

# Implementing Peace Agreements:

**From inclusive processes  
to inclusive outcomes?**





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**United Nations Development Programme**

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Alexander Bramble and Thania Paffenholz

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# Executive Summary

The project's findings show that the formal implementation of peace agreements is challenging; agreements are often only partially implemented – if at all – and formal implementation processes are often drawn out over long periods of time. The research also suggests that implementation processes are by no means linear or straightforward, but are complex and evolve over time. They are also impacted by (and impact upon) other political processes: formal peace agreement implementation often occurs simultaneously with negotiation processes, or conflict, and in parallel with existing governance structures and processes. As such, implementation often entails an ongoing renegotiation of the agreement or the overarching political change process.

Implementation broadens the scope of opportunity for the inclusion of a broader set of societal and political actors into the process. Greater inclusion is incorporated into implementation processes through provisions in agreements and through selection procedures and selection criteria of formal implementation bodies and mechanisms as well as informal arrangements and mobilization. The most common rationales for inclusion were: achieving greater popular ownership of the peace process; increasing the acceptance and legitimacy of agreements' provisions; ensuring greater transparency in their implementation; and adding more expertise to the process.

The research identified the principal formal implementation sectors and mechanisms as: constitutional and legislative reform mechanisms; interim and power-sharing governments; electoral reforms and elections; peacebuilding and reconciliation programmes; security sector transformation; and monitoring mechanisms. The level of inclusion varies according to sector, and there are certain sectors where inclusion of particular groups is highly constrained, such as women in security sector reform. IPTI's previous research has identified a typology of seven modalities through which actors can be included in peace processes: direct representation at the negotiation table; observer status; consultations; inclusive commissions; high-level problem-solving workshops; public decision-making; and mass action. These inclusion modalities all continue to exist during implementation, but their relevance and distribution change. There is a potential dichotomy between the level of inclusion and the effectiveness of inclusion, as more inclusion is not necessarily effective inclusion.

The project's findings demonstrate that inclusion is extremely important for implementation, as inclusion features in most implementation mechanisms and included actors overall work to support implementation and help the peace process or political transition to continue. The research also suggests that inclusion can also provide the opportunity to overcome blockages and delays in the process, and build and sustain momentum during complex and drawn-out

implementation processes. Inclusive implementation processes are a precondition for inclusive outcomes but such outcomes are not automatically guaranteed.

The research shows that certain factors enable inclusive processes, while others constrain them. Key enabling factors are early inclusion in the process; clear and detailed inclusion provisions in agreements; meaningful inclusion beyond representation; and moreover enabling participating actors to have influence over the process and its outcomes through, for example, an ‘inclusion formula’ (i.e. quotas along representative criteria and affirmative action incorporated into every day formal and informal institutions) in combination with representative selection criteria and most of all inclusive-decision making criteria and strong monitoring and oversight mechanisms both during and after the implementation process.

Processes are constrained from producing inclusive outcomes by the fact that inclusion through representation does not necessarily translate into influence, especially if elite actors that are dissatisfied with the new status quo resist the implementation of an agreement. There is also a significant degree of resistance to inclusion. In particular, inclusion is often regulated, co-opted or restricted by gatekeepers (mainly key political, military and other elites). Gatekeepers’ strategies include controlling the selection of actors; ignoring the inputs of included actors; co-opting actors; targeting funding and other resources or support; denigrating, delegitimizing or legitimizing actors; and using repression and violence against actors.

Overall, the findings of the project underline that inclusion in implementation processes – and in political transition processes as a whole – is a highly political subject, which should thus not be viewed

or approached as a technical undertaking. Who is included, how, where and when, are all decisions that can have an impact on the power dynamics that will determine the shape of a country’s economic, social and political landscape. As implementation takes place over long periods of time and evolves over the course of the process, these functions of inclusion can be supported, manipulated, controlled and adjusted and are as such subject to ongoing (re-)negotiations. Although inclusion is subject to ongoing challenges, setbacks and manipulation, these re-negotiations also represent opportunities to repeatedly and continually adapt and re-energize inclusion during all phases of the process.

The reality of peace processes and political transitions is that there is no linear or automatic progression from an inclusive negotiation to inclusion provisions in an agreement, to inclusive implementation bodies that lead into inclusive constitution-making that will implement inclusive governance and development on all levels. Rather, there is a constant back-and-forth between progress and setbacks. Political transformation processes thus entail constant long-term re-negotiation and require both patience and robust monitoring and oversight mechanisms.

Two key shifts in the thinking about peace and political transition process are essential to help countries maintain momentum on a pathway to inclusive societies and polities. The notion of ‘success’ in peace process implementation needs to be nuanced, particularly given the aforementioned understanding of political transition and long-term change. Success is a relative notion, meaning a certain degree of modesty in ambition is a must. It is also crucial to truly embrace a sustaining peace paradigm by ensuring that the objective of inclusive outcomes is incorporated at every step of the way.



# 1. Introduction

The failure to implement negotiated peace agreements and political settlements and the frequent collapse of elite deals have drawn the attention of researchers, policymakers and practitioners to try to better understand the conditions for the successful implementation of peace agreements and political transitions and greater societal inclusion in negotiations. International efforts to support peace processes and political transitions increasingly acknowledge the importance of inclusive arrangements, meaning that efforts to prevent or end armed violence and sustain peace now commonly involve a relatively broad range of actors including civil society. Furthermore, the international normative frameworks, comprising instruments such as the 2030 Agenda for Sustainable Development and the Sustainable Development Goals – in particular, Goal 16<sup>1</sup> – the Prevention and Sustaining Peace Agenda (S/RES/2282, A/RES/70/262, and the UN-World Bank Pathways for Peace study),<sup>2</sup> the Women, Peace and Security Agenda (S/RES/1325)<sup>3</sup> and the Youth Inclusion Agenda (S/RES/2250)<sup>4</sup> all emphasize the

merits of broad-based participation and the fact that inclusion in peace processes is seen as one of the means towards and the end-state itself, namely, reaching and sustaining an inclusive violence-free and socially just society.

Researchers have begun to look beyond the main conflict parties and explore the modalities, conditions and effects of the inclusion of a broader range of societal and political actors alongside powerful military and political elites in negotiations and political settlements. Yet the role of inclusion during implementation has received little attention and is not sufficiently understood. This is particularly the case in terms of the transitional institutions required to enable broad-based participation in implementation processes; the conditions required for civil society and non-armed actors to effectively participate in transitions; and the implications the inclusion of a wide range of actors may have for the implementation and outcome of transition processes.

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1 United Nations General Assembly Resolution 70/01, on *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/01 (25 September 2015).

2 United Nations Security Council Resolution 2282, on post-conflict peacebuilding, S/RES/2282 (27 April 2016); United Nations General Assembly Resolution 70/262, *review of the United Nations peacebuilding architecture*, A/RES/70/262 (27 April 2016); United Nations and World Bank, *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict* (Washington, DC: World Bank, 2018), <https://openknowledge.worldbank.org/handle/10986/28337>.

3 United Nations Security Council Resolution 1325, on *women, peace and security*, S/RES/1325 (31 October 2000); UN Women, *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325* (New York: United Nations, 2015).

4 United Nations Security Council Resolution 2250, on *maintenance of international peace and security*, S/RES/2250 (9 December 2015); United Nations Security Council Resolution 2419, on *maintenance of international peace and security*, S/RES/2419 (6 June 2018).

The Inclusive Agreement Implementation Research Project amalgamates and expands recent debates around implementation and inclusion and seeks to produce policy-relevant empirical findings on conditions for broad-based participation. In addition, the study aims to produce findings to better understand effects of inclusion in implementation processes. The study mainly focuses on the immediate post-accord period. Its primary aim is to analyse implications of specific features of implementation mechanisms for civil society and non-armed actors to engage in implementation processes after an agreement is concluded. The concepts applied in the study may be used by policymakers and researchers to assess conditions for broad societal participation and the potential effects of inclusion in implementation processes. It is thus relevant for policy and practice in helping to develop more adaptive and effective national and international responses to support political change processes.

This report proceeds as follows: Chapter 2 reviews the current state of research on peace agreement

implementation and components of political transition processes, and on inclusion in peace and political transition processes. Chapter 3 outlines the project's research plan – including the research objectives and research design – and elaborates on some of the key concepts on which the study draws. The remainder of the study presents findings on the forms and effects of inclusion in implementation processes in Chapter 4. Chapter 4 first broadly discusses the overarching perspective of implementation that emerges from the overall findings of the study. It then examines how inclusion is incorporated into implementation processes, looking at rationales, provisions and selection criteria and procedures. Next, it analyses inclusion in formal implementation sectors and mechanisms and subsequently seeks to expand the discussion beyond purely formal avenues through a discussion of inclusion modalities in implementation. It concludes by examining blockages to meaningful inclusion in implementation and by discussing the opportunities arising from inclusion in implementation and whether inclusive processes can lead to long-term inclusive outcomes.

## 2. Literature Review

### 1. State of research on peace agreement implementation and components of political transition processes

The implementation of peace agreements has been investigated in a series of quantitative and qualitative studies and specialized debates on different components of peace processes such as transitional governance, institutional reform and state-building,

post-war elections, peacebuilding, economic reconstruction and security sector transformation.

#### 1.1 Studies on the implementation of peace agreements

Stedman, Rothchild and Cousens produced a seminal edited volume on implementation well over a decade ago, which looks at implementation environments and strategies and attempts to explain the successful

termination of civil wars.<sup>5</sup> Since then, however, the impressive body of literature about peace processes has focused on negotiations and the features of agreements. Joshi and Quinn highlight that the bulk of quantitative studies on peace agreements after civil wars comparatively evaluate the content of agreements.<sup>6</sup> Only a handful of quantitative studies have examined the degree to which specific provisions (more specifically, power-sharing arrangements) were implemented in the post-accord period.<sup>7</sup> More recently, quantitative studies by Joshi, Quinn and their collaborators have explored sequencing effects of accommodation mechanisms and post-violence elections, as well as the relationship between the implementation of commitments, the recurrence of armed rebellions against governments, and the sustainability of peace. They found that the implementation of measures for accommodation benefits the conduct of elections and that the implementation of commitments made in agreements lowers the chances of renewed insurgencies.<sup>8</sup> Focusing on electoral systems, Joshi argues that transitional processes may be sustained if inclusive institutions become part of a peace agreement. In this situation, rival groups will have confidence that they will not be marginalized from the political process and will

begin to pursue their interests through democratic means.<sup>9</sup> While this argument has not been explored in the context of peace agreement implementation, much suggests that the same logic may hold regarding transitional implementing institutions.

Qualitative inquiries from different traditions of peace research have contributed to the debate on agreement implementation. Lyons, for instance, understands peace implementation as state- and institution-building and stresses the importance of transforming governance structures and building political parties to demilitarize and democratize politics.<sup>10</sup> The state-building literature moreover identifies the presence of capable and efficient state institutions as a condition for the effective implementation of agreements.<sup>11</sup> Applying the concept of “infrastructures for peace” to analyse institutional arrangements that involve peacebuilding programmes at the grassroots level, Giessmann outlines different institutional frameworks that were established after violent conflict, suggesting that such infrastructures may be necessary to enable conflict transformation.<sup>12</sup>

5 Stephen John Stedman, Donald S. Rothchild and Elizabeth M. Cousens (eds.), *Ending Civil Wars: The Implementation of Peace Agreements* (Boulder: Lynne Rienner Publishers, 2002).

6 Madhav Joshi and Jason Michael Quinn, “Implementing the Peace: The Aggregate Implementation of Comprehensive Peace Agreements and Peace Duration after Intrastate Armed Conflict,” *British Journal of Political Science* 47, no. 4 (October 2017): 869–92, doi: 10.1017/S0007123415000381.

7 Anna K. Jarstad and Desiree Nilsson, “From Words to Deeds: The Implementation of Power-Sharing Pacts in Peace Accords,” *Conflict Management and Peace Science* 25, no. 3 (1 July 2008): 206–23, doi: 10.1080/07388940802218945; Matthew Hoddie and Caroline Hartzell, “Civil War Settlements and the Implementation of Military Power-Sharing Arrangements,” *Journal of Peace Research* 40, no. 3 (1 May 2003): 303–20, doi: 10.1177/0022343303040003004.

8 Madhav Joshi, Erik Melander and Jason Michael Quinn, “Sequencing the Peace: How the Order of Peace Agreement Implementation Can Reduce the Destabilizing Effects of Post-Accord Elections,” *Journal of Conflict Resolution* 61, no. 1 (1 January 2017): 4–28, doi: 10.1177/0022002715576573; Madhav Joshi, Jason Michael Quinn, and Patrick M. Regan, “Annualized Implementation Data on Comprehensive Intrastate Peace Accords, 1989–2012,” *Journal of Peace Research* 52, no. 4 (1 July 2015): 551–62, doi: 10.1177/0022343314567486; Madhav Joshi and Jason Michael Quinn, “Watch and Learn: Spillover Effects of Peace Accord Implementation on Non-Signatory Armed Groups,” *Research & Politics* 3, no. 1 (1 January 2016): 1–7, doi: 10.1177/2053168016640558.

9 Madhav Joshi, “Inclusive Institutions and Stability of Transition toward Democracy in Post-Civil War States,” *Democratization* 20, no. 4 (1 June 2013): 743–70, doi: 10.1080/13510347.2012.666067.

10 Terrence Lyons, “Peace Implementation and Quality Peace,” in *Understanding Quality Peace: Peacebuilding after Civil War*, eds. Madhav Joshi and Peter Wallensteen (London and New York: Routledge, 2018), 29–44.

11 Karl DeRouen Jr. et al., “Civil War Peace Agreement Implementation and State Capacity,” *Journal of Peace Research* 47, no. 3 (2010): 333–46; Ian S. Spears, “Africa’s Informal Power-Sharing and the Prospects for Peace,” *Civil Wars* 15, no. 1 (1 March 2013): 37–53, doi:10.1080/13698249.2013.781302; Brendan O’Leary, “Power Sharing in Deeply Divided Places: An Advocate’s Introduction,” in *Power sharing in deeply divided places*, eds. Joanne McEvoy and Brendan O’Leary, National and Ethnic Conflict in the 21st Century (Philadelphia: University of Pennsylvania Press, 2013), 1–67.

12 Hans J. Giessmann, *Embedded Peace: Infrastructures for Peace: Approaches and Lessons Learned* (New York: United Nations Development Programme, Berghof Foundation, Swiss Agency for Development and Cooperation, 2016), [https://www.undp.org/content/dam/undp/library/Democratic Governance/Conflict Prevention/Berghof-UNDP\\_EmbeddedPeaceI4P\\_2016.pdf](https://www.undp.org/content/dam/undp/library/Democratic%20Governance/Conflict%20Prevention/Berghof-UNDP_EmbeddedPeaceI4P_2016.pdf).

Studies that draw from behavioural theory, mediation research and Zartman's concept of conflict ripeness emphasize that implementation processes need continued negotiations between former adversaries. They demonstrate that the strategic stalemate and incentives for non-violent behaviour that enabled a negotiated settlement must be sustained in the implementation phase, in order to keep factions and potential spoilers committed to the process.<sup>13</sup>

In the same vein, peace agreements are increasingly seen as roadmaps that require flexible implementation rather than strict contracts, as political dynamics and realities change.<sup>14</sup> This approach is equally advanced by von Hehn, who provides a comprehensive overview of implementation mechanisms from a legal perspective and outlines the international legal framework for peace implementation.<sup>15</sup>

## 1.2 Studies on specific components of political transition and implementation processes

The implementation of comprehensive peace agreements and global political agreements involves the

establishment of a variety of transitional mechanisms and reform processes that have been researched in specialized literatures. These processes and mechanisms include interim governments – which may take on the character of international authorities – technocratic governments and power-sharing executives that are discussed below.<sup>16</sup> Constitution-making processes, which may be conducted through national dialogues and legislative reform, are frequently a key element of implementation.<sup>17</sup> Equally, electoral reforms and elections are often undertaken.<sup>18</sup> In many cases, security sector reform is an essential component of post-war and democratic transitions.<sup>19</sup> The sustainability of peace often depends on economic reconstruction, land reform and social reform processes.<sup>20</sup>

Implementation requires oversight, and continued negotiation and mediation are likely to be features of the implementation phase, as complex reform plans and programs need to be elaborated within a highly volatile political environment.<sup>21</sup> International guarantors and signatories depend on reliable information

13 Terrence Lyons, "Successful Peace Implementation: Plans and Processes," *Peacebuilding* 4, no. 1 (2 January 2016): 71–82, doi:10.1080/21647259.2015.1094906.

