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Exclusion Amid Inclusion

Power-Sharing and Non-Dominant Minorities



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EXECUTIVE SUMMARY

Consociational power-sharing is a preferred tool for ending civil wars.

Yet, consociational governments in ethnically divided societies, such as Lebanon, Bosnia & Herzegovina, Northern Ireland, Burundi, North Macedonia and Kosovo, often fail to live up to the expectations of their citizens. While providing institutional guarantees for participation and representation, consociational mechanisms have been criticised for their limited ability to cater to the interests of citizens and groups beyond the former key ethnic antagonists.

Frequently, consociational institutions are believed to contribute to the exclusion of non-dominant groups. They are said to do so directly via legal inequalities between the dominant and non-dominant groups. Indirectly, consociational institutions are operated by social and political actors who have little incentive to reach beyond their core constituencies.

Yet, as our research finds, consociational arrangements can also offer the elites of core ethnic groups avenues for initiating reforms and enhancing the inclusion of non-dominant groups. This policy brief focuses on how to support political reforms and greater inclusion while also ensuring the survival, stability and evolution of power-sharing arrangements.

The exclusion of non-dominant groups is most commonly perceived to be a part of a necessary trade-off in getting the warring parties to agree to peace. Yet in many cases this exclusion also poses the long-term risk to stability of post-conflict democracy since the design of the system itself determines reform opportunities. There are four main consociational institutions: veto powers, group autonomy, proportional representation in public offices and the sharing of executive offices.

Each of these can rely on different rules, ranging on a continuum from approaches that pre-define who holds power, to those which anticipate the emergence of any political groups, regardless of existing lines of conflict.

The form of consociational institutions impacts three types of non-dominant groups differently: *Ethnic Others*, *Ethnic-rejecting Others* and *Issue-oriented Others*. These three types, tending to view consociational rules as a barriers to inclusion, pursue their interests in different ways. However, most often they unanimously view consociational rules as a barrier, missing opportunities to wield influence and achieve wider recognition.

However, our findings demonstrate that there are strategies by which consociations can become more inclusive. The *non-aligned political parties* (NAPPs), whose operation on a non-ethnic basis and/or ethnically inclusive appeal are key to providing intra-institutional representation to issues affecting non-dominant groups. Additionally, *engagement in non-electoral politics* by all members of society facilitates a more wholesome representation outside formal institutions and gradually changes exclusionary political/societal practices.

We make three broad recommendations geared towards actors both inside and outside the institutions who have a vested interest in political and societal stability. There is a need to engage in gradual and continuous political reform. These reform efforts should carefully reflect the changing cultural, social and political preferences of societies consociations serve.

**ENHANCE INCLUSION IN
FORMAL INSTITUTIONS
THROUGH SPECIFIC REFORMS**

- Mechanisms should be introduced to constrain the use of vetoes; this includes a mandated public justification for their use and the formation of a parliamentary committee to review veto enactments.
- Group autonomy rules should contain opt-in and opt-out mechanisms to ensure that non dominant groups are able to protect their identities and fully express individuality in cultural arenas.

**FACILITATE INFORMAL
CONDITIONS FOR CROSS-ETHNIC
INTERACTIONS**

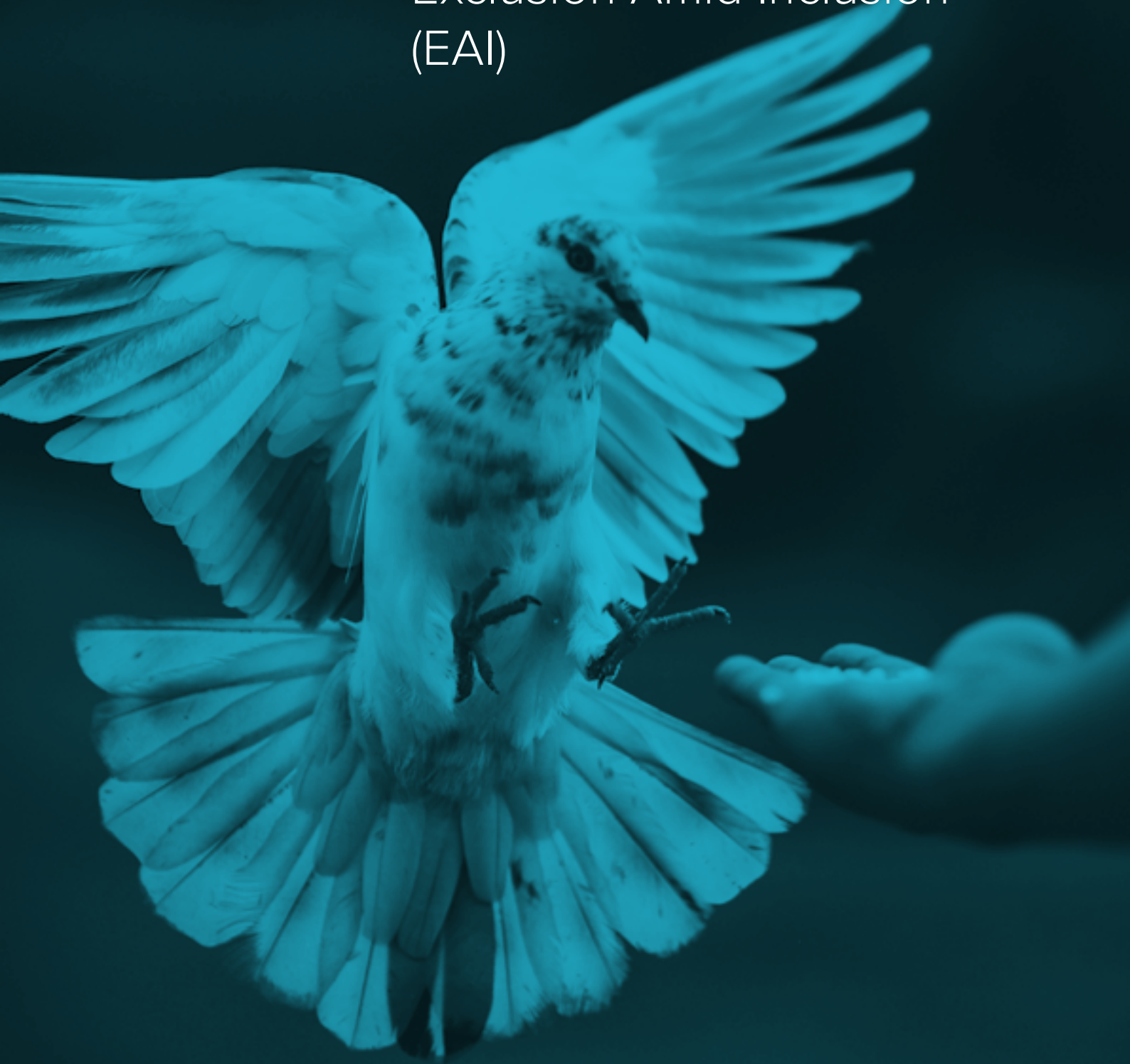
- Non-dominant actors should mediate between antagonist ethnic groups in moments of high tension, helping to foster non ethnic political mobilisation.
- Reform agendas should focus on cross-cutting citizenship objectives, avoiding ‘hot button’ issues and promote mutually acceptable perspectives on shared futures.
- Non-dominant groups should work to ensure transitional justice efforts are realised to promote wider societal healing and inter ethnic relations.

