complain about a breach of an Australian Privacy Principle by ANU, and how ANU will handle the complaint.
The ANU Privacy Policy is available at: https://policies.anu.edu.au/ppl/document/ANUP_010007.

DATA STORAGE
Data management procedures will be in compliance with the Australian *Privacy Act 1988* (Cth) and the ANU *Code of Research Conduct*. All electronic data gathered as part of this research will be encrypted and password protected. Consent forms will be digitised and stored separately from interview notes and transcripts, and a separate database will be maintained securely that links interviewee details (where consent is granted) with their coded transcripts. In accordance with ANU guidelines, all data will be stored securely on the ANU server for five years following publication of this research, and may be used by the Primary Researcher in future projects beyond this date.

QUERIES AND CONCERNS
Contact details for more information:
For further information or queries regarding this study, please contact the primary investigator or supervisor:

Michael Morison *ANU Ethics Committee clearance:*

PhD Candidate (Primary Investigator)
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T: +61 417 153 502
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Professor Jeremy Farrall (Supervisor)
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The ethical aspects of this research have been approved by the ANU Human Research Ethics Committee (Protocol 2017/099). If you have any concerns or complaints about how this research has been conducted, please contact:

Human Ethics Manager
The ANU Human Research Ethics Committee
Australian National University
T: +61 2 612 56782
E: human.ethics.officer@anu.edu.au

Australian National University

WRITTEN CONSENT FOR ORGANISATIONS AND PARTICIPANTS

Reimagining Democratisation Through Deliberation: United Nations Peacebuilding In Timor-Leste, Cambodia and Nepal

I have read and understood the information sheet you have given me about the above research project, and I have had any questions and concerns about the project (listed below) addressed to my satisfaction.

1.
2.
3.

I agree to participate in the project. YES ☐ NO ☐

I agree to this interview being audio-recorded YES ☐ NO ☐

I agree to be identified in the following way within research outputs:

Full name YES ☐ NO ☐

Pseudonym YES ☐ NO ☐

No attribution YES ☐ NO ☐

Signature:…….

Name of organisation (if applicable):……

Position (if applicable):……..

Date:…….