14 Ibid.

15 Arist von Hehn, *The Internal Implementation of Peace Agreements after Violent Intrastate Conflict: Guidance for Internal Actors Responsible for Implementation* (Leiden: Brill Nijhoff, 2011), 1–6.

16 Carrie Manning, "Interim Governments and the Construction of Political Elites," in *Interim Governments: Institutional Bridges to Peace and Democracy?*, eds. Karen Guttieri and Jessica Piombo (Washington, DC: US Institute of Peace Press, 2007), 53–73; Jarstad and Nilsson, "From Words to Deeds."

17 Kirsti Samuels, "State-Building and the Political Transition After Conflict," *Proceedings of the ASIL Annual Meeting* 99 (2005): 171–74, doi: 10.1017/S0272503700102150.

18 Krishna Kumar (ed.), *Postconflict Elections, Democratization, and International Assistance* (Boulder: Lynne Rienner Publishers, 1998); Krishna Kumar and Marina Ottaway, "General Conclusions and Priorities for Policy Research," in *Postconflict Elections, Democratization, and International Assistance*, ed. Krishna Kumar (Boulder: Lynne Rienner Publishers, 1998), 229–39; Terrence Lyons, "The Role of Postsettlement Elections," in *Ending Civil Wars: The Implementation of Peace Agreements*, eds. Stephen John Stedman, Donald S. Rothchild and Elizabeth M. Cousens (Boulder: Lynne Rienner Publishers, 2002), 215–36; Benjamin Reilly, "Post-War Elections: Uncertain Turning Points of Transition," in *From War to Democracy: Dilemmas of Peacebuilding*, eds. Anna K. Jarstad and Timothy D. Sisk (Cambridge: Cambridge University Press, 2008), 157–82; Kristine Höglund, Anna K. Jarstad and Mimmi Söderberg Kovacs, "The Predicament of Elections in War-Torn Societies," *Democratization* 16, no. 3 (1 June 2009): 530–57, doi: 10.1080/13510340902884689.

19 Paul Cornish, "The Military Dimension of Security Sector Governance in Complex Power-Sharing Arrangements," in *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, eds. Marc Weller and Barbara Metzger (Brill Nijhoff, 2008), 571–97; Janine Rauch, "Civil Society and Security Sector Oversight," *African Security Review* 20, no. 4 (1 November 2011): 21–33, doi:10.1080/10246029.2011.630807; Mark Sedra (ed.), *The Future of Security Sector Reform* (Ontario: The Centre for International Governance Innovation, 2010); Alpaslan Ozerdem, "Disarmament, Demobilization and Reintegration," in *Routledge Handbook of Peacebuilding*, ed. Roger Mac Ginty (Abingdon: Routledge, 2013), 225–36.

20 Tony Addison, "Conflict and Peace Building: Interactions between Politics and Economics," *The Round Table* 94, no. 381 (1 September 2005): 405–11, doi: 10.1080/00358530500243534; Wafula Okumu, "CSOs, Post-Conflict Reconstruction and Peacebuilding in Africa," in *Africa's Peacemaker?: Lessons from South African Conflict Mediation*, ed. Kurt Shillinger (Johannesburg: Jacana Media, 2009), 239–51.

21 Elizabeth M. Cousens, *It Ain't Over 'til It's Over: What Role for Mediation in Post-Agreement Contexts?*, Background Paper for the Oslo Forum (Geneva: The Centre for Humanitarian Dialogue, 2008); Michael Aebly, "Stability and Sovereignty at the Expense of Democracy? The SADC Mediation Mandate for Zimbabwe, 2007–2013," *African Security* 10, no. 3–4 (2 October 2017): 272–91, doi: 10.1080/19392206.2017.1348116.



to ensure that an agreement is being adhered to and to identify obstacles that may derail the peace process. Different models of monitoring mechanisms have been discussed in the literature, and UNDP has developed methodological guidelines for peace consolidation monitoring.<sup>22</sup> Guarantors may deploy third-party fact-finding missions or the parties may assign experts to monitor implementation, as in the case of the Kroc Institute's monitoring programme in Colombia.<sup>23</sup> Implementation processes can also be overseen by an independent national body or a joint commission.<sup>24</sup> IPTI researchers have examined the influence of women and civil society representation on the credibility of monitoring and even on what is being monitored.<sup>25</sup> Beyond this, studies about the different components of implementation processes have paid little attention to the role of inclusion in the implementation of peace agreements.

### 1.3 Ongoing research projects on peace agreement implementation

Several research institutions are undertaking projects on peace agreement implementation whose output informs this study. In 2013, the Kroc Institute for International Peace Studies launched the Peace Accord Matrix (PAM), a database of the implementation processes for 34 peace agreements negotiated between 1989 and 2012.<sup>26</sup> The PAM provides research support to ongoing peace processes. The Kroc Institute is mandated to monitor the implementation of the Colombian peace process.<sup>27</sup> In 2017, the Peace Research Institute Oslo (PRIO) launched a research project to examine the effects of peace

agreement implementation on women's security and empowerment.<sup>28</sup> The Political Settlements Research programme at the University of Edinburgh studies the inclusiveness of political settlements through its Peace Agreement Database (PA-X), primarily focusing on the content of agreements.<sup>29</sup>

## 2. State of research on inclusion in peace and political transition processes

Inclusion is an important theme in several fields of peace research and has been conceptualized in different ways. It features prominently in literature relating to negotiations and mediation, power-sharing, civil society, state-building and gender in peacebuilding. Most relevant to this study are the debates on the inclusion of military and political elites in negotiations, political settlements and power-sharing arrangements, resilient social contracts and the role of civil society in formal peace processes and peacebuilding. Findings suggest that, generally, inclusion matters for peace process outcomes. Who is included, when and how, shapes not only the political dynamics of negotiation processes, but influences whether peace agreements are successfully implemented and whether they contribute to a lasting absence of armed conflict. While most contributions that touch on peace agreement implementation do not explicitly conceptualize inclusion, they nonetheless analyse various important dimensions of how a variety of actors participate in implementation, and thus provide important groundwork for more systematic research on inclusion.

22 United Nations, *Monitoring Peace Consolidation: United Nations Practitioners' Guide to Benchmarking* (New York: United Nations, 2010).

23 Ulrich Schneckener, "Third-Party Involvement in Self-Determination Conflicts," in *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, eds. Marc Weller and Barbara Metzger (Leiden: Brill Nijhoff, 2008), 467–501; "Peace Accords Matrix Colombia," Kroc Institute for International Peace Studies, n.d., <https://kroc.nd.edu/research/peace-processes-accords/pam-colombia/>.

24 Evan Hoffman and Jacob Bercovitch, "Examining Structural Components of Peace Agreements and Their Durability," *Conflict Resolution Quarterly* 28, no. 4 (2011): 409, doi: 10.1002/crq.20031.; Michael Aebly, *Zimbabwe's Gruelling Transition: Interim Power-Sharing and Conflict Management in Southern Africa* (Basel: Philosophisch-Historische Fakultät der Universität Basel, 2017).

25 Nick Ross, *Civil Society's Role in Monitoring and Verifying Peace Agreements: Seven Lessons from International Experiences* (Geneva: Inclusive Peace & Transition Initiative, 2017), <https://www.inclusivepeace.org/sites/default/files/Civil-Society-Monitoring-Peace-Agreements.pdf>; Michael Aebly, "Making an Impact from the Margins? Civil Society Groups in Zimbabwe's Interim Power-Sharing Process," *The Journal of Modern African Studies* 54, no. 4 (December 2016): 703–28, doi:10.1017/S0022278X16000616.

26 "Peace Accords Matrix Colombia."

27 Schneckener, "Third-Party Involvement in Self-Determination", 484; "Peace Accords Matrix Colombia."

28 "New Project: The Effects of Peace Agreement Implementation on Women's Security and Empowerment," *Peace Research Institute (PRIO)*, 19 December 2017, <https://www.prio.org/News/Item/?x=2241>.

29 "Themes: Political Settlements Research Programme," *Politicalsettlements.org*, 18 June 2015, <http://www.politicalsettlements.org/about/how/themes/>.

## 2.1 Studies on the inclusion of rival elites in peace processes and power-sharing

The inclusion of political elites, armed groups and other actors who have the potential to be “spoilers”<sup>30</sup> has been widely debated in conflict management literature.<sup>31</sup> Several studies highlight the importance of norms in deciding which actors are included or excluded from a formal negotiation process.<sup>32</sup> Lanz, for instance, argues that the selection of actors depends on whether their participation augments the chance of reaching a sustainable settlement and whether their presence is consistent with the values of international mediators and sponsors of the process.<sup>33</sup>

The relationship between inclusion and peace is central to the debate about power-sharing, which broadly discusses how conflict can be resolved or prevented through institutional arrangements

that guarantee an equitable distribution of power among and between conflict parties and their constituencies.<sup>34</sup> The underlying assumption is that power-sharing turns opponents into cooperative partners by providing leaders with a guaranteed stake in the political process. The inclusion of all major groups in decision-making is assumed to encourage moderation, and joint problem-solving is thought to be vital for democratic transitions and sustainable peace.<sup>35</sup> Lijphart prescribes his classic model of “consociational democracy” to any deeply divided country.<sup>36</sup> However, the model has been criticized for promoting elite pacts and eliminating opposition, fostering ineffective governance and secession and failing to offer incentives for moderate behaviour.<sup>37</sup> Most importantly, its reliance on ethnically defined “segments”<sup>38</sup> makes it likely to legitimize ethnic divides in the political system.<sup>39</sup> A focus on formalized arrangements between national elites also

30 Stephen John Stedman, “Introduction,” in *Ending Civil Wars: The Implementation of Peace Agreements*, eds. Stephen John Stedman, Donald S. Rothchild and Elizabeth M. Cousens (Boulder: Lynne Rienner Publishers, 2002), 12.

31 Desirée Nilsson, “Partial Peace: Rebel Groups Inside and Outside of Civil War Settlements,” *Journal of Peace Research* 45, no. 4 (1 July 2008): 479–95, doi: 10.1177/0022343308091357; Desirée Nilsson and Mimmi Söderberg Kovacs, “Revisiting an Elusive Concept: A Review of the Debate on Spoilers in Peace Processes,” *International Studies Review* 13, no. 4 (2011): 606–26; Andrew G. Reiter, *Fighting Over Peace: Spoilers, Peace Agreements, and the Strategic Use of Violence* (University of Wisconsin–Madison, 2011); Lisa Blaydes and Jennifer De Maio, “Spoiling the Peace? Peace Process Exclusivity and Political Violence in North-Central Africa,” *Civil Wars* 12, no. 1–2 (1 January 2010): 3–28, doi: 10.1080/13698249.2010.484896.

32 Sara Hellmüller, Palmiano Federer and Matthias Zeller, *The Role of Norms in International Peace Mediation* (Bern: Swisspeace and NOREF, 2015), 21; David Lanz, “Who Gets a Seat at the Table? A Framework for Understanding the Dynamics of Inclusion and Exclusion in Peace Negotiations,” *International Negotiation* 16, no. 2 (1 January 2011): 275–95, doi:10.1163/138234011X573048; Jamie Pring, “Including or Excluding Civil Society? The Role of the Mediation Mandate for South Sudan (2013–2015) and Zimbabwe (2008–2009),” *African Security* 10, no. 3–4 (2 October 2017): 223–38, doi: 10.1080/19392206.2017.1352394.

33 Lanz, “Who Gets a Seat at the Table?”

34 For a comprehensive review of the power-sharing literature, see Aeby, *Zimbabwe’s Gruelling Transition*, 93–8; Chandra Lekha Sriram, *Peace as Governance: Power-Sharing, Armed Groups and Contemporary Peace Negotiations* (London: Palgrave Macmillan, 2008); Lyons, “Successful Peace Implementation.”

35 Pippa Norris, *Driving Democracy: Do Power-Sharing Institutions Work?* (Cambridge: Cambridge University Press, 2008), 4; Benjamin Reilly, “Does the Choice of Electoral System Promote Democracy?: The Gap between Theory and Practice,” in *Sustainable Peace: Power and Democracy After Civil Wars*, eds. Philip G. Roeder and Donald S. Rothchild (Ithaca: Cornell University Press, 2005), 160.

36 Arend Lijphart, “Conclusion: Power Sharing, Evidence, and Logic,” in *Thinking about Democracy: Power Sharing and Majority Rule in Theory and Practice* (London: Routledge, 2007), 269.

37 Donald L. Horowitz, “Constitutional Design: Proposals versus Processes,” in *The Architecture of Democracy, Constitutional Design, Conflict Management and Democracy*, ed. Andrew Reynolds (Oxford: Oxford University Press, 2002), 19; Donald L. Horowitz, *A Democratic South Africa?: Constitutional Engineering in a Divided Society* (Oxford and Cape Town: Oxford University Press, 1991), 138; Timothy D. Sisk, *Power Sharing and International Mediation in Ethnic Conflicts*, Later printing edition (Washington, D.C.: United States Institute of Peace, 1996), 38; Brendan O’Leary, “Debating Consociational Politics: Normative and Explanatory Arguments,” in *From Power-sharing to Democracy: Post-conflict Institutions in Ethnically Divided Societies*, ed. Sid Noel (Montreal: McGill–Queen’s University Press, 2005), 4.

38 Arend Lijphart, “Constitutional Design for Divides Societies,” in *Thinking about Democracy: Power Sharing and Majority Rule in Theory and Practice* (London: Routledge, 2007), 82; Arend Lijphart, “Self-Determination versus Pre-Determination of Ethnic Minorities in Power-Sharing Systems,” in *Thinking about Democracy: Power Sharing and Majority Rule in Theory and Practice* (London: Routledge, 2007), 67; Pippa Norris, “Ballots Not Bullets: Testing Consociational Theories of Ethnic Conflict, Electoral Systems, and Democratization,” in *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*, ed. Andrew Reynolds (Oxford: Oxford University Press, 2002), 235.

39 Donald L. Horowitz, *A Democratic South Africa?: Constitutional Engineering in a Divided Society* (Berkeley: University of California Press, 1991), 143; Reilly, “Post-War Elections: Uncertain Turning Points of Transition,” 171; Sisk, *Power Sharing and International Mediation in Ethnic Conflicts*, 39.

often overlooks the local level, as well as important informal practices.<sup>40</sup> More recent studies have thus also engaged with the subnational dimension of power-sharing, extending the focus beyond capital-based transitional arrangements.<sup>41</sup>

Hartzell and Hoddie, based on a quantitative comparison of power-sharing pacts, argue that the more dimensions of power-sharing an agreement includes (political, territorial, military and economic), the greater the chances that peace will endure.<sup>42</sup> Their research suggests that commitments for territorial power-sharing enhance the chances of timely elections.<sup>43</sup> Jarstad, however, in a study based on the Uppsala Conflict Data Program, finds no evidence for either claim.<sup>44</sup> Druckman and Albin argue that distributive justice provisions can increase the durability of peace agreements,<sup>45</sup> although Mehler warns that economic power-sharing may amount to the partition of state resources by belligerents.<sup>46</sup>

Several scholars have adopted the concept of “interim power-sharing”, where power-sharing institutions are not enshrined in a finely calibrated constitutional design, but imposed in an ad hoc, temporary manner. This has prompted a debate on the dangers of power-sharing for conflict management.<sup>47</sup> Interim power-sharing executives are intended to make reluctant conflict parties more confident and willing to sign an agreement; they are also meant to serve as institutional bridges to maintain stability until suitable conditions for elections can be created.<sup>48</sup> Proponents argue that power-sharing, as a form of inclusion, is an effective conflict resolution strategy in and of itself.<sup>49</sup> In contrast, power-sharing is seen by many as a quick fix that entrenches elite cartels in power and only defers violent conflict whilst undermining democratization.<sup>50</sup> The critique centres on the actors that are included. Power-sharing pacts often give executive power to self-declared leaders due to their military power and capacity to spoil the peace process, even if these elites lack popular support

40 Kathrin Heitz, “Power-Sharing in the Local Arena: Man - a Rebel-Held Town in Western Côte d’Ivoire,” *Africa Spectrum* 44, no. 3 (1 December 2009): 109–31, doi: 10.1177/000203970904400306.