**ANTICIPATE AND FOSTER
‘REFORM MOMENTS’ BOTH
THROUGH DOMESTIC CROSS-
ETHNIC ADVOCACY AND WITH
SUSTAINED INTERNATIONAL AND
NATIONAL STAKEHOLDERS**

- Non-dominant groups should be able to hold dominant groups to account; this includes by being present in formal and informal discussions about legislative and political reforms thereby challenging the ethnocentric electoral mobilisation.
- Non-dominant groups should create progressive agendas that are realistic, clear and cross cutting. These platforms should be committed to over the long term and implementable during political crises.
- Promote a society-wide understanding of how consociational mechanisms can be used to encourage reform agendas without marginalising dominant groups.

INTRODUCTION

Exclusion Amid Inclusion (EAI)



Consociational power-sharing is a leading strategy for ending civil wars. Despite its contribution to peace and stability, there is a risk that the adoption of consociationalism may result in the exclusion of non-dominant groups. However, the Exclusion amid Inclusion (EAI) research team has found that consociations can in fact enhance democratic inclusion while fulfilling its primary objective of ending violence.

Central to this study is a consideration how consociations can better recognise non-dominant minorities and increase their participation in post-conflict settings to guarantee durable peace.

The EAI team conducted over 100 semi-structured interviews between 2017 and 2020, evidence from which informs this brief.¹ Research participants included elected officials from dominant ethnic parties, minority ethnic parties, and civic parties, as well as members of civil society groups and international actors.²

Interviews were conducted in six cases, all of which emerged from decades' worth of ethnic conflict through international and regionally mediated peace agreements: Lebanon (Taif Accords, 1989), Bosnia & Herzegovina (Dayton

Peace Accords, 1995), Northern Ireland (Good Friday/Belfast Agreement, 1998), (Arusha Accords, 2000), North Macedonia (Ohrid Agreement, 2001), and Kosovo (Ahtisaari Plan, 2007).

Past scholarship demonstrates that non-dominant groups – those whose ethnic, gender, and sexual identities, and/or political orientations are not expressly included in government – encounter difficulties of representation.³ The evidence collected for this study highlights how these groups deal with these challenges, while contributing to the stability and democratic quality of consociational power-sharing systems. Over the course of the project, we identified three broad types of non-dominant groups:

• ETHNIC OTHERS

include those whose primary political identity is ethnic but who are not included in the government structure, often because the group constitutes a very small share of the population and/or they are territorially dispersed. *This can often include micro-minorities such as the Roma as well as newcomer communities (e.g., immigrants, asylum seekers or refugees).*

• ETHNIC-REJECTING OTHERS

include those who seek political participation on a socially relevant identity other than ethnicity, and for whom that identity has been the basis for their exclusion and marginalization from political life. *This may often be centered on gender and Lesbian, Gay, Bisexual and Transgender (LGBT) identities, but could also include religion, language, or other core identity features not accounted for in the power-sharing structure.*

• ISSUE-ORIENTED OTHERS

include those *rejecting all identity-driven labels* and who instead pursue ideological forms of political participation, either in the *form of traditional left-right politics or through post-materialist mobilisation, such as environmental activism*. They make the conscious choice to disconnect their social and ethnic identities from their political identities and often seek political access in keeping with liberal, individualist notions of representative democracy.

¹ Interviews were mostly conducted in English but also Bosnian and Arabic (depending on the comfort of participant).

² Interview participants were coded based on country, their membership in a political party, civil society organisation or international organisation, identified gender and whether they identified with a dominant or non-dominant community.

³ Timofey Agarin, Allison McCulloch, and Cera Murtagh. "Others in Deeply Divided Societies: A Research Agenda." *Nationalism and Ethnic Politics*, vol.24, no. 3 (2018), pp.299-310, Siobhan Byrne and Allison McCulloch. "Gender, Representation and Power-Sharing in Post-Conflict Institutions." *International Peacekeeping* vol.19 no.5 (2012): 565-580.