41 Franzisca Zanker, Claudia Simons and Andreas Mehler, “Power, Peace, and Space in Africa: Revisiting Territorial Power Sharing,” *African Affairs* 114, no. 454 (1 January 2015): 72–91, doi: 10.1093/afraf/afu064.

42 Caroline Hartzell and Matthew Hoddie, “Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management,” *American Journal of Political Science* 47, no. 2 (2003): 318, doi:10.1111/1540-5907.00022.

43 Matthew Hoddie and Caroline Hartzell, “Power Sharing in Peace Settlements: Initiating the Transition from Civil War,” in *Sustainable Peace: Power and Democracy After Civil Wars*, eds. Philip G. Roeder and Donald S. Rothchild (Ithaca: Cornell University Press, 2005), 84.

44 Anna K. Jarstad, “The Prevalence of Power-Sharing: Exploring the Patterns of Post-Election Peace,” *Africa Spectrum* 44, no. 3 (23 March 2010): 44–57.

45 Daniel Druckman and Cecilia Albin, “Distributive Justice and the Durability of Peace Agreements,” *Review of International Studies* 37, no. 3 (July 2011): 1137–68, doi: 10.1017/S0260210510000549.

46 Andreas Mehler, “Peace and Power Sharing in Africa: A Not so Obvious Relationship,” *African Affairs* 108, no. 432 (2009): 456; Chandra Lekha Sriram and Marie-Joëlle Zahar, “The Perils of Power-Sharing: Africa and Beyond,” *Africa Spectrum* 44, no. 3 (2009): 26.

47 Christine Bell, “Power-Sharing, Conflict Resolution, and Women,” *Nationalism and Ethnic Politics* 24, no. 1 (2018): 13–32; Aebly, Zimbabwe’s Gruelling Transition; Michael Aebly, “Inside the Inclusive Government: Interparty Dynamics in Zimbabwe’s Power-Sharing Executive,” *Journal of Southern African Studies* 44, no. 5 (3 September 2018): 855–77, doi:10.1080/03057070.2018.1497122.

48 Hoddie and Hartzell, “Power Sharing in Peace Settlements: Initiating the Transition from Civil War,” Donald Rothchild, “Reassuring Weaker Parties after Civil Wars: The Benefits and Costs of Executive Power-Sharing Systems in Africa,” *Ethnopolitics* 4, no. 3 (1 September 2005): 248, doi:10.1080/17449050500229958; Karen Rochelle Guttieri and Jessica R. Piombo, “Issues and Debates in Transitional Rule,” *Strategic Insights* 5, no. 1 (2006): 11; Ian S. Spears, “Understanding Inclusive Peace Agreements in Africa: The Problems of Sharing Power,” *Third World Quarterly* 21, no. 1 (2000): 105.

49 René Lemarchand, “Consociationalism and Power Sharing in Africa: Rwanda, Burundi, and the Democratic Republic of the Congo,” *African Affairs* 106, no. 422 (2007): 2.

50 Nic Cheeseman and Blessing-Miles Tendi, “Power-Sharing in Comparative Perspective: The Dynamics of ‘Unity Government’ in Kenya and Zimbabwe,” *The Journal of Modern African Studies* 48, no. 2 (2010): 203; Anna Jarstad, “Power Sharing: Former Enemies in Joint Government,” in *From War to Democracy: Dilemmas of Peacebuilding*, eds. Anna Jarstad and Timothy Sisk (Cambridge: Cambridge University Press, 2008), 125; Donald Rothchild and Philip G. Roeder, “Power-Sharing as an Impediment to Peace and Democracy,” in *Sustainable Peace: Power and Democracy after Civil Wars*, eds. Philip G. Roeder and Donald Rothchild (Ithaca: Cornell University Press, 2005), 38; Chandra Lekha Sriram and Marie-Joëlle Zahar, “The Perils of Power-Sharing: Africa and Beyond,” *Africa Spectrum* 44, no. 3 (23 March 2010): 29.

and are responsible for human rights abuses.<sup>51</sup> Such pacts can provide an incentive to a regime to hold onto power after losing elections and to opponents to take up arms.<sup>52</sup> Attempts to negotiate inclusive arrangements may also lead to a proliferation of armed groups that aim to acquire a share of political and military power, leading to renewed insecurity.<sup>53</sup> Power-sharing can also drive corruption in post-conflict countries, even more so if natural resources are involved.<sup>54</sup> Where power-sharing is based on ethnicity, elites may be rewarded for entrenching ethnic divides.<sup>55</sup> Power-sharing pacts often exclude civilian groups and neglect peacebuilding on the local level.<sup>56</sup> Power-sharing deals that are brokered after post-electoral crises are most controversial as they suspend the constitutional order.<sup>57</sup> Power-sharing pacts are also criticized for disadvantaging women, but may bear opportunities to promote gender equality.<sup>58</sup> Some studies have argued that power-sharing arrangements tend to produce incentives for renegotiation and pre-emptive strikes during implementation.<sup>59</sup> In the same direction with a focus on process, comparing 40 qualitative case studies examining the possibility of Preventing Violence through Inclusion, IPTI has found that exclusive elite deals can hold but

only if they are inclusive of all relevant elite groups and open the space for a broader more inclusive implementation process.<sup>60</sup>

## 2.2 Studies on civil society inclusion and peacebuilding

Peacemaking among political and military elites takes centre stage in peace processes, but there is increasing recognition of the role civil society can play.<sup>61</sup> The field of research looking at the role of civil society in peacebuilding and the negotiation and implementation of agreements is comparatively recent, but it builds on a vast body of literature on civil society's functions in democratization processes.

Civil society, as understood here, constitutes an intermediate associational realm between the state, the market and the family. It consists of organizations that are largely autonomous from the state and formed by members of society to advocate public interests. Although civil society organizations (CSOs) are hardly and rarely apolitical, they differ from political parties in that they do not seek to take direct control of the state.<sup>62</sup> Civil society actors, as defined by Paffenholz and understood by IPTI, include special interest groups like trade unions, women's

51 Mehler, "Peace and Power Sharing in Africa," 108; Jarstad, "The Prevalence of Power-Sharing," 119; Ian S. Spears, "Anarchy and the Problems of Power Sharing in Africa," in *From Power Sharing to Democracy: Post-Conflict Institutions in Ethnically Divided Societies*, ed. Sidney John Roderick Noel (Montreal: McGill-Queen's Press - MQUP, 2005), 112; Sriram and Zahar, "The Perils of Power-Sharing," 28.

52 Nic Cheeseman, "The Internal Dynamics of Power-Sharing in Africa," *Democratization* 18, no. 2 (1 April 2011): 359, doi: 10.1080/13510347.2011.553358; Denis M. Tull and Andreas Mehler, "The Hidden Costs of Power-Sharing: Reproducing Insurgent Violence in Africa," *African Affairs* 104, no. 416 (2005): 375–98.

53 Tull and Mehler, "The Hidden Costs of Power-Sharing"; Sarah Birgitta Kanafani von Billerbeck, *Whose Peace?: Local Ownership and United Nations Peacekeeping* (Oxford: Oxford University Press, 2017).

54 Felix Haass and Martin Ottmann, "Profits from Peace: The Political Economy of Power-Sharing and Corruption," *World Development* 99 (1 November 2017): 60–74, doi: 10.1016/j.worlddev.2017.07.006.

55 Melani Cammett and Edmund Malesky, "Power Sharing in Postconflict Societies: Implications for Peace and Governance," *Journal of Conflict Resolution* 56, no. 6 (1 December 2012): 987, doi: 10.1177/0022002711421593.

56 Claudia Simons et al., "Power-Sharing in Africa's War Zones: How Important Is the Local Level?," *The Journal of Modern African Studies* 51, no. 4 (December 2013): 681, doi: 10.1017/S0022278X13000645.

57 Rowland J.V. Cole, "Power-Sharing, Post-Electoral Contestations and the Dismemberment of the Right to Democracy in Africa," *The International Journal of Human Rights* 17, no. 2 (2013): 263.

58 Christine Bell, "Power-Sharing, Conflict Resolution, and Women," 13–32.

59 Karl Derouen, Jenna Lea and Peter Wallenstein, "The Duration of Civil War Peace Agreements," *Conflict Management and Peace Science* 26, no.4 (2009): 367–87.

60 Thania Paffenholz et al., *Preventing Violence through Inclusion: From Building Momentum to Sustaining Peace* (Geneva: IPTI, the Graduate Institute of International and Development Studies, 2017), 28.

61 United Nations Security Council and United Nations General Assembly, *Peacebuilding and sustaining peace: Report of the Secretary-General*, A/73/890–S/2019/448 (30 May 2019); United Nations, "17 Goals to Transform Our World," *United Nations Sustainable Development Goals*, n.d., <https://www.un.org/sustainabledevelopment/>.

62 Thomas Carothers and Marina Ottaway, "Introduction: The Burgeoning World of Civil Society Aid," in *Funding Virtue: Civil Society Aid and Democracy Promotion*, eds. Marina Ottaway and Thoma Carothers (Washington: Carnegie Endowment for International Peace, 2000), 9; Reiner Forster and Mark Mattner, *Civil Society and Peacebuilding: Potential, Limitations and Critical Factors* (Washington, DC: The World Bank, 2006); Nelson Kasfir, "The Conventional Notion of Civil Society: A Critique," *Commonwealth and Comparative Politics* 36, no. 2 (1998): 3–6.



and minority associations, faith-based organizations, traditional and community groups, research institutions, service delivery organizations, social movements that are loosely structured and rally around a common cause, non-profit advocacy groups that represent business, as well as networks consisting of such organizations.<sup>63</sup> Peacebuilding actors often overlook the considerable diversity of civil society organizations, and attention has often focused on elite-based minority civil society organizations that are only partly representative of society as a whole.<sup>64</sup> Furthermore, the viability of the Western understanding of civil society to analyse social processes in non-Western societies and rural peasant communities, where much of associational life and political participation take place outside organizations that are commonly defined as CSOs, has been drawn into question.<sup>65</sup> According to Verkoren and van Leeuwen, the mismatch between Western discourse and the realities and practices of local non-state actors in non-Western conflict-affected countries impedes the effectiveness of international support for civil society for the purpose of peacebuilding.<sup>66</sup>

Civil society can fulfil a range of peacebuilding and democratic functions during the negotiation and implementation phases of formal peace or political transition processes, as well as in longer-term peacebuilding.<sup>67</sup> The articulation, representation and protection of different societal interests, the oversight

of (interim) governments, the political socialization of citizens, and the diffusion of democratic and pacifist norms are conventional democratic functions that are vital during peace processes.<sup>68</sup> Functions that relate specifically to peace and transition processes may include the facilitation of negotiations, the consulting of negotiating parties, the monitoring of implementation processes, the provision of conflict resolution training, international advocacy, truth-seeking and reconciliation activities, psycho-social support to war victims, and the delivery of social services.<sup>69</sup>

Civil society actors, however, may not seek to support a formal peace process and peacebuilding. On the contrary, CSOs may take on an ambiguous or detrimental and “uncivil” role, by rallying around sectarian identities or resisting cooperation and compromise.<sup>70</sup> CSOs may even undermine peace by diffusing hateful messages, inciting violence or becoming paramilitary and criminal organizations.<sup>71</sup>

Existing research suggests that the conditions for the effective inclusion of civil society in the negotiation and implementation of peace and political transition processes may relate to internal and external factors. These include the composition and coordination of civil society, the political and legislative environment, the internal cohesion of organizations, their social grounding and popular backing, bureaucratic

63 Thania Paffenholz, “Civil Society,” in *Routledge Handbook of Peacebuilding*, ed. Roger MacGinty (Abingdon: Routledge, 2013), 352.

64 Béatrice Pouligny, “Civil Society and Post-Conflict Peacebuilding: Ambiguities of International Programmes Aimed at Building ‘New’ Societies,” *Security Dialogue* 36, no.4 (2005): 495–510.

65 Nelson Kasfir, “Civil Society, the State and Democracy in Africa,” *Commonwealth and Comparative Politics* 36, no. 2 (1998): 229.

66 Willemijn Verkoren and Mathijs van Leeuwen, “Civil Society in Peacebuilding: Global Discourse, Local Reality,” *International Peacekeeping* 20, no. 2 (2013): 159–72.

67 Catherine Barnes, “Civil Society and Peacebuilding: Mapping Functions in Working for Peace,” *The International Spectator* 44, no. 1 (2009): 131–47.

68 Carothers and Ottaway, “Introduction: The Burgeoning World of Civil Society Aid,” 4; Thania Paffenholz and Christoph Spurk, “A Comprehensive Analytical Framework,” in *Civil Society and Peacebuilding: A Critical Assessment* (Boulder: Lynne Rienner, 2014), 15.

69 Roberto Belloni, “Civil Society in War-to-Democracy Transitions,” in *From War to Democracy: Dilemmas of Peacebuilding*, eds. Anna K. Jarstad and Timothy D. Sisk, 177; Christopher J. Colvin, “Civil Society and Reconciliation in Southern Africa,” *Development in Practice* 17, no. 3 (2007): 322; Thania Paffenholz, “Civil Society and Peace Negotiations: Beyond the Inclusion–Exclusion Dichotomy,” *Negotiation Journal* 30, no. 1 (2014): 69–76; Barnes, “Civil Society and Peacebuilding: Mapping Functions in Working for Peace.”

70 Thania Paffenholz and Christoph Spurk, “Civil Society, Civic Engagement, and Peacebuilding,” *Social Development Papers: Conflict Prevention and Reconstruction* (Washington, DC: The World Bank, 2006), 2.