Exclusion Amid Inclusion

Consociationalism is often seen as a stepping-stone, that is, as a transitional device from war towards more traditional forms of liberal democracy. Yet, despite the transitional nature of consociation, there are concerns about its ability to reform without imperilling its stability in the long run.

Consociations primarily work because they employ institutions that provide security to the dominant antagonistic groups by ensuring their inclusion in political processes.

By contrast, non-dominant groups often find themselves struggling for inclusion in the post-conflict order, a phenomenon we label as 'Exclusion Amid Inclusion' (EAI).

EAI is a crucial area of study as practitioners and scholars have primarily focused on consociation's ability to solve ethnic conflict through the direct inclusion of dominant ethnic groups in government. But what happens to those groups excluded from ethnic power-sharing? This is a critical oversight, as the exclusion of non-dominant groups and the strategies they take to gain representation are indicative of a potential challenge to both the democratic quality and stability of consociations. Addressing the EAI dilemma will help create more inclusive societies and provide opportunities for political mobilisation beyond the divided identities.

Our report outlines a range of exclusionary outcomes for non-dominant groups in consociations, none of which are solely caused by the institutional mechanisms.

Power-Sharing and Non-Dominant Minorities

Instead, these institutions offer enabling conditions in divided, post-conflict landscapes for antagonistic communities to act in a protective mode and to continue to be wary of each other. For example, dominant politicians may instrumentalise divisions and use consociational mechanisms to protect their credentials as defenders of their ethnic groups.

We also highlight informal political behaviours that avail of formal consociational institutions to marginalise preferences of non-dominant group members. However, we emphasise that the enabling conditions of consociational rules, once in place, can also facilitate further transition from violence to inclusive democracy in divided societies.

This brief highlights critical action points for the design and reform of consociations that transcend the particularities of each country case study. Finer-grain analysis of the phenomena we have uncovered and how they are operationalised can be found in the illustrative case studies in the appendix.



EXPECTATIONS OF CONSOCIATIONALISM

Peace agreements create the rules for managing violence-to-peace transitions. Power-sharing has become a key term in the lexicon of international peacemakers, so much so that between 1945 and 1998, 97% of civil war resolutions employed some form of power-sharing, including consociationalism.⁴ The preference for consociationalism as a means to resolving intra-state conflict is clear: majoritarian democracy can lead to the continuation of violence and ethnic exclusion as groups feel insecure that losses at the ballot box will then be followed by policymaking that endangers their position. By contrast, consociations provide incentives for groups in conflict to transfer their contestation from violence to electoral and democratic means.⁵ What sets consociationalism apart from other types of power-sharing is the presence of the following four institutions: *Veto powers, Group autonomy, Proportional representation in public offices, and Sharing of executive offices.*

The four consociational institutions may affect non-dominant groups in problematic ways:

- **Group autonomy** provisions, by privileging dominant groups, risk normalising the exclusion of all non-

dominant groups, especially Ethnic-rejecting Others. This has been the case in Lebanon.

- **Veto rules** can be abused to halt legislative progress and political reform, rather than as a device to protect vital group interests (e.g., vetoes used to stop progress of marriage equality legislation in Northern Ireland).

- **Sharing the executive office** can result in the nominal representation of non-dominant groups in government. In Burundi, for example, the constitution outlined the criteria for the inclusion of Ethnic Others in the legislature, but mandated access to government posts has not translated in greater recognition or influence of non-dominant groups in the political system.

- **Proportionate representation in public offices** results in the professionalisation of politics and causes difficulty for innovation in governance. The requirement of multi-ethnic party rolls in Burundi results in token representation of non-dominant groups, overrepresentation of micro-minorities in Kosovo resulted in less qualified members of the group to occupy government posts, guaranteed seats to non-dominant groups in North Macedonia caused tensions between members of these groups, and co-optation of non-dominant groups elsewhere reflect this challenge.

These four institutions, however, can be constructed in different ways. One central contrast is whether the system is seen as more 'liberal' or 'corporate';⁶ Corporate consociations are more likely to strengthen the position of the dominant groups, making it harder for non-dominant groups to influence decision-making.

Liberal consociations allow for greater fluidity of identity formation and at least in theory, provide openings for politically salient issues to encourage post-conflict political mobilisation. Yet when faced with the depth of societal division caused by conflict, they may find it hard to transcend the presence and influence of dominant groups' political identities. Ultimately, all consociational arrangements are about compromise.

They are often not the preferred outcome for any of the key actors involved in conflict as they require all groups to cede some of claim to power to a rival.⁷ In effect, consociations are able to create democratic systems where none previously existed, at least amongst the dominant ethnic majority and minorities.

⁴ Caroline Hartzell, Matthew Hoddie, 'Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management', *American Journal of Political Science*, Vol.47, No.2, 2003, pp.318-332.

⁵ Recent agreement in Afghanistan as well as the continued attempts to implement power-sharing in Sudan, South Sudan and Democratic Republic of Congo underscore the importance of the theory in developing solutions to violent conflict. Additionally, the United Nations Standby Team of Mediation Advisors maintains a regular position for a power-sharing expert.

⁶ Some consociational institutions predetermine which ethnic communities will be guaranteed representation (corporate) while others leave the institutional rules more open as to the recognition of whatever salient political groups emerge, regardless of ethnic belonging (liberal). John McGarry and Brendan O'Leary, "Iraq's Constitution of 2005: Liberal Consociation as Political Prescription." *International Journal of Constitutional Law* 5, no. 4, 2007, pp.670-698.

⁷ Ethnic groups who have seen their previous hegemonic roles reduced as a part of the power-sharing agreement are Unionists in Northern Ireland, Maronites in Lebanon, Tutsis in Burundi and Bosnian Serbs in Bosnia & Herzegovina.

NON-DOMINANT GROUPS IN CONSOCIATIONS

Consociations create conditions for peace which serves as a platform to transition to more inclusive forms of democracy, but an important question remains:

Does consociational design contribute to the implicit exclusion of non-dominant groups?

Non-dominant groups' particular relation both with democratic institutions and with other ethnic communities contributes to their positionality on the inclusion/exclusion spectrum. Inclusion and exclusion are often described in binary terms, reflecting the logic of past conflict. Yet our findings suggest that such zero-sum thinking is an unhelpful distinction for accurately describing the kinds of interactions non-dominant groups experience. Groups' positionality on the inclusion/exclusion spectrum depends on the dynamic effects of institutional factors, expressed in terms of:

1. **Presence:** a group is officially recognised in formal constitutional documents and as a result guaranteed representation in governing institutions as a group.
2. **Influence:** a group is able to attract attention to and have its concerns accounted for in their preferred social and political forums.

Thus, a group's presence and/or influence determines the level of responsiveness the system has to their needs. Presence can often result in token representation, marring group's effective influence over political outcomes. Yet, at the same time, a group's influence on political processes is often difficult without representation. Barriers to presence and influence are found in both liberal and corporate consociations, as they are in all types of democracies, and highlight common challenges to making democracies work in postconflict societies.

However, it is consociational *institutions* that are often blamed for the exclusion of non-dominant groups, both in terms of presence and influence. But consociational mechanisms do offer non-dominant groups avenues to influence decisions made by elected representatives as well as to have their presence as part of consociational society recognised.

Making consociational democracy work for all its citizens requires a dual approach in which a diverse range of interests is present in the formal institutions and through public pressure, advocacy and awareness raising. We observed that where dominant actors opt for gradual reforms they are able to expand their personal and party appeal outside their group without losing the support of their original constituencies. However, reform efforts require an acknowledgement of the relevance of two types of actors rarely viewed as central to consociational politics: non-allied political parties (NAPPs) and *organisations operating outside of electoral politics*.

• **Accessible NAPPs:** NAPPs are those political parties on a non-ethnic basis as well as those who mobilise their support base around an ethnically inclusive appeal. NAPPs are important agents of change because they tend to hold the middle ground between the parties representing the dominant ethnic groups. NAPPs are often not seen as an electoral threat by dominant elites and therefore are not the target of fierce political contestation.

These parties often coalesce around issues and concerns that appeal to constituencies wider and more diverse than just one ethnic community. As such they are more likely to aggregate voter interests into viable policy suggestions, pursue reforms on behalf of those outside the halls of power and to support their implementation.

• **Organisations operating outside of electoral politics.** Citizen groups representing interests that do not achieve active representation via electoral avenues either due to their small electoral weight, or as a result of their explicit marginalisation from positions of government, are key to highlighting shifts in social norms in post-conflict settings.

As societies move away from the time of conflict, issues of daily concern and those cutting across ethnic lines gain greater relevance in spaces outside formal politics. Organisations operating outside the electoral politics are likely to play an important role in vocalising and formalising claims over issues with a cross-ethnic appeal.

A large crowd of people is gathered in a town square, filling the foreground and middle ground. In the background, there are several multi-story buildings with traditional European architecture, including a prominent church tower with a clock face. The scene is set in a town with steep, rocky hills in the background. The entire image has a blue tint.

Exclusion
Amid Inclusion

Power-Sharing and
Non-Dominant Minorities

Citizen groups representing interests that do not achieve active representation via electoral avenues either due to their small electoral weight, or as a result of their explicit marginalisation from positions of government, are key to highlighting shifts in social norms in post-conflict settings.

INCREASING SPACE FOR NON-DOMINANT GROUPS

The evidence collected from our research highlights how the design of consociational institutions impacts on prospects for the presence and influence of non-dominant groups. We found that corporate rules on proportionality and autonomy create conditions in which ethnic elites are slow to respond to the needs of non-dominant groups (see appendix). Whereas, corporate consociations can sometimes close off spaces for non-dominant groups to mobilise, liberal consociational rules, on their own, are not likely to break down the dominant identities that form the strongest connection in political communities.

Liberal consociations can however provide constitutional opt-in or opt-out clauses that ensure opportunities for the presence and influence of other identities in political spaces. Importantly, they also ensure the adherence to non-discrimination principles. Both types of consociations are still likely to run up against societal challenges, but in both the politically mobilised members of non-dominant groups can reflect on the effects of limited recognition of societal diversity on stability of political process in post-conflict divided societies.

Mechanisms like quotas for non-dominant groups in national assemblies (see appendix)⁸ can create 'on-paper' a more outwardly inclusive polity, but often ensure only descriptive representation unless those groups can exert some influence jointly with other non-dominant groups.

In Northern Ireland (see appendix), for example, despite their inability to initiate formal institutional changes or steer the societal dynamics, non-dominant groups have sought to exhort, and have been successful at, incentivising dominant ethnic elites to include issues beyond those of probate relevance for electoral success and consider non-dominant groups as part of their potential electorate. Whereas in a more majoritarian liberal democracy, dominant elites could simply ignore their calls, the consociational system encouraged them to engage with the agendas and interests of non-dominant groups.⁹

While consociations do provide opportunities for inclusion of non-dominant groups, it is important to recall that the nature of divided communities, when coupled with group autonomy mechanisms, makes ethnic political mobilisation more advantageous. Our research shows that consociational arrangements tend to be 'sticky' because of the electoral reward for ethnic political mobilisation which is empowered by group autonomy measures. This type of ethnic mobilisation is effective because, in post-conflict settings, citizens and their leadership usually have no appetite for a return of violence and elites representing dominant communities have shown little interest in questioning the existing balance of power less these would reignite past conflicts.