71 Belloni, “Civil Society in War-to-Democracy Transitions,” 178–98.

capacity, financial resources and independence from the state.<sup>72</sup> Donor dependency and CSOs' relations with international agencies may impact the ways in which local civil society actors engage in political transitions and in peacebuilding.<sup>73</sup> A CSO's role also hinges on the norms and values it promotes.<sup>74</sup>

Moving away from an actor-only approach discussing inclusion and exclusion, Paffenholz has developed a typology of the various modalities through which additional actors can be included in negotiation processes and the implementation of negotiated agreements.<sup>75</sup> The inclusion of civil society in peace talks may serve to increase the local and international legitimacy of peace processes.<sup>76</sup> Civil society inclusion in peace talks and implementation processes is also hoped to enhance the transparency of the process and the degree of accountability of political actors, provide alternative perspectives, prevent the emergence of spoilers and improve the chances of achieving durable peace.<sup>77</sup> But Paffenholz finds that civil society actors are often excluded from peace talks because their presence is feared to complicate negotiations, translate into selection problems and encounter resistance from major conflict parties.<sup>78</sup>

Country case studies show that the contributions civil society can make to peace processes may not be fully appreciated by international mediators and

guarantors, whose mediation mandates may not provide for civil society participation.<sup>79</sup> A comparative analysis by Bell and O'Rourke shows that, in the past, few peace agreements stipulated the participation of civil society in implementation processes, but that this has not prevented civil society from taking on a key role in peacebuilding.<sup>80</sup> By statistically comparing peace agreements and their outcome in the post-Cold War period, Nilsson finds that the inclusion of civil society in peace settlements increases the durability of peace, particularly in non-democratic societies.<sup>81</sup> Findings from IPTI's research suggest that inclusion can contribute not only to halting acute violence, but also to tackling violence and addressing causes of conflict in the long run, thereby contributing to political transitions that pave the way for sustainable peace.<sup>82</sup>

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72 Colvin, "Civil Society and Reconciliation in Southern Africa," 330; Forster and Mattner, *Civil Society and Peacebuilding: Potential, Limitations and Critical Factors*, 19; Julie Hearn, "The 'Uses and Abuses' of Civil Society in Africa," *Review of African Political Economy* 28, no. 87 (2001): 43; Marina Ottaway, "Social Movements, Professionalization of Reform, and Democracy in Africa," in *Funding Virtue: Civil Society Aid and Democracy Promotion*, eds. Thomas Carothers and Marina Ottaway, 99; Thania Paffenholz, "Civil Society and Peacebuilding," in *Civil Society and Peacebuilding: A Critical Assessment*, ed. Thania Paffenholz (Boulder, Colorado: Lynne Rienner Publishers, 2010), 43–64; Paffenholz and Spurk, "Civil Society, Civic Engagement, and Peacebuilding," 2.

73 Pouligny, "Civil Society and Post-Conflict Peacebuilding: Ambiguities of International Programmes Aimed at Building 'New' Societies."

74 Forster and Mattner, *Civil Society and Peacebuilding: Potential, Limitations and Critical Factors*, 19–24.

75 Paffenholz, "Civil Society and Peace Negotiations: Beyond the Inclusion–Exclusion Dichotomy," 69–91.

76 Franzisca Zanker, "Legitimate Representation: Civil Society Actors in Peace Negotiations Revisited," *International Negotiation* 19, no. 1 (2014), 62–88.

77 Desirée Nilsson, "Anchoring the Peace: Civil Society Actors in Peace Accords and Durable Peace," *International Interactions* 38, no. 2 (2012): 243–66.

78 Paffenholz, "Civil Society and Peacebuilding," 71–76.

79 Aeby, "Making an Impact from the Margins?," 703; Aeby, "Stability and Sovereignty at the Expense of Democracy?"; Pring, "Including or Excluding Civil Society?"

80 Christine Bell and Catherine O'Rourke, "The People's Peace? Peace Agreements, Civil Society, and Participatory Democracy," *International Political Science Review* 28, no. 3 (2007), 293.

81 Nilsson, "Anchoring the Peace: Civil Society Actors in Peace Accords and Durable Peace."

82 Paffenholz et al., *Preventing Violence through Inclusion*, 61.

# 3. Research Plan and Conceptual Approach

## 1. Research objectives and questions

The study is primarily concerned with conditions and modalities for inclusion in implementation processes, but it also explores the implications of a wide range of forms of participation within implementation mechanisms, sectors and preconditions towards pathways to peace. The initial research objectives related to different dependent variables: the ability of societal groups to participate; the ways in which they participate; the impact of their participation on the implementation process; and, to a lesser extent, the implementation of agreements per se. At the start of the research, the focus was on the immediate post-agreement period and the design of implementation mechanisms. During the course of the research, we realized that the original focus did not do sufficient justice to the complexity of implementation processes and their place within longer-term pathways to peace. We therefore added additional dimensions to the analysis, ultimately looking at the following objectives:

- a) Gain a better understanding of the role that included societal actors play in the implementation of peace and transition agreements.
- b) Gain a better understanding of the conditions that enable or constrain inclusion by presence and representation as well as the potential to influence the process.
- c) Gain a better understanding as to how inclusion influences pathways to peace, i.e., creates preconditions and sets precedents for progress towards inclusive, peaceful societies.
- d) Generate policy-relevant empirical findings on the conditions for inclusion that emanate from features of implementation processes, further factors and the potential effects of inclusion on formal implementation but also pathways to peace.

### 1.1 Research questions

- Q1: How does implementation take place, what are its main characteristics and how is inclusion manifested therein?
- Q2: What effects do certain features of implementation processes have on societal actors' ability to participate in implementation and to what extent do these features enable or constrain inclusion?
- Q3: In which ways can included actors potentially impact not only on the formal implementation process, but also on the broader political change process that the implementation process transforms as a series of milestones on pathways to peace, and, as such, are inclusive processes contributing to inclusive outcomes?

## 2. Research design

The study pursues these objectives through a combination of research steps and qualitative methods. First, it develops a comprehensive analytical framework, combining parameters identified in the literature and in a screening of 32 empirical case studies on inclusion in peace processes from IPTI's database of more than 42 in-depth qualitative case studies of inclusive peace and transition processes.<sup>83</sup> Second, the study uses a qualitative comparative approach to examine 11 country cases in order to analyse the above questions. The comparison serves to identify patterns and variations in the effects the compared factors can have on inclusion. Third, a case study on inclusion in the implementation phase of the Mindanao peace process in the Philippines investigates all the parameters entailed in the comprehensive analytical framework. Fourth, the analysed data and preliminary patterns identified were discussed at an expert workshop<sup>84</sup> and contrasted with other research findings. As a consequence, further data analysis and interpretation has been conducted, in particular to further investigate Q3.<sup>85</sup>

### 2.1 Sources and empirical methods

The sources used comprise case studies from IPTI's Broadening Participation and Civil Society Projects, secondary literature and primary sources. In addition, 18 semi-structured interviews were conducted with country experts to complement the data from the existing case study collection, which is concerned more with inclusion in peace negotiations rather than implementation. All data were systematically coded using Qualitative Data Analysis (QDA) software on the basis of a coding scheme that reflects the comprehensive analytical framework to ensure an effective comparison.

## 3. Concepts

The Inclusive Agreement Implementation Project builds on IPTI's key concepts and previous studies.

Although inclusion has become ubiquitous in the discussion of peace and political transition processes, it manifestly means different things to different people and constituencies. Some see it as a normative principle, others as a rights-based concept. It can be considered as a means or an end; it can mean the representation of actors or the mainstreaming of topics. Inclusion is not therefore a given "good," nor is it a panacea. Any study of inclusion – as well as the practical implementation of inclusion – needs to be aware of the different understandings of the term and of the other factors at play, beyond inclusion. Inclusion can thus be understood and conceptualized in many different ways and, in this context, it is understood as an evolving notion. Since this study is concerned with broad-based participation in formal peace and political transition processes, inclusion refers here to the participation of actors other than the principal negotiation parties that hold veto power over the peace process and without whom negotiations could not take place in official negotiations and components of implementation processes. Included actors can encompass civil society (including women's groups), religious actors as well as political parties.<sup>86</sup>

This understanding of inclusion, which presumes the existence of a negotiation or agreement implementation process, is derived from an analytical framework developed by Paffenholz et al. in the multi-year project Broadening Participation in Political Negotiations and Implementation (2011–2017). It identifies a typology of the various modalities through which additional actors can be included in negotiation processes and the implementation of negotiated agreements.<sup>87</sup>

83 The 32 cases in question all produced peace agreements, which were implemented to varying extents.

84 Co-organized by IPTI and UNDP OGC, held in Oslo in November 2018.

85 For a detailed breakdown of the stages of the research design, please see Annex 2.

86 Thania Paffenholz et al., *Preventing Violence through Inclusion*, 13.

87 Paffenholz, "Civil Society and Peace Negotiations: Beyond the Inclusion–Exclusion Dichotomy," 69–91.



The seven modalities are:<sup>88</sup>

1. **Direct Representation at the Negotiation**

**Table:** Included actors are directly represented alongside the main conflict parties. This takes place as part of so-called Track One negotiations and can be achieved by including more actors in the main negotiation delegations, by enlarging the number of negotiation delegations at the table or by including almost all relevant constituencies within society through a broad-based format such as a National Dialogue.<sup>89</sup>

2. **Observer Status:** Observers are permitted to be present in most or all sessions of a negotiation or of specific working groups, but they do not form part of official delegations. They are usually not allowed to speak formally and do not have any decision-making power.

3. **Consultations:** Consultations can be used in parallel to negotiations or implementation to gather opinion, to discover facts or to create consensus among a larger set of constituents. They can be elite-centred or broad-based, public and officially endorsed, or less formal and consultative.

4. **Inclusive Commissions:** Commissions involving civil society and other players enjoy formal standing. Three types of inclusive commissions can be distinguished: post-agreement commissions; commissions preparing or conducting the peace process; and permanent bodies.

5. **High-level Problem-solving Workshops:** Sometimes referred to as track 1.5, these workshops are unofficial and generally not publicized.

They bring together representatives close to the leaders of the main conflict parties as well as other actors and offer a space for discussion in parallel to official negotiations, without the pressure to reach an agreement.

6. **Public Decision-making:** Peace agreements and constitutions can be submitted to ratification through popular referenda and other electoral mechanisms. They seek to provide democratic legitimacy to the process, ensuring public support and the sustainability of the agreement.

7. **Mass Action:** Mass campaigns, protests or strikes are another modality by which actors can include themselves in a process, by making their voices heard, raising grievances or preferences related to a conflict or political transition and putting pressure on the negotiating parties. Mass Action can occur before, during, or after violent conflict or a political crisis.

The study also draws on Paffenholz's Civil Society and Peacebuilding Project (2006–2010), which identified seven peacebuilding functions of civil society:<sup>90</sup>

1. **Protection of citizens and communities against violence:** This may apply to a despotic state or any armed actor, ranging from the national army to local groups. Protection is a precondition for civil society to act and perform other functions and may be civil society-led (e.g., protection/sanctuary networks) or supportive of state/international actions (such as security arrangements, disarmament).
2. **Monitoring of human rights violations or the implementation of agreements:** CSOs monitor

88 The "Broadening Participation" project originally contained nine inclusion modalities that consisted of 1) Direct Representation at the Negotiation Table; 2) Observer Status; 3) Official Consultations; 4) Consultations; 5) Inclusive Commissions; 6) High-level Problem-solving Workshops; 7) Public Participation; 8) Public Decision-making; and 9) Mass Action. However, in light of new research, the various consultative forums were grouped under a single category that reduced the number of inclusion modalities to seven.

89 ITPI's report *What Makes or Breaks National Dialogues?* compares 17 National Dialogues held between 1990 and 2014, identifying success factors that enable or constrain inclusion in such dialogues that constitute the most broad-based format of direct participation. See Thania Paffenholz, Anne Zachariassen and Cindy Helfer, *What Makes or Breaks National Dialogues?* Geneva: Inclusive Peace & Transition Initiative (The Graduate Institute of International and Development Studies), October 2017.

90 Inclusive Peace & Transition Initiative, *Civil Society in Peace Processes at a Glance*, Briefing Note Based on Results from the 'Civil Society and Peacebuilding' Research Project, Geneva: Inclusive Peace & Transition Initiative (The Graduate Institute of International and Development Studies), April 2016.

conflict situations, give recommendations to decision makers and provide information to human rights and other advocacy groups. Monitoring is a precondition to protection and advocacy and central to democratization as a means for holding governments accountable.

3. **Advocacy for peace and human rights:** Divided into two types: a) Nonpublic or informal advocacy, where civil society actors communicate with the political apparatus in private, bringing issues to the negotiation agenda in peace talks through informal channels; and b) Public communication or public advocacy, when claims and demands are made in public via demonstrations, press releases, petitions or other statements in support of a specific demand.
4. **Socialization in the values of peace and democracy:** Two types of in-group socialization can be distinguished: a) The culture of peace, encompassing socialization activities enhancing democratic attitudes and capacities to handle conflicts peacefully (e.g., conflict resolution training or capacity-building); and b) Socialization towards building or strengthening in-group identity, in particular oppressed or marginalized groups.
5. **Social Cohesion:** There are three types of inter-group social cohesion: a) Relationship-oriented cohesion for peace, bringing together representatives and/or members of (former) conflicting groups to foster attitude change toward the “other.” b) Outcome-oriented cohesion for peace, bringing together key representatives of (former) conflicting groups to go beyond building relationships, attempting to reach a larger peacebuilding objective. c) Outcome-oriented cohesion for business or development work, bringing together the conflicting groups for objectives other than peace, for example business, service user or educational system initiatives that consist of two or more conflicting groups.

#### 6. **Intermediation and Facilitation of dialogue:**

Civil society can play the role as intermediary/facilitator between citizens and the state. In the peacebuilding context, facilitation can also be an important function that takes place between or among groups (not only between state and citizens) and at different levels of society.

7. **Service delivery:** Service delivery or aid projects such as education, health or relief work can create entry points for peacebuilding. The relevant service delivery initiatives in this regard are limited to those that are specifically designed and implemented with these peacebuilding objectives in mind.

The study uses the frameworks in an adaptive way and also goes beyond these frameworks and identifies inclusion along the contextual mechanisms and sectors that take place during implementation in the cases examined.

## 4. Case study sampling and key features

The study qualitatively compares the implementation of 11 agreements that were struck between 1994 and 2014: Afghanistan’s Bonn Agreement (2001); Burundi’s Arusha Agreement (2000); Guatemala’s Peace Accords (1996); Kenya’s Transition Agreements (2008); Liberia’s Comprehensive Peace Agreement (2003); Nepal’s Comprehensive Peace Agreement (2006); Northern Ireland’s Belfast (Good Friday) Agreement (1997); the Philippines’ Comprehensive Agreement on the Bangsamoro (2014); the Solomon Islands’ Townsville Agreement (2000); South Africa’s Interim Constitution (1994); and Tajikistan’s General Agreement on the Establishment of Peace and National Accord (1997).<sup>91</sup> They were selected for the secondary analysis because they contain substantive data on the implementation phase of the peace processes.

The cases were selected as they feature in the IPTI database, making it possible to conduct the research in a relatively short timeframe due to availability of

91 For factual summaries of the 11 conflicts and peace processes, please see Annex 1.

existing data that only needed to be supplemented. The original case studies were sampled according to a purposive sampling methodology, intended to capture a representative picture of a variety of inclusive peace negotiations, implementation processes and political transitions in the post-Cold War era.<sup>92</sup>

The case studies vary significantly with respect to the explored features of implementation processes. Some features could not be examined in all cases due to missing data. The cases also vary widely with regard to their political, socio-economic and international contexts, the intensity of the conflict and types of conflict actors, the types of agreements, the scope of inclusion, the presence and organizational capacity of civil society and political organizations, as well as the extent to which the agreements were implemented and succeeded in ending violent conflict. While the implications of these variations for the inclusiveness of implementation processes cannot be examined in this study, they must be taken into consideration when interpreting the effects that the eight discussed features of the implementation processes may have on inclusion.

The agreements were negotiated in response to fully-fledged civil wars, struggles against oppressive regimes, post-election crises and low-intensity conflicts. The implementation processes took place in socio-economic contexts that ranged from least-developed countries to emerging economies and industrialized nations. The capacity of the respective states to implement institutional reforms and carry out programmes envisaged in peace agreements varied greatly, as the cases comprise fragile and highly capable states as well as regime types that range from closed authoritarian systems to consolidated liberal democracies. The peace processes took place against vastly different geopolitical backgrounds and with a varying degree of international support.

Several agreements and implementation processes were facilitated and guaranteed by the international

community, whereas other settlements were reached and implemented in the absence of international mediation. The negotiations from which the agreements emanated ranged from highly inclusive national dialogues to talks within a small circle of political and military elites, behind closed doors. The 11 cases comprise a variation of agreement types, ranging between comprehensive peace agreements (CPA), political transition agreements and an interim constitution. In some instances, a series of partial agreements were concluded in quick succession, and the implementation processes of multiple agreements and peace processes that involved different signatories overlapped and were intertwined. The scope and content of provisions varied significantly. Some agreements merely aimed at ending hostilities, demobilizing fighters and power-sharing, whilst others comprised extensive constitutional, electoral, social, economic and land reform, peacebuilding programmes, monitoring mechanisms and, in the case of South Africa's interim constitution, the realization of a catalogue human, democratic and economic rights.

The presence of well-organized and capable civil society and political organizations varies greatly among the country cases. Whereas some cases involved broad-based civil society movements and coalitions that were well-equipped to engage in the implementation process, such organizations were almost absent elsewhere. The inclusiveness of the implementation processes also varied significantly: some processes barely went beyond power-sharing among political and military elites and counter-elites, while others saw a concerted effort to enable the participation of civil society and a cross-section of society. Groups that were included alongside the principal conflict actors and negotiating parties in implementation mechanisms were able to influence the functioning and outcome of these programmes and transitional institutions to a varying degree. The extent to which the agreements were implemented and succeeded in transforming conflict and preventing a renewed outbreak of violence varied

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92 See Jason Seawright and John Gerring, "Case Selection Techniques in Case Study Research: A Menu of Qualitative and Quantitative Options," *Political Research Quarterly* 61, no. 2 (1 June 2008): 294–308, doi: 10.1177/1065912907313077 for the rationale behind this sampling approach.

substantially. Some were only partially implemented; others led to far-reaching institutional change and ushered in the consolidation of peace.

Contextual factors, the characteristics of the included actors, and additional features of the peace processes undoubtedly have important ramifications for the

inclusion of actors in implementation processes, which must be considered. These fall beyond the scope of this qualitative comparison, although the case study on the implementation of the Comprehensive Agreement on the Bangsamoro does consider a broader range of factors that may affect inclusion.

## 4. Results

### 1. How does implementation happen?

Our research identified the principal formal implementation sectors and mechanisms as: constitutional and legislative reform mechanisms; interim and power-sharing governments; electoral reforms and elections; peacebuilding and reconciliation programmes; security sector transformation; and monitoring mechanisms. The findings show that the formal implementation of agreements is challenging; agreements are often only partially implemented – if at all – and formal implementation processes are often drawn out over long periods of time. As with the notion of peace processes as a whole, the classical linear notion of implementation is misleading, as the reality is that implementation processes are complex and evolve over time.

Indeed, it is increasingly acknowledged that the classical way of thinking about peace processes is obsolete.<sup>93</sup> The idea of a quasi-linear process, from

armed conflict or peaceful rebellion to formal negotiations and a peace or political agreement, followed by implementation (where a constitution drafting or changing process is often key) and (free and fair) elections ending the process with the transfer of power to a post-conflict government, does not reflect reality.

Researchers and practitioners are increasingly grasping that, on the contrary, peace processes are elements of political transitions that take place over decades, and formal track one peace negotiations and agreement implementation make up just part of the space where the transition takes place. There may not even be a formal agreement at all. There is no straightforward singular alternative model to the formal peace process: focusing only on the local level (e.g., the local turn in peacebuilding), for example, has not brought countrywide change, as the peace and transition have to be negotiated and implemented at all levels. But peace agreements are

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93 Christine Bell and Jan Pospisil, “Navigating Inclusion in Transitions from Conflict: The Formalised Political Unsettling,” *Journal of International Development* 29, no. 5 (2017): 576–93, doi: 10.1002/jid.3283; Anna Jarstad et al., *Peace Agreements in the 1990s: What Are the Outcomes 20 Years Later?*, Umeå Working Papers in Peace and Conflict Studies (Umeå, Sweden: Umeå University, 22 December 2015).



increasingly seen as roadmaps that require flexible implementation rather than strict contracts, as political dynamics and realities change.<sup>94</sup>

Implementation processes are also impacted by (and impact upon) other political processes: formal peace agreement implementation often occurs simultaneously with negotiation processes, or conflict, and in parallel with existing governance structures and processes. As such, implementation often entails an ongoing renegotiation of the agreement or the political change process. In particular, constitution-making processes – one of the most prevalent formal implementation processes – simultaneously involve aspects of what the classical understanding of peace processes would consider negotiation and implementation. Multiple dialogue processes occur, on different topics, at different political and societal levels, and with a variety of actors.

As such, while formal implementation sectors and mechanisms remain a key locus of implementation, it is also important to recognize the importance of other formal spaces beyond the formal negotiation space, such as parliaments or development initiatives, which can also provide a platform for implementation. In Somalia, for example, the New Deal became the framework for the implementation of the peace agreement. The implementation framework thus overtly incorporated aspects of peacebuilding, statebuilding and development. But, in the vast majority of contexts, there is a general disconnect between the spaces for the implementation and realization of development initiatives and the formal mechanisms of peace agreement implementation. Informal spaces for ongoing negotiation of power distribution, such as informal elite deals and mass action, are also extremely important. Actors are thus often involved in parallel processes, which, in some cases, impact on and interact with one another while, in others, they remain discrete, creating opportunities and challenges.

## 2. How does inclusion happen during implementation?

Implementation broadens the scope of opportunity for the inclusion of a broader set of societal and political actors into the process. There is a variety of rationales for inclusion in implementation processes. Greater inclusion is incorporated into implementation processes through provisions in agreements, selection procedures and selection criteria of formal implementation bodies and mechanisms as well as informal arrangements and mobilization.

### 2.1 Rationales

The rationales leading to the inclusion of additional actors in the implementation of agreements, and the rationales informing the choice of inclusion modality, are likely to shape both included actors' space for participation and the influence they can exert on the implementation process. The results suggest that common rationales that lead to the inclusion of a broader range of actors in implementation processes are to legitimize agreements and their implementation and foster public buy-in and ownership; to access expertise; and to meet the demands of guarantors, donors or civil society itself.

Inclusion through a number of the mechanisms and modalities discussed above can engender greater acceptance and legitimacy of an agreement's provisions and greater legitimacy of their implementation, by making them credible and transparent to the wider population, and can generate public buy-in and public ownership of the process. Representative transitional and elected constitutional assemblies can enable the participation of otherwise marginalized political groupings and civic actors, lending greater legitimacy to a process. In Liberia, for instance, the inclusion of the additional civil society and political actors was instrumental in improving the democratic legitimacy of the transitional authority. The discussed cases also show that civil society can lend legitimacy to official truth and reconciliation mechanisms. The cases of Kenya and Liberia demonstrate that inclusive

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94 Lyons, "Successful Peace Implementation."

electoral reform processes seem to be a key factor for trust building and legitimacy.

Referenda are a common means of garnering greater popular legitimacy and greater popular ownership of the implementation of a peace agreement. The referendum in Northern Ireland was deemed vital to gain public buy-in for the implementation of the Agreement's provisions and was of enormous symbolic importance, although the fact that only 51 percent to 57 percent of voters in Unionist areas approved the Agreement diminished the legitimizing effect of the referendum.<sup>95</sup> In Burundi, the referendum accorded greater popular legitimacy to the constitution that had emanated from an elite-driven, highly exclusive and non-transparent drafting process greater popular legitimacy.

Public outreach programmes of implementation bodies are important to foster popular ownership and to acknowledge citizens' voices. In South Africa, public participation initiatives helped to underscore the legitimacy of the democratic process and to create a strong sense of ownership of the final constitution by giving people the opportunity to contribute to its creation.<sup>96</sup> In the Philippines, public participation was seen as important for the legitimacy of the process, and civil society involvement has often ensured the representation of particular population groups in Mindanao – for example, indigenous peoples or evacuees, especially given the Supreme Court decision on the Memorandum of Agreement on Ancestral Domain – and to lend legitimacy to the process and to the MILF, which needs grassroots support, as it claims to speak for the Moro people.

The case of the Philippines also shows that actors can be included to bring greater impartiality to a process. The MILF insisted on the involvement of an international actor as mediator after the failure of the Memorandum of Agreement on Ancestral Domain.

Another rationale for greater inclusion in implementation processes is to access the expertise available among a broader segment of the population, notably academia and civil society. This is particularly the case for specialized undertakings such as monitoring, as the section on monitoring mechanisms outlines below.

The in-depth case study of the Philippines suggests that the chosen means or mode of incorporating greater inclusion relates to the subject area and the “threat” of inclusion to the decision-making powers of the two main negotiating parties. On the whole, commissions were not inclusive, the monitoring commissions' inclusiveness was hard-won and the other commissions with specifically non-MILF or non-government members have had very little influence. While the practice of consultations has been a requirement in a number of cases, the use of the outcomes of these consultations has not. Only the plebiscite was “beyond” the control of the MILF and the government.

## 2.2 Provisions

Provisions for inclusion were examined using primary data, agreements and codes from the PA-X database, and interview data. The cases suggest that inclusive provisions within peace agreements themselves were adhered to for the most part during the implementation phase. Although provisions on the Truth and Reconciliation Commission were ignored in Burundi, inclusive provisions were respected in Afghanistan, Guatemala, Kenya, Liberia, Northern Ireland, the Philippines and South Africa.

Referenda took place where they were provided for and largely spurred civil society participation (notably around mobilization to vote and voter education), but not always – the referendum in Guatemala, for instance, saw poor turnout and a no vote. For those countries where a referendum was closely followed by elections – notably Northern Ireland and Burundi – mobilization faltered as civil society activists turned to party politics and political parties focused

95 IPTI, BP Case Study, Northern Ireland Good Friday and St. Andrews 1998-2006, unpublished.

96 Catherine Barnes and Eldred De Klerk, “South Africa's Multi-Party Constitutional Negotiation Process,” ACCORD 13 (2002): 33.

on electioneering rather than on sustaining the political transition set out in the peace agreement.<sup>97</sup>

In many cases, formal mechanisms went further regarding inclusion than the agreement stipulated. Sometimes, this was because of subsequent more detailed legislation, as demonstrated by the establishment of gender quotas for commissions in Liberia, the Executive Order on the composition of the Expanded Bangsamoro Transition Commission in the Philippines, and the consultation processes in drawing up the constitution in South Africa. In Nepal and the Solomon Islands, the agreement contained very little on inclusion, and yet civil society and women were included within mechanisms referred to in the agreement. The few discernable manifestations of an inclusive process in Tajikistan did not relate to the agreement at all. Elsewhere, formal implementing bodies built inclusive processes into their work, notably the Constitutional Commission in Afghanistan and the Policing (Patten) Commission in Northern Ireland. In Northern Ireland, the few inclusive provisions in the agreement were implemented, but arguably the most influential forms of inclusion, the work of the Patten Commission, were not directly stipulated in the agreement. The Commission was expected to be independent and to “consult widely, including with non-governmental expert organizations, and through such focus groups as they consider it appropriate.”<sup>98</sup> The Commission interpreted this mandate in a broadly inclusive sense: it included two women (out of eight commissioners); its consultation process was wide-ranging and accessible and accessed by a large number of individuals and civil society organizations; and its work proved influential. Additional inclusive components can thus be introduced from a number of sources: the principle parties of the agreement (Philippines), a transitional administration (selecting the electoral commission in

Burundi) or the body itself (the Patten Commission in Northern Ireland).

Thus, while ensuring that there are provisions on inclusive implementation in agreements may not be a necessary condition for inclusion during implementation, the cases studied indicate that provisions for inclusive implementation are highly conducive to ensuring inclusion during implementation, as such measures tend to be adhered to, and can be built on, thus, serving as a catalyst for further inclusion. Language on inclusion provides a strong degree of legitimation for those actors demanding inclusion. Language in the agreement also supports strong secondary implementing legislation, and specific measures and powers (on composition, inclusive activities and decision-making), which are more likely to be found in such secondary legislation, appear to be more effective than vague commitments.

Indeed, the research underlined the importance of clarity of provisions, as non-specific provisions and mandates with vague stipulations prompt disputes over who is included or allow elites to evade them. In certain cases, such as Afghanistan, provisions for inclusion did not specify how inclusion would be achieved. Decision-making at the Emergency Loya Jirga did not prove inclusive<sup>99</sup> and criticisms of the Interim Administration as not representative, especially of Pashtuns, were not addressed by the ELJ in the Transitional Administration.<sup>100</sup> This point is well illustrated by provisions for civil society inclusion in monitoring. When a role for civil society in monitoring was spelled out in the peace agreement or accompanying document in vague or general language, civil society inclusion either was not implemented or was implemented in an ineffective way. In contrast, where the agreement (or

97 Inclusive Peace & Transition Initiative, *Women in Peace & Transition Processes: Northern Ireland (1996–1998)*, Case Study Series, Geneva: Inclusive Peace & Transition Initiative (The Graduate Institute of International and Development Studies), December 2018, <https://www.inclusivepeace.org/sites/default/files/IPTI-Case-Study-Northern-Ireland-1996%E2%80%931998.pdf>; Jane Linekar email exchange with Catherine Mabobori, December 2018.

98 The Belfast (Good Friday) Agreement, 10 April 1998, Annex A.

99 ICG, *The Afghan Transitional Administration: Prospects and Perils*, Afghanistan Briefing (Kabul/Brussels: International Crisis Group, 30 July 2002), <https://www.crisisgroup.org/asia/south-asia/afghanistan/afghan-transitional-administration-prospects-and-perils>.

100 Thomas H. Johnson, “The Loya Jirga, Ethnic Rivalries, and Future Afghan Stability,” *Strategic Insights* 1, no. 6 (2002): 1–8.

follow-up or accompanying documents) specify in which bodies and how civil society will be included in monitoring (for example, reserved seats for civil society in monitoring bodies), this inclusion is more likely to occur and be effective.<sup>101</sup>

There are, however, also examples to suggest that even vague provisions can help and are more conducive to some degree of inclusion than a lack of provisions. In the Philippines, the majority of provisions on inclusion were vague (e.g., regarding consultations); however, even these helped when the Supreme Court decided against the Memorandum of Agreement on Ancestral Domain (it referred to an Executive Order on the peace process that supported consultations).<sup>102</sup>

However, the broad adherence to provisions for inclusion did not guarantee meaningful inclusion, as the research demonstrates how provisions on inclusion can be adhered to but their outcomes ignored, or how provisions can be evaded through half-hearted implementation.

Even the implementation of relatively detailed inclusive provisions did not necessarily lead to influence. For example, the detailed provisions on the truth and reconciliation commissions in Kenya and Liberia led to inclusive processes, but their recommendations were not implemented, and power-holding elites managed to stifle their influence. In the Philippines, detailed provisions regarding the make-up of the monitoring bodies enabled inclusion and yet decision-making power remained with the negotiating parties.

While ensuring there are provisions on inclusive implementation in agreements may not be a necessary condition for inclusion during implementation, the cases studied indicate that provisions for inclusive implementation are conducive to ensuring inclusion during implementation due to their

importance in legitimizing the presence and role of civil society actors and giving weight to their voice in implementation mechanisms. The cases suggest that a push during negotiations for specific provisions on inclusion during implementation could constitute a driver for greater inclusion both in terms of the specifics of the provisions and in building a broader inclusive process. Precise wording of provisions is crucial, as a lack of clarity of provisions for inclusion and implementation can enable key stakeholders – particularly elites – to evade them. Nevertheless, it is not sufficient to rely on provisions in agreements to enable inclusive implementation, as while clearly-worded provisions for inclusion might be largely adhered to, they do not necessarily guarantee that this inclusion is meaningful or effective.

### 2.3 Selection

The selection of included actors determines whether they will be representative of their ostensible constituencies, whether they will be independent of the other factions in a negotiation or implementation process (government, political parties, armed groups, etc.), whether they will be suitable for the role assigned and whether they will be perceived as legitimate. The study examined *de jure* and *de facto* selection criteria and procedures. Selection is often linked to provisions in agreements where many official selection criteria and procedures in the form of quotas for key implementation body and governance bodies or power-sharing arrangements are pre-defined.