While opportunities for reform seem limited, there is reason for hope, evidenced in our research: several cases have shown an ability to use formal consociational mechanisms while being aware of societal sensitivities to make progress (see appendix). Building on the work of *NAPPs and organisations operating outside of electoral politics* and the ability to capitalize on reform moments, consociational democracies can be made more inclusive of non-dominant groups.

⁸ Michael Potter, 2019. *Inclusion in Post-Conflict Legislatures: The Kosovo and Northern Ireland Assemblies*. Palgrave Macmillan.

⁹ Cera Murtagh and Allison McCulloch. 2021. 'Beyond the Core: Do Ethnic Parties "Reach out" in Power-Sharing Systems?' *The British Journal of Politics and International Relations*. <https://doi.org/10.1177/1369148120973139>.

PATHWAYS TO INCLUSIVE PRACTICES

Non-dominant groups have been able to tackle their exclusion and gain further inclusion across our case studies. The nature of exclusion depends on two factors:

- The formal rules of the system (vetoes, groups autonomy, executive power-sharing and proportionate representation) neglecting non-dominant groups interests;
- The informal practices reflecting societal views about non-dominant groups.

ENHANCE INCLUSION IN FORMAL INSTITUTIONS THROUGH SPECIFIC REFORMS

Our research found that vetoes and group autonomy have a strong impact on the inclusion of non-dominant groups. Veto rules and group autonomy provisions both provide powerful incentives for conflicting communities to engage politically, but they traditionally favour dominant groups. The following recommendations should be kept in mind for NAPPs and groups engaging in non-electoral politics when reforming vetoes and group autonomy provisions:

- **Vetoes** should be accompanied with a justification for their use. Public justifications for veto use ensure parties are incentivized to use them in spirit of which consociations intend: to reflect their constituents' vital interests. This pressure works better when NAPPs in the institutions can formally monitor veto use and organisations operating outside the electoral politics can raise public awareness as to the damage a lack of progress in legislative and politics reform causes.

- **Median institutions**, such as independent commissions and parliamentary committees, should be empowered to review veto use in order to assess the validity of the justification for use. A review mechanism allows other policymaking to continue. If the validity of the veto is contested after the committee's judgment then the actors activating the veto should be able to use judicial channels to appeal the decision.

These committees can help increase the institutional power of NAPPs, if their participation is prescribed in the review process. Organisations operating outside the electoral politics also have an opportunity to ensure transparency of committee composition and raise awareness of the veto process.

- **Group autonomy** rules for dominant groups are vital and should remain a part of consociational practice. However, there should remain opt-out mechanisms for non-dominant groups who would then be able to make their choices in the cultural arena. This protects 'individual' ability to express their identity to their own preference. Examples of opt-out mechanisms may include non-ethnic education, greater opportunities to live in areas with mixed ethnic heritage and civic law available for all members of society.

NAPPs play a crucial role in tabling these reforms, as they would be unlikely to be taken up by dominant elites. Organisations operating outside the electoral politics can support these efforts by drawing attention to the negative impact the lack of opt-out policies have across groups.

FACILITATE INFORMAL CONDITIONS FOR CROSS-ETHNIC INTERACTIONS

While reforms of formal and legislative practices are vital to ensuring institutional mechanisms are sufficiently open to the input of non-dominant actors, the division and mistrust between the dominant groups often prevents novel issues from gaining traction in formal processes.

Therefore, NAPPs and Organisations operating outside the electoral politics should consider alternate paths to reform:

- Ensuring sustained and substantial intergroup contact between the segments of a deeply divided society is key to redressing any mutual misconceptions and to facilitating inter-personal relations that are not bound by group loyalties. NAPPs and groups engaging in non-electoral politics should highlight the need to follow up with transitional justice efforts on sensitive conflict-related issues. NAPPs and organisations operating outside the electoral politics should be supported in creating cross-ethnic alliances to monitor the implementation of these initiatives. In recognising the importance of groups' cultural autonomy, consociational arrangements should also provide mechanisms for citizens to opt into a non-ethnic civic culture.

This will prevent the preservation of institutions where post-conflict generations live together separately, possibly confined to their language and cultural community, and have cultural signifiers reinforced rather than revised. This can be done, for example, via shared education systems, which offer early opportunities to promote contact between young people of different backgrounds.

- External funding often supports cross-community ventures between dominant communities. Transitional justice efforts should not only target the dominant communities engaged 'cross-community' work but non-dominant groups who have also been affected by conflict.

Ensuring the presence of non-dominant groups in transitional justice spaces and amplifying their influence in social programming can bring all communities together around a shared interest in dealing with the legacies of the past. Since continuous societal division also impacts non-dominant groups, their experiences, views and interests should be framed as integral to peace and transitional justice efforts.

- 'Consociation' is often seen by the public as rigid and prone to legislative blockages, and as such undeserving of public trust. For non-dominant groups, this often results in the 'consociation system' being 'the problem' rather than an institutional setting through which to pursue their interests.

The compromise required from all participants in consociational politics and the pivotal role of political representatives therein, are often undervalued in societies made up of antagonistic groups. NAPPs and organisations operating outside the electoral politics should not only commit to but also be actively involved in awareness-raising in the general public about how cooperative behaviour between all societal segments and their representatives serves to make consociational democracy work for all.