Formal political power-sharing provisions were an important component of six of the peace agreements of the cases studied (Afghanistan, Burundi, Kenya, Liberia, Northern Ireland and South Africa). In Afghanistan, for instance, selection to the Interim Administration is specified in the agreement and was made “with due regard to the ethnic, geographic and religious composition of Afghanistan and to the importance of the participation of women.”<sup>103</sup>

101 Ross, *Civil Society's Role in Monitoring and Verifying Peace Agreements: Seven Lessons from International Experiences*.

102 Supreme Court of the Philippines Decision, G.R. No. 183752, 14 October 2008.

103 Bonn Agreement, Page 4, III. Interim Administration, A. Composition, 3; IPTI, BP case study, Afghanistan Bonn Negotiations and Political Transition 2001–2005, unpublished.

Quotas for key implementation bodies were also present in many cases. The five cases of TRCs (Burundi, Guatemala, Kenya, Liberia and South Africa) demonstrate the importance of a transparent and, ideally, consultative selection process to ensure that the integrity of the commissioners is broadly accepted, which is a prerequisite for commissions to successfully lead truth and reconciliation processes. Members of Burundi's TRC comprised eminent women and men of several faiths and denominations from different regions, but the government's control over the selection and appointment of commissioners may have discouraged victims and witnesses to testify and was feared to result in selective investigations of human rights crimes.<sup>104</sup>

Quotas across all major commissions in Kenya and Liberia were also pre-defined and entail mainly ethnic, religious, gender and geographic aspects but also sector and relevant expertise. The data also suggest that, besides official quotas and power-sharing formulas specified in agreements, a range of unofficial socio-demographic criteria, including ethnicity, religion class, gender and kinship, comes into play as well as political factors, such as political orientation and patronage networks. In the Philippines, the strength of family networks in politics meant that there were also some people outside of the two parties who could influence inclusion, based on their strong informal ties to the signatory parties.<sup>105</sup>

In many cases, however, as the discussion below on implementation mechanisms and sectors bears out, technical expertise regarding reforms was decisive for civil society actors' inclusion in steering bodies and their impact. In terms of Security Sector Reform (SSR), for example, only a small number of CSOs had the necessary technical expertise to meaningfully contribute to the development of security policies.

Quotas in the form of an "inclusion formula" that have been embedded into all governance and everyday institutions of the long-term post-agreement period have been grounded in diversity criteria reflecting the composition of the country. South Africa witnessed the inclusion of affirmative action to counteract the historical injustices of the legacy of apartheid; in Nepal, an inclusion formula putting emphasis on cast, gender, religion and geography is guiding the composition of everyday institutions in governance, development nationally and locally and at the formal and informal levels.

Yet selection procedures and criteria can be manipulated by gatekeepers (particularly elites) to ensure that they retain control of the process. For example, then-president of Afghanistan Hamid Karzai had significant influence over the selection of participants in the Constitutional Loya Jirga in Afghanistan (CLJ). A committee consisting of nine members, all directly appointed by President Karzai, wrote the initial draft of the constitution in 2002. President Karzai also directly appointed a 35-member Constitutional Review Commission that conducted extensive consultations throughout the country with the aim of refining and finalizing the constitutional draft, which was then presented for ratification to the CLJ in 2004. Many observers concluded that President Karzai used his influence over the final text to alter the outcomes of the consultation process, changing the proposed decentralized character of the state into a centralized one, which contributed significantly to the deterioration of the security situation in the country.<sup>106</sup> In the Philippines, the conflict parties' control over selection has constrained the scope of inclusion. Candidates to the formal implementation bodies have to be approved by the government and the MILF, and many are nominated by one party or the other (see detailed case study in this report), which has allowed the main conflict parties to

104 Stef Vandeginste, "Burundi's Truth and Reconciliation Commission: How to Shed Light on the Past While Standing in the Dark Shadow of Politics?", *International Journal of Transitional Justice* 6, no. 2 (1 July 2012): 364, doi: <https://doi.org/10.1093/ijtj/ijts009>; The Truth and Reconciliation Commission of Burundi. "Presentation." Establishment of the Truth and Reconciliation Commission. Accessed 21 November 2018. <https://civrburundi.bi/en/presentation/>.

105 Michael Aeby interview with Paul Adolfo, 27 September 2018.

106 BP case study Afghanistan.



control the agenda and representation in the process.<sup>107</sup>

### 3. Inclusion in formal implementation sectors and mechanisms

The implementation of comprehensive peace agreements and global political agreements involves the establishment of a variety of transitional mechanisms and reform processes. These processes and mechanisms include interim governments, technocratic governments and power-sharing executives. Constitution-making processes and legislative reform, which may be conducted through national dialogues, are frequently a key element of implementation, as are implementation monitoring mechanisms. Electoral reforms and elections, and peacebuilding and reconciliation programmes are often undertaken. In many cases, security sector transformation (DDR and SSR) is an essential component of both post-war and democratic transitions. The sustainability of peace often depends on economic reconstruction, land reform and social reform processes.

The section below examines the most common implementation mechanisms and sectors and explores the extent to which additional actors can participate and influence implementation processes. The following section looks at inclusion during implementation through the prism of the inclusion modalities (outlined above in the concepts section). Despite a degree of overlap between these respective sections, we find the different/distinct angles of analysis of inclusion during implementation useful to full examine the ways in which actors beyond the main conflict parties may participate in and influence peace and political transition processes, through both formal and informal channels.

#### 3.1 Constitution-making processes

Constitutional reform programmes that are carried out as part of peace processes are considered a rare and crucial opportunity to reconfigure the polity, alter the distribution of power in society and establish the parameters to enable a sustainable political settlement. The crafting of a new constitution is often the linchpin of complex transition processes that comprise reforms in a range of sectors and are guided by constitutional provisions. Constitutional reform processes may take place in the negotiation phase, whereby the constitution serves as a peace agreement, as in the case of South Africa.<sup>108</sup> However, most often, constitution-making or extensive legislative reform takes place as result of an agreement, as seen in Afghanistan, Burundi, Guatemala, Kenya, Nepal, the Philippines and also in South Africa, where a Constitutional Assembly elaborated the permanent final constitution.

In all seven cases, appointed transitional assemblies and elected parliaments played a central role in the constitution-making process and inclusion of additional political groupings or civil society took place. However, their representation did not necessarily translate into greater influence on the content of the constitution, which, in several cases, was largely determined by a small circle of political and military elites behind closed doors and presented to the assemblies as a *fait accompli*. For example, in Afghanistan, despite the broad-based representation of Afghanistan's Constitutional Loya Jirga and a countrywide consultation process, the constitution-making process and its outcomes were dominated by President Karzai and his powerful warlord allies, who could veto the results.<sup>109</sup> CSOs were represented in Burundi's transitional National Assembly, but played a marginal role, as the process was controlled by the major parties, the Front for Democracy in Burundi (FRODEBU), the National Council for the Defense of Democracy-Forces for the

107 Statement at Expert Workshop.

108 Christine Bell and Kimana Zulueta-Fülscher, *Sequencing Peace Agreements and Constitutions in the Political Settlement Process*, Policy Paper No. 13 (Stockholm: International Institute for Democracy and Electoral Assistance, 2016), 9–12.

109 Michele Brandt et al., *Constitution-Making and Reform: Options for the Process*, Geneva: Interpeace, November 2011, 330, <https://constitutionmakingforpeace.org/wp-content/themes/cmp/assets/handbooks/Constitution-Making-Handbook-English.pdf>.

Defense of Democracy (CNDD-FDD) and the Union for National Progress (UPRONA).<sup>110</sup> Nepal's elected Constituent Assembly – the most representative and inclusive in Asia – took nine years to produce a constitution and the commissions that drafted the interim and final constitution were controlled by the major political parties.<sup>111</sup> Similarly, the Bangsamoro Organic Law in the Philippines that was approved by Congress and the President was drafted by a commission exclusively representing the main negotiation parties: the government and MILF.<sup>112</sup> In Guatemala, clientelistic parliamentary parties added an additional 37 reforms (many of which were unrelated to the peace process) to the constitutional reform package for self-interested purposes, illustrating the risk that a painstakingly negotiated agreement may fall prey to politicking in a parliamentary process.<sup>113</sup>

In Kenya, in order to avoid political polarization in parliament, the mediators entrusted an independent panel of technical experts with the drafting of the constitution, while parliament merely debated the draft constitution. The expert panel enriched the drafting processes with countrywide consultations as well as earlier civil society work on reforms. The draft constitution was subsequently put to a referendum and was overwhelmingly accepted.<sup>114</sup> In South Africa, the broadly representative, democratically elected parliament enabled the inclusion of political and ethnic minorities in all decision-making organs and substantive civil society input thanks to the dominant party's commitment to civic politics and inclusion as a guiding principle. It is, however, important to note that the fundamental institutions and principles of the final constitution had already been determined in the interim constitution, of which the most critical

provisions, although arising from national dialogue conferences, had been negotiated in bilateral high-level talks between the ANC and NP.<sup>115</sup>

The discussed cases thus illustrate that broadly representative transitional and elected constitutional assemblies can prove critical in enabling the participation of otherwise marginalized political groupings and civic actors. However, assemblies are not sufficient to ensure an inclusive process and outcomes, as the substance of a constitution is likely to be determined in different, often exclusive forums and preceding talks.

Broad representation of groups and interests in drafting committees therefore seems critical to ensure their influence on the content. The constitution-making processes studied featured efforts to enable public participation that were of great (often symbolic) importance in particular to help increase popular ownership of constitutions that arose more often than not from exclusive drafting processes. Afghanistan's constitutional reform involved extensive public outreach in which 170,000 people, including women and youth, were consulted and 50,000 written submissions received, but its impact on the constitution was limited, in part due to the short timeframe and the government's control over the drafting bodies.<sup>116</sup> Kenya's constitutional reform, in contrast to previous attempts, only involved limited consultations with key stakeholders, whereas Nepal's Constitutional Assembly enabled a greater level of public participation through questionnaires, but certain key demands (for federalism, more direct democracy, and tackling discrimination of marginalized groups) were not fully accommodated in the

110 Michael Aeby interview with Felix Mbutho, 3 December 2018; Arusha Accord, Protocol 1, Art 8.2.

111 Brandt et al., *Constitution-Making and Reform: Options for the Process*, 341.

112 Sheila Crisostomo, "Local, International Observers Welcome in Bangsamoro Plebiscite," *The Philippine Star*, 7 October 2018, <https://www.philstar.com/nation/2018/10/07/1857856/local-international-observers-welcome-bangsamoro-plebiscite>.

113 Roddy Brett and Antonio Delgado, *The Role of Constitution-Building Processes in Democratization: Case Study: Guatemala* (Stockholm: International Institute for Democracy and Electoral Assistance, 2005), 22.

114 Michael Aeby interview with Nic Cheeseman, 12 September 2018; Michael Aeby interview with Muthoni Wanyeki, 25 September 2018; Michael Aeby interview with Gabrielle Lynch, 13 September 2018.

115 Michael Aeby interview with Sandy Africa, 25 October 2018; Michael Aeby interview with Sheila Meintjes, 6 August 2018; Barnes and De Klerk, "South Africa's Multi-Party Constitutional Negotiation Process," 32.

116 Ebrahim Afsah and Alexandra Hilal Guhr, "Afghanistan: Building a State to Keep the Peace," *Max Planck Yearbook of United Nations Law*, 2005 (9), (Koninklijke Brill N.V.: The Netherlands, 2005), 427; Brandt et al., *Constitution-Making and Reform: Options for the Process*, 331.

2015 constitution.<sup>117</sup> In Burundi and Guatemala, a level of public engagement may have been possible through budding media systems and civic forums, but the involvement of the public was limited to referenda that are further discussed below.<sup>118</sup> South Africa's Constitutional Assembly sought to enable public participation by launching an extensive media campaign, holding public consultation meetings that were attended by 95,000 people, soliciting 1.7 million written submissions and receiving a further 250,000 submissions focusing on specific provisions of a first draft.<sup>119</sup>

These outreach programmes went to great lengths in creating public awareness and fostering greater public buy-in. Yet the practical limitations of inclusive politics in the context of a fragile implementation process are apparent. Collating and filtering vast amounts of gathered information present a tremendous technical challenge, and designing a carefully calibrated constitution for a divided society is an extremely demanding and sensitive technical process that requires a considerable amount of legal and political expertise.

Even more significantly, the cases clearly illustrate that, while more inclusive processes can generate significant input through outreach programmes and public participation, political elites often retain control over the drafting process and decision-making organs and thus over the content of constitutions.

### 3.2 Power-sharing/interim governments

Power-sharing governments – be they interim power-sharing governments that take office during an interregnum in which essential reforms and elections can take place, or permanent power-sharing systems

of government – are a common feature of peace agreements and their implementation. Provisions for political power-sharing occurred in Afghanistan, Burundi, Kenya, Liberia, Northern Ireland and South Africa, while the deals in the Philippines and Solomon Islands comprised provisions for territorial autonomy that can be part of complex power-sharing systems.<sup>120</sup> However, in 10 of the 11 cases, power-sharing governments only included principal conflict parties. This suggests that, overall, power-sharing deals are exclusively struck between the political and military elites of the major conflict parties that hold coercive power and that unity governments rarely comprise additional, less powerful groups.<sup>121, 122</sup>

The one exception was Liberia. Liberia's CPA required the interim executive and assembly to include a range of political parties and CSOs and reflect a gender balance as the international sponsors of the peace process would subject the government to greater accountability. The power-sharing pact reserved cabinet posts for civil society activists, but they only had limited influence on policymaking, given the chaotic workings of the interim executive, which was mired in corruption (many of the included parties, however, were fly-by parties founded by elites close to the Taylor regime without a support base).

The Liberian example suggests that the inclusion of CSOs into interim power-sharing arrangements can have differing effects, illustrated by the divisions in civil society over the inclusion of civil society activists in government. On the one hand, civil society actors assuming political office ran the risk of undermining their traditional watchdog role and subjecting themselves to accusations of being

117 Brandt et al., *Constitution-Making and Reform: Options for the Process*, 341-2; Cheeseman interview; Wanyeki interview; Lynch interview; ICG, Nepal's Divisive New Constitution: An Existential Crisis, Asia Report No. 276 (Kathmandu/Brussels: International Crisis Group, 4 April 2016), <https://www.crisisgroup.org/asia/south-asia/nepal/nepal's-divisive-new-constitution-existential-crisis>, 1.

118 Mbutho interview; Brett and Delgado, *The Role of Constitution-Building Processes in Democratization: Case Study: Guatemala*, 24-7.

119 Barnes and De Klerk, "South Africa's Multi-Party Constitutional Negotiation Process," 32.

120 See PA-X Database Codings: "PA-X: Peace Agreements Database," *Peaceagreements.org*, n.d., <https://www.peaceagreements.org/>.

121 Sriram, *Peace as Governance*; Anna K. Jarstad, "Power Sharing: Former Enemies in Joint Government," in *From War to Democracy: Dilemmas of Peacebuilding*, eds. Anna K. Jarstad and Timothy D. Sisk (Cambridge University Press, 2008), 125; Mehler, "Peace and Power Sharing in Africa," 453-73.

122 Cheeseman interview; Mbutho interview; Michael Aeby interview with Franzisca Zanker, 25 October 2018; Michael Aeby interview with Roger Southall, 2 October 2018; Michael Aeby interview with Tim Epkenhans, 27 September 2018.

co-opted by the political establishment.<sup>123</sup> On the other hand, the inclusion of additional actors alongside the major violence-producers sent a signal that the latter would not be rewarded and that grievances over exclusion would be addressed. The Governance Reform Commission that outlasted the transition and comprised CSOs made a significant impact on new legislation restructuring the polity.<sup>124</sup> While it is patently impossible to generalize from a single case, the Liberia case demonstrates that the broadening of elite power-sharing deals is a sensitive affair and very context-specific. The risk that civil society might lose its independence is high, but inclusive follow-up mechanisms seem to be very important. This suggests that the combination of elite power-sharing deals with broader follow-up and monitoring mechanisms might prove effective in paving the way for a sustainable political transition.

### 3.3 Elections and electoral reforms

Elections and electoral reforms are a common feature of contemporary peace agreements and often mark the end of a transition period, although the timing of elections is a contested issue among researchers and practitioners.<sup>125</sup> Transitional elections after armed conflict are meant to advance sometimes

contradictory goals relating to democratization, legitimate governance, peacebuilding and the end of international interventions. Transitional elections are supposed to provide an incentive to sign an agreement and to constitute a first step towards democratic consolidation and the institutionalization of the new rules of the political order. The transfer of power to an elected government is often a condition for donor assistance and a cut-off point for sponsors of peace processes who are wary of open-ended commitments.<sup>126</sup> However, electoral competition in the aftermath of violent conflict constitutes a serious risk that may derail a peace process.<sup>127</sup> Elections consume enormous resources and are often held to satisfy the international community regardless of their effects on the conflict dynamics.<sup>128</sup> Credible elections depend on the creation of a safe environment and the opening of democratic space during the transition period. In addition, comprehensive reforms to the institutional and legislative framework governing elections are often required.<sup>129</sup>

Transitional elections or electoral reforms to be implemented during the transition period were envisaged in all of the studied transitions with the exception of the Solomon Islands.<sup>130</sup> While civil

123 Zanker interview; Debey Sayndee, "The Role of Civil Society in Post-Conflict Peacebuilding in Liberia: A Policy Approach," In *War to Peace Transition: Conflict Intervention and Peacebuilding in Liberia*, edited by Kenneth Omeje, 2009, 183; Franzisca Zanker, "Monrovia Is Not Liberia: A Rocky Path towards Decentralisation," *Conflict Trends*, no. 3 (2014): 10–16.

124 Zanker, "Monrovia Is Not Liberia"; Zanker interview; see also Tull and Mehler, "The Hidden Costs of Power-Sharing."

125 Lyons, "The Role of Postsettlement Elections," 216; Sid Noel, "Introduction," in *From Power Sharing to Democracy: Post-Conflict Institutions in Ethnically Divided Societies*, ed. Sidney John Roderick Noel (Montreal: McGill-Queen's Press - MQUP, 2005), x; Reilly, "Post-War Elections: Uncertain Turning Points of Transition," 152.

126 Kumar, *Postconflict Elections, Democratization, and International Assistance*, 6–7; Lyons, "The Role of Postsettlement Elections," 217–8; Reilly, "Post-War Elections: Uncertain Turning Points of Transition," 152.

127 Jarstad, "The Prevalence of Power-Sharing," 41; Reilly, "Post-War Elections: Uncertain Turning Points of Transition," 154.

128 Guttieri and Piombo, "Issues and Debates in Transitional Rule," 21; Kumar and Ottaway, "General Conclusions and Priorities for Policy Research," 232; Reilly, "Post-War Elections: Uncertain Turning Points of Transition," 156; Sriram, *Peace as Governance*, 35.

129 Ursula E. Daxecker, "The Cost of Exposing Cheating: International Election Monitoring, Fraud, and Post-Election Violence in Africa," *Journal of Peace Research* 49, no. 4 (1 July 2012): 505–7, doi: 10.1177/0022343312445649; Krishna Kumar, "After the Elections: Consequences for Democratization," in *Postconflict Elections, Democratization, and International Assistance*, ed. Krishna Kumar (Boulder: Lynne Rienner Publishers, 1998), 218; Kumar, *Postconflict Elections, Democratization, and International Assistance*, 8; Cyril I. Obi, "International Election Observer Missions and the Promotion of Democracy: Some Lessons from Nigeria's 2007 Elections," *Politikon* 35, no. 1 (1 April 2008): 71, doi: 10.1080/02589340802113089; Reilly, "Post-War Elections: Uncertain Turning Points of Transition," 169; Andrew Reynolds, "Electoral Arrangements in Systems of Complex Power-Sharing," in *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, eds. Marc Weller, Barbara Metzger, and Niall Johnson (Leiden and Boston: BRILL, 2008), 452–3; Andrew Reynolds and Ben Reilly, *The International IDEA Handbook of Electoral System Design* (Stockholm: International Institute for Democracy and Electoral Assistance, 1997), 115–8.

130 Bonn Agreement, I. The Interim Authority, 4; Arusha Agreement, Protocol II, Chapter II: Article 20.; Agreement on Constitutional Reforms and the Electoral Regime (Stockholm Agreement); National Accord and Reconciliation Act, Preamble; Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties Accra, 18 August 2003, Part 8, Article XVIII; Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist) 22 November 2006, Preamble; Good Friday Agreement, Strand One, Democratic Institutions in Northern Ireland; Interim Constitution of South Africa, Chapter 15, Section 249.



society and members of the public participated in the electoral processes through a variety of activities including voter education, registration drives, campaigning and election monitoring, the study focuses on inclusion in electoral reform processes.<sup>131</sup> Electoral reforms in the implementation period that involved substantive civil society and public participation took place in Liberia and Kenya.

In Liberia, both UNMIL, which provided election support, and the National Elections Commission (NEC), whose members were drawn from civil society, recognized the risk of conflict escalation emanating from the elections. The NEC therefore opted for an inclusive electoral reform process to build trust in the electoral institutions and the integrity of the vote. As such, the NEC ensured a transparent recruitment process, consulted a wide range of stakeholders when drafting new electoral laws, and set up a Consultative Committee to diffuse suspicion about the electoral process and liaise with parties, whom it required to meet a gender quota.<sup>132</sup> Thanks in large part to the NEC's consultative approach and professionalism, the NEC's work and the transitional elections – which passed peacefully despite taking place in a volatile context – were generally deemed credible and transparent by all major stakeholders.<sup>133</sup> The NEC's partnership with CSOs was also strengthened. In Kenya, the electoral reform process allowed for civil society to participate in the commissions of inquiry that recommended institutional changes and the

development of a new electoral framework as part of the constitutional reform. Civil society was also involved in the crafting of secondary legislation concerning elections by the interim electoral commission, which convened a conference on the Electoral Reform Agenda, and the new permanent IIEC, which was widely credited for restoring confidence in the electoral authorities ahead of the 2013 elections.<sup>134</sup> As in the case of Liberia, the consultative approach and efforts to bring civil society actors on board helped to build trust in the institutions overseeing the high-stakes transitional elections and thereby mitigate the risk of renewed violent conflict. The elections were among the most peaceful in Kenyan post-colonial history.

The two cases illustrate that inclusive electoral reform processes seem to be a key factor for trust-building and legitimacy and thus have the potential to mitigate the risk of electoral violence.

### 3.4 Truth and reconciliation mechanisms

Official transitional justice mechanisms are a common feature of implementation processes.

While all 11 country cases involved an array of unofficial civil-society-driven peacebuilding programmes, six of the examined implementation processes – Burundi, Guatemala, Liberia, Kenya, the Philippines and South Africa – involved official truth and reconciliation mechanisms. The TRC in South

131 Lynch interview; Jane Linekar interview with Subindra Bogati, 4 October 2018; Sandy Africa interview.

132 Michael Scharff, "A Path to Peace: Liberia's First Post-War Elections, 2004-2005," (Innovations for Successful Societies Program, Princeton University, 2011), 1-6, <https://successfultsocieties.princeton.edu/publications/path-peace-liberias-first-post-war-elections-2004-2005>; Mathew Elavanalathoduka et al., "Liberia Gets Set for Elections," *UNMIL FOCUS* 1, no. 3 (May 2005): 4-15; National Elections Commission, Republic of Nigeria, "Elections 2005," <http://www.necliberia.org/results/>; Michael Aeby interview with Sibel Gürlér, 28 September 2018; Susan L. Palmer et al., *Report of an Electoral Assessment and Planning Mission to Liberia: April 4-25, 2004*, Extending the Reach of Democracy (Washington, DC: International Foundation for Election Systems (IFES), 6 May 2004), 31-3, [https://www.ifes.org/sites/default/files/ifes\\_liberia\\_mission\\_report\\_may\\_04.pdf](https://www.ifes.org/sites/default/files/ifes_liberia_mission_report_may_04.pdf).

133 Scharff, "A Path to Peace," 12; ICG, *Liberia's Elections: Necessary But Not Sufficient*, Africa Report No. 98 (Brussels: International Crisis Group, 7 September 2005), 1-3, <https://d2071andvip0wj.cloudfront.net/98-liberia-s-elections-necessary-but-not-sufficient.pdf>; National Democratic Institute, *Observing Presidential and Legislative Elections in Liberia: Final Report on the International Observation Delegations* (Washington, DC and Atlanta: National Democratic Institute and The Carter Center, 2005), 6-7, [https://www.ndi.org/sites/default/files/2119\\_lr\\_finalreport\\_110105\\_0.pdf](https://www.ndi.org/sites/default/files/2119_lr_finalreport_110105_0.pdf).

134 Lynch interview; Mathieu Mérino, "Kenya: The Role of the EMB in Electoral Reform," *Ace Project: The Electoral Knowledge Network*, 2012, <http://aceproject.org/ace-en/topics/lf/annex/lfc/kenya-the-role-of-the-emb-in-electoral-reform>; ICG, Kenya's 2013 Elections, Africa Report No. 197 (Brussels: International Crisis Group, 17 January 2013), 20, <https://d2071andvip0wj.cloudfront.net/kenyas-2013-elections.pdf>; The Carter Center, *Observing Kenya's March 2013 National Elections: Final Report* (Atlanta: The Carter Center, 2013), 42, [https://www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/kenya-final-101613.pdf](https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/kenya-final-101613.pdf); Godfrey Musila, "Legal Reforms Aim to Prevent Electoral Violence in Kenya," *Africacenter*, 26 July 2017, <https://africacenter.org/spotlight/legal-reforms-aim-prevent-electoral-violence-kenya/>; Duncan Okubasu, "Lessons for Sub-Saharan Africa from Kenya on Electoral Reforms: The Role and Limitations of the Law," *Election Law Journal: Rules, Politics, and Policy* 16, no. 2 (24 May 2017): 306-15, doi: 10.1089/elj.2016.0415.



Africa became a model, inspiring most subsequent mechanisms globally.<sup>135</sup>

In Guatemala, a commission for the Historical Clarification of Human Rights Violations was set up as a result of lobbying by CSOs and faith-based organizations. Its membership comprised civic rights activists; its structures largely consisted of former international and Guatemalan UN staff. The Catholic Church launched a parallel process rather than being formally embedded in the official mechanism.<sup>136</sup>

Kenya's TJRC and commission of inquiry not only benefited from information received from CSOs, but the TJRC's members and staff comprised people with a civil society background who were proposed by CSOs.<sup>137</sup> While prominent human rights NGOs disengaged from the TJRC process over the appointment of its chair and fostered public scepticism about its work, victims' organizations remained heavily involved throughout the process. The TJRC also partnered with peacebuilding organizations for its outreach activities.<sup>138</sup> NGOs that were contracted to draft parts of the TJRC's final report had a significant impact on the content of the report and the reparations framework.<sup>139</sup> However, the recommendations made in volumes of TJRC reports have so far – 10 years after the agreement – not been implemented due to lack of political will. In Liberia, the TRC was included in the CPA on the demand of civil society, who acted as custodians of the process, and participated in the conceptualization, recruitment, training, outreach and truth-seeking activities of the TRC.<sup>140</sup>

South Africa's TRC was initiated and headed by prominent civil society and religious leaders, but the drafting of its act was not particularly consultative. The TRC greatly benefited from a statement-taking partnership with CSOs that were heavily involved in the process and massively increased the reach of the TRC's truth-seeking activities in rural areas.<sup>141</sup> The TRC moreover complemented its hearings based on the input it received from women's organizations.<sup>142</sup> The TJRC that was set up via the Framework Agreement on the Bangsamoro, meanwhile, consisted exclusively of government and MILF representatives and international experts.<sup>143</sup> The TRC in Burundi only started working 14 years after the accord. This was due to a lack of political will on the part of government and differences with the international sponsors over the design of the TRC. Apart from including religious leaders, the Burundian TRC saw little civil society engagement.

These five cases demonstrate that, while truth-seeking is extremely politically sensitive, faces resistance by authorities and often takes place in contexts with limited democratic space, civil society can nonetheless impact on the outcome of truth-seeking processes, even in spite of official transitional justice and peacebuilding mechanisms only permitting for minimal civil society involvement. CSOs were instrumental in lobbying for the inclusion of truth and reconciliation mechanisms in peace agreements, developing acts for their establishment and conceptualizing the design of truth and reconciliation processes. Civil society could also play an important role

135 Meintjes interview; IPTI, BP Case Study, Philippines-MILF Peace Process 2010-16, unpublished.

136 Inclusive Peace & Transition Initiative, *Women in Peace and Transition Processes: Guatemala (1994–1999)*, Case Study Series, Geneva: Inclusive Peace & Transition Initiative (The Graduate Institute of International and Development Studies), May 2017, footnotes 15 and 18, <https://www.inclusivepeace.org/sites/default/files/IPTI-Case-Study-Women-Guatemala-1994-1999.pdf>.

137 Inclusive Peace & Transition Initiative, *Women in Peace and Transition Processes: Kenya (2008–2013)*, Case Study Series, Geneva: Inclusive Peace & Transition Initiative (The Graduate Institute of International and Development Studies), August 2016, footnote 19, <https://www.inclusivepeace.org/sites/default/files/IPTI-Case-Study-Women-Kenya-2008-2013.pdf>; Wanyeki interview.

138 Inclusive Peace & Transition Initiative, *Women in Peace and Transition Processes: Kenya (2008–2013)*, Case Study Series, Geneva: Inclusive Peace & Transition Initiative (The Graduate Institute of International and Development Studies), August 2016, <https://www.inclusivepeace.org/content/women-peace-and-transition-processes-kenya-2008–2013>; Lynch interview; Wanyeki interview.

139 Lynch interview.

140 Zanker interview.

141 Truth and Reconciliation Commission, *Volume One: Truth and Reconciliation Commission of South Africa Report* (Cape Town: Truth and Reconciliation Commission, 1998), 135–65.

142 Meintjes interview.

143 Terms of Reference for the Transitional Justice and Reconciliation Commission in the Philippines – Mindanao, 22 March 2014, <https://www.peaceagreements.org/view/1347>.

in fielding, nominating and vetting commissioners and staff that could ensure the integrity and credibility of the process. Besides deploying members to the structures of peace and reconciliation mechanisms, CSOs could partner with the official mechanisms to decisively enhance their truth-seeking activities, contribute information they gathered independently to final reports and even draft recommendations. This points to opportunities to leverage independent civil society peace and reconciliation programmes that often start long before an official mechanism is established to enhance the reach and information available to official truth, reconciliation and peace-building mechanisms. The discussed cases also show that civil society can not only lend legitimacy to official truth and reconciliation mechanisms but also duly or unduly undermine public confidence in the process.