ANTICIPATE AND FOSTER 'REFORM MOMENTS' BOTH THROUGH DOMESTIC CROSS-ETHNIC ADVOCACY AND WITH SUSTAINED INTERNATIONAL AND NATIONAL STAKEHOLDERS

Consociations are sometimes prone to stalemates and political impasses in part because the political representatives of dominant groups have not wholly embraced the cooperative logic of power-sharing. When faced with reform agendas, representatives of dominant groups will often try to reframe these as challenges to their group's communal cohesion and their position in the consociational structure.

Yet possibilities for reform are embedded in the power-sharing system itself and additional opportunities might arise as a result of occasional crisis of government. We suggest that the following is kept in mind, anticipating the moments for "sticky institutions" to eventually reform:

- Frame reform efforts as having a society-wide benefit. Reduce references to specific communities and focus on wider citizenship objectives that cuts across group lines and support a mutually acceptable shared future. Drawing attention to specific group identities can be a 'hot button' issue and the focus should be on avoiding issues that are directly relevant to the dominant group's (potential) claims of vital community or relate to the wider conflict.

- It is essential to engage dominant actors in cooperative relationships in pursuit of continuous and piecemeal reform allowing them to frame issues from the progressive agendas, not as 'challenges' to their position but as 'compromising concerns'. This can be done through informal discussions on potential draft laws with members of dominant ethnic political parties and communicating the benefits to their constituencies early on.

- Encourage practical understanding of consociationalism in publics affected, over technical references to 'power-sharing institutions'. References to power shared might invoke the sense of loss in dominant communities (at the expense of a 'win' for minority groups), whereas consociational mechanisms provide opportunities to leverage better governance outcomes for all members of a society emerging from conflict. Often the wider public does not have a clear understanding of the institutions and how they impact their reform agendas beyond a 'winner takes it all' logic.

Our research also highlights that in those moments when consociations face legal and/or political stalemate, NAPPs and organisations operating outside the electoral politics often fail to seize the opportunity to steer the course of reforms in a more inclusive direction. Being able to take advantage of these moments is crucial to shoring up public trust and confidence in power-sharing and in the inclusion of non-dominant groups. Building on this insight we suggest that the following is kept in mind:

- NAPPs may have a mediating role when the representatives of divided groups are at logger heads. The growth of non-ethnic political mobilisation should be a long-term goal and during times of ethnic tension NAPPs can help chart a path forward. This allows all political organisations mobilising around issues rather than around identities to find their way into consociational institutions as compromise candidates while also building their reputation as a reliable non-ethnic option.
- NAPPs and organisations operating outside the electoral politics play an important role in vocalising discontent and holding dominant policymaking processes accountable. Ensuring that the non-dominant voices are present in formal and informal discussions about legislative and political reforms, NAPPs can serve a watchdog function in electoral politics, and can formally challenge the salience of ethnic narratives underpinning dominant parties electoral mobilisation. This can help to include issues relevant in non-electoral politics on political agendas.

- NAPPs and organisations operating outside the electoral politics must maintain a good public reputation by being as transparent as possible. This includes ensuring transparent financial reporting, inclusive hiring processes and that funding sources are not compromised by clientelist connections.

- NAPPs and organisations operating outside the electoral politics should have accessible legislative and policy reform agendas that are realistic and concise. These agendas should be ready-made to meet moments of political crisis and deadlock when there is widespread public distrust in the institutions and the parties in power.

These crises are opportunities for non-dominant actors to suggest alternative policy proposals to help break deadlocks. By having ready-made actionable plans that benefit all citizens and which help to end governance crises, these moments provide a platform to build public trust in their agendas.

By building public trust over the long term, non-electoral groups and parties of non-dominant communities can take advantage of public disillusionment with political representatives of dominant groups and ensure awareness of the need for wider reforms.

Appendix

Consociationalism in Action: Case Studies

Consociational institutions are not designed uniformly and their institutional variability impacts how they relate to differently positioned non-dominant groups. The following case studies highlight how differently positioned non-dominant groups face exclusion, and how they then can create pathways to inclusion.

AUTONOMY OF CULTURE: LEBANON

Religious freedom and the official recognition of 18 different sects are the cornerstones of Lebanon's cultural autonomy provisions. Each sect has its own personal status laws; these laws determine legal age of marriage, regulate marital arrangements, inheritance, divorce and child custody and are overseen by the relevant religious authorities. There is no overarching civil code in Lebanon nor are individual citizens given the choice to opt-out of their sect's personal status laws.

This arrangement reflects a longstanding Lebanese tradition that allows each group to manage their own affairs, helping to create a sense of security for religious communities. The autonomy provisions also serve as a useful mobilising tool for ethnic political actors as the codes bestow significant legal prerogatives on clergy. While there is nothing within the Lebanese consociational framework which prohibits the creation of an overarching civil code, this has not yet occurred and reforming personal status laws has proven difficult.

A possible explanation lays in the corporate structure of the Lebanese parliament, where ethnic quotas and reserved seats guarantee ethnic actors a predominant role. In order to shore up their electoral support, the parties often lean on clergy to support their candidacy. As a result, dominant politicians do not wish to create a civil status code and incur a political penalty in their constituency by taking on positions in opposition to their ethnic clergy.

Lebanon's cultural autonomy arrangement has had particularly onerous results for women, particularly in regards to tackling gender based violence (GBV). Some of the more contentious statutes include:

- Article 505, which outlines that in the cases of statutory rape, the rapist will be exempt from punishment if there is a promise of marriage to the minor,
- Article 518, which allows exemption for men who marry virgin girls they promised to marry before the assault, and
- Article 252, which allows abusive men in a "fit of fury" to receive leniency for crimes 'provoked' by the victim's act (marital infidelity, premarital sex and elopement).

Reform efforts in 2014, including the introduction of Law 293 which was an attempt to codify normative laws to protect women against GBV, were only partially successful. A number of NGOs coalesced and mobilised in response to the remaining weaknesses and gaps in the legal reforms. This included an active campaign to repeal Penal Code 522, which stated that a rapist would be exempt from punishment if he married his victim. This law was overturned in 2017 (Law 505 and 518 were not overturned), following the sustained coalition and 15 years of active work of local NGOs, who were aided by significant monetary and advocacy support from international stakeholders including multi-national organisations, embassies and press coverage.

Due to the sectarian nature of personal status laws, reform efforts often happen on the basis piecemeal progression. They run the risk their efforts will be seen as an 'attack' on the cultural rights of one group, highlighting how the prescribed corporate representation in parliament means that women are disproportionately affected by the cultural autonomy provisions and that ethnic elite will be slow to adopt needed reforms.

"Why aren't we governed all the same? In Lebanon it is a very confessional system and you identify yourself with your religion and your sect at all times."

Interview in Beirut

VETO POWER: NORTHERN IRELAND

Veto rights are a primary means by which ethnic groups are able to defend their vital interests from being encroached upon in legislation. Vetoes can be seen both as a protective mechanism for communities and as a means to create opportunities for dialogue on key issues. However, there is also a risk that vetoes can be used to block the legislative agenda, create deadlock in policymaking, and to be deployed against the interests of non-dominant communities.

In Northern Ireland the veto is known as the ‘petition of concern.’ The signatures of 30 members of the Assembly to a petition activates the cross-community voting rules, meaning that without support from both unionists and nationalists, legislation cannot move forward. Between 1998 and 2007, vetoes were enacted judiciously and only on matters of great concern to the two communities.

From 2007 to 2017, however, the veto was used more than 100 times across a range of issues, including thwarting investigations into corruption complaints. The petition of concern was also used to deny marriage equality rights to the LGBT community, despite a legislative majority and public opinion in support of such rights. A central reason for the shift in veto usage was that after 2007 one party – the Democratic Unionist

Party – had more than 30 Assembly members and could thus trigger the petition on their own. Prior to this point, it required parties to cooperate to enact the veto.

Consequently, the petition of concern moved from a device protecting a group’s vital interests to a measure blocking policy and legislative progress. As part of the 2020 New Decade, New Approach agreement that saw power-sharing restored in Northern Ireland after a 3-year suspension, these blocking features were amended. The petition of concern still requires 30 signatures to move forward but it now also needs support from at least two parties, must include a statement justifying its usage, and is subject to a 2-week review process to assess its compatibility with human rights legislation.

However, without more active inter-ethnic negotiation within the executive branch, parties represented the dominant groups could continue to block policies and legislation serving to and promoting the interests of non-dominant groups by co-signing vetoes intra-ethnically.

“The petition of concern, is a mutual veto to Sinn Féin and the DUP. When it was envisaged it during the negotiations it wouldn’t operate the way it has been operated as a mutual veto amongst the (dominant) parties.”

Interview in Belfast

ELITE MINORITY REPRESENTATION: BURUNDI

For demographically small but concentrated ethnic groups, such as the Batwa in Burundi, their population size renders them significantly less opportunity for influence. Batwa are formally recognised within the consociational agreement, but have only little influence in political and legislative decision-making.

Burundi's power-sharing agreement expressly protects the two largest ethnic groups, the Hutu and Tutsi, as the key political communities in the state. Under the terms of the 2005 constitution, executive power-sharing is guaranteed whereby the President of the Republic is assisted by two vice-Presidents, one Hutu and one Tutsi. The consociational arrangement also seeks to reduce the salience of the ethnic polarisation and resultant political contestation between the two dominant groups in the legislature via an electoral mechanism that requires party lists to be multi-ethnic, where only two out of every three candidates can come from the same ethnic group.

While this has helped create multi-ethnic parties and quelled some of the contestation between the main antagonist groups, it may have also limited the space for other ethnic groups such as the Batwa, who comprise 1% of the population. Batwa presence is guaranteed via reserved seats in the legislature, but they lack influence. Batwa representation has either come as an exercise in an ethnic head count, where the dominant parties fill out public offices with Batwa representatives, or through co-optation, where Batwa politicians support dominant party proposals.

It is also notable that Batwa representatives have not filed any formal policy proposals that would serve their corporate interests, such as access to education and support for economic activity.

In response to an influence deficit, Batwa, like other small ethnic groups, have also sought to draw attention to their marginalisation outside the political office and in the public space.

One means for doing so has been the growth of civil society organisations (CSOs) created and led by Batwa community members and devoted to tackling the group's historical marginalisation. CSOs in Burundi fill an important space as unofficial government opposition to the ever-increasing strength of the dominant political party, National Council for the Defence of Democracy – Forces for the Defence of Democracy (CNDD-FDD).

While CSOs representing the main ethnic dyad are constrained in looking for donor support in the current political disposition, Batwa CSOs have been able to reach out to international organisations whose normative goals for increasing democratic responsiveness of institutions fit with the governments' agenda of securing wider albeit token ethnic representation in Burundi.

Considering Burundi's current political direction which has seen the curtailment of democratic space and the fortification of the CNDD-FDD, the appointment of the first Batwa minister to government in 2020 was unexpected. The increasingly Hutu-centric policies and discourse of the CNDD-FDD have isolated the government regionally and internationally, increasing the likelihood of renewed conflict in Burundi. This was evidenced in the aftermath of the 2015 political crisis when the CNDD-FDD's Pierre Nkurunziza was nominated for a third term as president in contravention of presidential term limits. Nkurunziza's continued tenure as president resulted in growing ethnic tension, the shrinking of space for political opposition and the reduction of international aid and investment in the state. The appointment of a Batwa minister as well as Nkurunziza's decision not to pursue a fourth term can be seen as an attempt by the new government to showcase ethnic inclusion that had eroded since 2015.

How consociations recognise the presence of, and allow for influence of, small ethnic minorities remains a source of ongoing consideration. While such minorities are often recognised in formal documents (both implicitly and explicitly) as holders of corporate rights, their ability to assert recognition of their group-relevant interests remains limited. In effect they are often included in formal decision making, but only on the terms of larger groups to ensure that ethnic tension is limited.

EXPANDING PUBLIC REPRESENTATION: WESTERN BALKANS

Kosovo, North Macedonia and Bosnia & Herzegovina all continue to witness gender based discrimination and high levels of prejudice against the LGBT community. Beyond a lack of formal inclusion in political office, there also remains significant fear within the community to freely express their sexual or gender identity without experiencing violence. This problem, we note, is not specific to consociations, but these three cases suggest that consociations can see different levels of reform on the same issue due, in part, to the different impact NAPPs and organisations operating outside the electoral politics are able to exercise domestically.

In Bosnia & Herzegovina, there is little formal support for robust enforcement of legal protections against gender based discrimination as well as ongoing social and legal prejudice against the LGBT community. By contrast, Kosovo and North Macedonia have both seen progress on these issues in part due to the normative pressures brought about by wider legal approximation with the EU (North Macedonia) and the beginning of the Acquis transposition (Kosovo).

In this context, local NAPPs and organisations operating outside the electoral politics have prioritised raising public awareness about gender based discrimination, an issue persistently sidelined by discussions about politically salient identity categories. In all three countries, they have also engaged in judicial activism to challenge local neglect of applicable international norms, highlighting the limited effects person-based rights can achieve in ensuring the presence and influence of Others. In all three cases, the translation of the state's legal commitments into comprehensive policy responses to redress gender based discrimination and prejudice against LGBT individuals has remained patchy, to a large extent because of the cross-sectional nature of gender and sexual identities.

There is often a gap between what is enshrined in law and what is enforced in practice, or between laws which contradict one another. Kosovo Constitution's boasts an advanced legal bottom line meant to protect "gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life."¹⁰ Kosovo is also one of just ten countries globally to ban discrimination on the grounds of sexual orientation within the Constitution.¹¹

However, this is undermined by secondary Law, including the *Family Law of Kosovo*, which defines marriage as a "legally registered community of two persons of different sexes."¹² Similarly, Kosovo's *Law on Gender Equality* stipulates a parity of representation between women and men at all decision-making levels, though most central and municipal level institutions fail to achieve this benchmark. This results in women's underrepresentation at all levels of public and political life.¹³ There is also a disjunct between the *Laws on General Elections* with the *Law on Gender Equality*, the latter of which enshrines a 30% gender quota.¹⁴ A legal challenge brought about a collaboration between international actors and Kosovo Women's Network was unsuccessful, highlighting the reluctance of the courts to consider the gender equality law as part of the human rights.

In North Macedonia, the success of progressive reforms largely depend on the government coalition's general political orientation. A social-democratic coalition government, elected in 2016, was seen as responsive to public campaigns on LGBT issues, specifically to their appeals to bring domestic legislation in line with the European non-discrimination laws. In response to these campaigns, North Macedonia passed a *Law on Prevention of and Protection against Discrimination* in 2019. While barriers remain throughout society that will challenge the implementation of LGBT inclusion, the current governments strategy, particularly the 'One Society For All' framework has sought to move the state in a more civic direction. The One Society strategy has been fundamental in seeking to find methods for society wide compromise while still maintaining crucial protections for a range of non-dominant groups.

¹⁰ Constitution of Kosovo, Art. 7

¹¹ See: <https://www.lgbti-era.org/content/kosovo>

¹² Law Nr.2004/32 Family Law of Kosovo, Art. 14, available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2410>

¹³ Kosovo Women's Network, Kosovo Gender Analysis, 2018, available at: <https://womensnetwork.org/wp-content/uploads/2018/10/womens-network.pdf>

¹⁴ Ibid.

Across the region, the effects of gender based discrimination in the labour market and adjacent claims for non-discrimination of LGBT communities have been interpreted as a individual, human rights issues rather than as group-related rights for non-discrimination. While the constitutional promises for greater inclusion of wider societal groups are often embedded in consociations, they are not always taken up since it requires reassessing the group-related rights dimension outside the zero-sum logic of competition of the core, ethnic groups. As such this points to, rather than a problem of consociational design, to the limited incentive for dominant elite to engage with the wider recognition of group-relevant rights of communities not previously in the focus of institutional design.

The Western Balkan cases underline that consociational institutions are neither the main, nor the only cause of lack of progress in the gender equality and LGBT community inclusion. Some legal reforms are being taken in response to an anticipated legal pressure from international observers such as the Council of Europe and the EU.

The existing international norms and their endorsement by local non-dominant groups have encouraged judicial and policy reform even if there has been little progress societally on changing public attitudes of gender based discrimination or towards the LGBT community. Coalescing around international norms can aid non-dominant groups identifying vectors that they can challenge in courts while additionally helping draw together members of a community that is not ethnically aligned nor have been previously mobilised.

“Even today, it’s crucial that all groups and communities are equally represented throughout the state in all political institutions. But as long as you do that, you are just looking or seeing it from a quantitative side, and you forget on the qualitative side. You forget the concept of power sharing in meaning that it’s not important only to have numbers, but it’s important what they are going to do and what kind of power they have.”

Interview in Sarajevo

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