Public participation was, evidently, a fundamental part and objective of the truth-seeking, reconciliation and peacebuilding mechanisms, but the extent to which their design permitted the public to participate differed substantially across the cases. Burundi's TRC was designed with little civil society and public involvement and, despite the country's long history of mass violence, only envisaged to hear 2,000 cases and to investigate 50 cases of serious human rights abuses.<sup>144</sup> Guatemala's Commission for the Historical Clarification of Human Rights Violations consulted 11,000 people and held 7,200 confidential interviews across the country, but public participation was constrained by the Commission's mandate and the insufficient dissemination of its findings, which were

not translated into indigenous languages.<sup>145</sup> To enable public participation, Kenya's TJRC collected 42,465 standardized statements and memoranda, held special hearings for women, children and vulnerable groups, convened 10 reconciliation forums to grasp understandings of reconciliation in different regions and broadcasted discussion programmes on national television.<sup>146</sup> Whereas Kenya's commissions were not aimed at consulting the public, the district peace committee structures what were set up in hotspots served to engage people on the grassroots level.<sup>147</sup> Liberia's truth and reconciliation process, which was designed to enable the meaningful participation of women, youth and children, whose voices were represented in the TRC's report, collected 20,000 statements, including 1,500 testimonies by Liberians abroad. Whereas the Liberian TRC held hearings in rural areas across the country, efforts to include refugees in Ghana had to be aborted due to confrontations between Liberian refugees and the Ghanaian authorities.<sup>148</sup> The South African TRC, although facing logistical challenges due to the size of the country, collected over 20,000 statements in various local languages that covered 50,000 cases of gross human rights abuses, but only reflected a fraction of the voices of apartheid victims. It held victims' events and special hearings for conscripts, minors and women, but these were introduced only after gender experts demanded appropriate representation of women's experiences. Broad-based public participation that was reflected by a high level of awareness in surveys was also made possible thanks to a vast amount of media coverage on the TRC that televised hearings.<sup>149</sup> In the Philippines, the TJRC also equally

144 Stef Vandeginste, "Burundi's Truth and Reconciliation Commission: How to Shed Light on the Past While Standing in the Dark Shadow of Politics?" *International Journal of Transitional Justice* 6, no. 2 (1 July 2012): 364, doi:10.1093/ijtj/ijts009; The Truth and Reconciliation Commission of Burundi. "Presentation." Establishment of the Truth and Reconciliation Commission. Accessed November 21, 2018. <https://civrburundi.bi/en/presentation/>.

145 Mark Freeman and Priscilla B. Hayner, "The Truth Commissions of South Africa and Guatemala," in *Reconciliation After Violent Conflict: A Handbook*, eds. David Bloomfield, Teresa Barnes and Luc Huyse, Handbook Series (Stockholm: International Institute for Democracy and Electoral Assistance, 2003), 143.

146 TJRC, *Report of the Truth, Justice and Reconciliation Commission: Volume I* (Nairobi: Truth, Justice and Reconciliation Commission, Kenya, 2013), 28–121.

147 Lynch interview.

148 Gürler interview; Truth and Reconciliation Commission of Liberia, *Final Report of the Truth and Reconciliation Commission of Liberia (TRC): Volume I: Findings and Determinations* (Truth and Reconciliation Commission of Liberia, December 2008), [https://reliefweb.int/sites/reliefweb.int/files/resources/3B6FC3916E4E18C6492575EF00259DB6-Full\\_Report\\_1.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/3B6FC3916E4E18C6492575EF00259DB6-Full_Report_1.pdf), 37–55.

149 Meintjes interview; Truth and Reconciliation Commission, *Volume One: Truth and Reconciliation Commission of South Africa Report*, 135–65.

consulted thousands of people and conducted surveys to assess the grievances of the Bangsamoro people.<sup>150</sup>

Meaningful participation thus depended on the provision of adequate forums and hearings for specific socio-demographic and victims' groups as well as persons who had been displaced by conflict. It was also heavily dependent on the use of local languages in the collection of statements and the dissemination of information and findings of the truth, reconciliation and peacebuilding programmes.

### 3.5 Security sector reform

Since the demobilization of combatants and the reform of military, police and intelligence institutions directly affect the security of the signatories of a peace agreement and the state, these mechanisms are highly sensitive. As such, they are often the exclusive domain of official actors and leave little space for civil society and public participation.

In Afghanistan, reforms to the army and police were envisaged in complementary agreements after the conclusion of the Bonn Agreement.<sup>151</sup> Yet the country's nascent domestic civil society was not able to play a significant oversight role. The authorities' lack of commitment to transparency, accountability and civilian oversight, the international focus on counter-terrorism, and the unsafe conditions for activists left no room for inclusion in a foreign-driven Security Sector Reform (SSR) process that lacked local ownership.<sup>152</sup> In Guatemala, SSR only materialized a decade after the agreements' conclusion due

to the resistance of military and political elites, lack of interest of political parties, and civil society's weak capacity to influence the SSR agenda.<sup>153</sup> In Nepal, CSOs sought to lay the groundwork for the integration of Maoist ex-combatants into society but were completely side-lined by the political actors, as the country's DDR programme left virtually no room for civil society participation.<sup>154</sup> In Tajikistan, international agencies turned to traditional civic networks to assist the repatriation of refugees, but CSOs played no meaningful role in integrating ex-combatants into society or the army.<sup>155</sup>

Nevertheless, as demonstrated by a number of cases, civil society can play a crucial role in overseeing security institutions to promote their accountability to the public and can engage security actors in different ways. CSOs can monitor SSR, help to shape policies, train officials, inform operations, provide security services in communities and facilitate dialogue among and between security actors and communities.

SSR in Burundi, Kenya, Liberia, Northern Ireland and South Africa involved a varying degree of inclusion in the transformation of different security institutions. Kenya's SSR process followed long-standing calls by CSOs for police reform due to severe grievances. The role of the police in the post-election violence permitted limited public participation through consultations by the Task Force, the National Police Service Commission and Independent Policing Oversight Authority (IPOA) that were put in charge of police reform and oversight as well as

150 Terms of Reference for the Transitional Justice and Reconciliation Commission in the Philippines – Mindanao.

151 DCAF, "Afghanistan SSR Snapshot," *International Security Sector Advisory Team (ISSAT)*, accessed 3 December 2018, <https://issat.dcaf.ch/Learn/Resource-Library/Country-Profiles/Afghanistan-SSR-Snapshot>.

152 Fatima Ayub, Sari Kouvo, and Rachel Wareham, *Security Sector Reform in Afghanistan*, IFP Security Cluster- Country Case Study: Afghanistan (Brussels: Initiative for Peacebuilding, April 2009), 17, <https://www.ictj.org/sites/default/files/ICTJ-Afghanistan-Security-Reform-2009-English.pdf>; Emma Sky, "Afghanistan Case Study: The Lead Nation Approach," in *Local Ownership of Security Sector Reform: A Guide for Donors*, by Laurie Nathan (Security Sector Reform Strategy of the Global Conflict Prevention Pool, 2007), 59–66, <http://www.lse.ac.uk/international-development/Assets/Documents/PDFs/csrc-background-papers/Local-Ownership-of-Security-Sector-Reform-2007.pdf>.

153 Bernardo Arévalo de León, "Guatemala Case Study: Inter-Sectoral Dialogue on SSR," in *Local Ownership of Security Sector Reform: A Guide for Donors*, by Laurie Nathan (Security Sector Reform Strategy of the Global Conflict Prevention Pool, 2007), 74–81, <http://www.lse.ac.uk/international-development/Assets/Documents/PDFs/csrc-background-papers/Local-Ownership-of-Security-Sector-Reform-2007.pdf>.

154 Bogati interview; DB Subedi, "Dealing with Ex-Combatants in a Negotiated Peace Process: Impacts of Transitional Politics on the Disarmament, Demobilization and Reintegration Programme in Nepal," *Journal of Asian and African Studies* 49, no. 6 (1 December 2014): 672, 676, doi: 10.1177/0021909613507537.

155 Epkenhans interview; Parviz Mullojanov, "Civil Society and Peacebuilding," in *Accord 10: Politics of Compromise: The Tajikistan Peace Process*, London: Conciliation Resources, 2001, 62.

through CSOs' surveys and consultations. Nevertheless, besides contributing technical expertise to the Task Force and its SSR blueprint that was included in the constitution, CSOs played an important oversight role in the IPOA and during the NPSC's lacklustre police vetting process, but ultimately disengaged from the process, which was mired in controversy and had little noticeable impact on police conduct.<sup>156</sup>

Despite the fact that the official consultative organ of Burundi's government was not suited to exercising effective oversight and civil society involvement faced resistance from government and security officials, CSOs partnered with international NGOs and development agencies to conduct studies and to monitor the behaviour and public perceptions of the security sector and engaged security officials through multi-stakeholder forums. Local women's groups and their international partners successfully put gender and women's security concerns on the SSR agenda.<sup>157</sup> In Liberia, the SSR process was driven by the state, American state security officials and a private security firm and did not enable public participation. Civil society lacked the expertise and organizational capacity to engage in the process. However, thanks to its expertise and its trusting relationship with civilian and security stakeholders, the Liberian Law Enforcement Association succeeded in convincing

the government to set up an advisory SSR Task Force with a civil society component and a SSR Working Group that served as an interface between the National Coalition of CSOs and the state's Governance Reform Commission. These mechanisms enabled a degree of national ownership of the SSR process.<sup>158</sup> Continued SSR brought about the inclusion of gender in security policies and more women in security institutions.<sup>159</sup>

In Northern Ireland, as a result of the outreach campaign and sustained efforts of the Independent Commission on Policing for Northern Ireland (better known as the Patten Commission), the public and civil society provided input to SSR reform through public and private meetings, oral and written submissions, surveys and focus groups, as well as public discussions on the Commission's recommendations.<sup>160</sup> While Northern Ireland's police reform illustrated that inclusive SSR can transform relations between police and communities and the nature of policing, the decommissioning process showed that the possibilities for public and civil society inclusion in highly sensitive security matters are limited.<sup>161</sup> The transformation of the security institutions of the South African apartheid regime was remarkably inclusive thanks to the context of democratic regime change, the high degree of civilian control over the

156 Lynch interview; Christopher Gitari Ndungú, "Failure to Reform: A Critique of Police Vetting in Kenya," *International Center for Transitional Justice*, 21 November 2017, 4–9, <https://www.ictj.org/publication/reform-police-vetting-kenya>; Anneke Osse, "Police Reform in Kenya: A Process of 'Meddling Through,'" *Policing and Society* 26, no. 8 (16 November 2016): 907–24, doi: 10.1080/10439463.2014.993631; Wanyeki interview; Kenya National Commission on Human Rights, *Are We Under Siege? The State of Security in Kenya: An Occasional Report (2010 – 2014)* (Nairobi: Kenya National Commission on Human Rights, 2014), [https://www.undp.org/content/dam/kenya/docs/Democratic Governance/State of Security in Kenya -Occasional Report.pdf](https://www.undp.org/content/dam/kenya/docs/Democratic%20Governance/State%20of%20Security%20in%20Kenya--Occasional%20Report.pdf).

157 CIGI, "Security Sector Reform Monitor: Burundi," (The Centre for International Governance Innovation, August 2010), 3–7, [https://www.files.ethz.ch/isn/121208/SSRM\\_Burundi\\_No\\_3.pdf](https://www.files.ethz.ch/isn/121208/SSRM_Burundi_No_3.pdf); Nicole Ball, *Lessons from Burundi's Security Sector Reform Process* (The Africa Center for Strategic Studies, 30 November 2014), 5–6, <https://africacenter.org/publication/lessons-from-burundis-security-sector-reform-process/>; International Alert, "Integrating Gender into Security Sector Reform in Burundi," International Alert, 24 February 2011, <https://www.international-alert.org/news/integrating-gender-security-sector-reform-burundi>.

158 Alexander Loden, "Civil Society and Security Sector Reform in Post-Conflict Liberia: Painting a Moving Train without Brushes," *International Journal of Transitional Justice* 1, no. 2 (1 July 2007): 301–307, doi:10.1093/ijtj/ijm022; Adedeji Ebo, "Liberia Case Study: Outsourcing SSR to Foreign Companies," in *Local Ownership of Security Sector Reform: A Guide for Donors*, by Laurie Nathan (Security Sector Reform Strategy of the Global Conflict Prevention Pool, 2007), 84–92, <http://www.lse.ac.uk/international-development/Assets/Documents/PDFs/csrc-background-papers/Local-Ownership-of-Security-Sector-Reform-2007.pdf>; Gürlér interview; Zanker interview.

159 DCAF, "Liberia SSR Snapshot," *International Security Sector Advisory Team (ISSAT)*, accessed 3 December 2018, <https://issat.dcaf.ch/Learn/Resource-Library/Country-Profiles/Liberia-SSR-Snapshot>.

160 Jane Linekar interview with Dawn Walsh, 15 October 2018; The Independent Commission on Policing for Northern Ireland, *A New Beginning: Policing in Northern Ireland: The Report of the Independent Commission on Policing for Northern Ireland* (Norwich: The Independent Commission on Policing for Northern Ireland, September 1999), 10.

161 Walsh interview; Independent International Commission on Decommissioning, *Final Report of the Independent International Commission on Decommissioning* (Dublin and Belfast: Independent International Commission on Decommissioning, 28 March 2011), 4–5; Branka Marijan and Dejan Guzina, "Police Reform, Civil Society and Everyday Legitimacy: A Lesson from Northern Ireland," *Journal of Regional Security* 9, no. 1 (2014): 63.



security sector, the presence of a strong civil society, and the commitment by the ANC-led power-sharing government to participatory and civic politics. The drafting of the chapter on security institutions of the final constitution and secondary legislation relating to defence and police by parliament and its broadly representative organs ensured the buy-in of all parties and enabled public participation through public outreach programmes. In particular, the drafting of the Defence White Paper was an example of a highly inclusive SSR process that achieved broad-based ownership by all major stakeholders thanks to wide-ranging consultations with state and non-state actors that enabled the inclusion of a variety of interests and expert advice in the document. Yet the limits of inclusive SSR were also demonstrated by the lack of technical expertise of civil society and parliamentarians during a defence review and by the less transparent intelligence reform process.<sup>162</sup> In the Bangsamoro process in the Philippines, the Independent Commission on Policing was expected to consult widely with state-actors and the armed wing of the MILF, as well as with CSOs and the public – including women – in affected communities, and ceasefire monitors worked with local CSOs. The Independent Decommissioning Body and Commission on Policing, however, exclusively consisted of foreign and Philippine security experts.<sup>163</sup>

The cases illustrate that civil society can play an important oversight role in security sector transformation if CSOs are formally included in commissions and SSR structures. CSOs can also provide a significant watchdog role with regards to the recruitment, vetting and conduct of security forces by doing research, providing independent information and engaging officials as well as communities that are meant to benefit from the security services. Inclusive SSR can be instrumental in transforming relations

between communities and the security forces as well as the nature of policing and make a significant impact on guiding policy frameworks, as exemplified by the integration of gender into security policies owing to the lobbying work of women's groups. Well-placed CSOs and their civic allies managed to establish durable mechanisms to institutionalize dialogue between civil society, security officials and government organs pertaining to security. In several instances, the inclusive development of security policies and institutions contributed to the broad-based ownership of the reformed security services by both state and non-state actors.

Inclusive SSR was, however, only possible in cases where government and security officials showed commitment to participative processes and only a handful of well-placed CSOs had a suitable network to build trusting relationships with security services and the necessary technical expertise to meaningfully contribute to the development of security policies. Whereas public participation was generally very limited, extremely sensitive processes relating to decommissioning and intelligence reform that affect the safety of armed groups and the security of the state remained off-limits for civil society participation other than the advisory role of academic experts. The discussed cases nevertheless illustrate important opportunities for inclusion in the critical domain of SSR that may help to build collaborative relations between security services and communities.

When it comes to women's inclusion, in the cases assessed, aside from the integration of gender into security policies the security and a greater number of women in the security sector in Liberia, the involvement of women in SSR is often limited. Nevertheless, experience shows that women have often been involved in informal arrangements,<sup>164</sup> where

162 Sandy Africa, *The Transformation of the South African Security Sector: Lessons and Challenges*, Policy Paper No. 33, Geneva: Geneva Centre for the Democratic Control of Armed Forces (DCAF), March 2011, 20; Laurie Nathan, "South African Case Study: Inclusive SSR Design and the White Paper on Defence," in *Local Ownership of Security Sector Reform: A Guide for Donors*, by Laurie Nathan (Security Sector Reform Strategy of the Global Conflict Prevention Pool, 2007), 100–105, <http://www.lse.ac.uk/international-development/Assets/Documents/PDFs/csrc-back-ground-papers/Local-Ownership-of-Security-Sector-Reform-2007.pdf>.

163 Government of Malaysia and Moro Islamic Liberation Front, *The Independent Commission on Policing and Its Terms of Reference: Section 5* (Kuala Lumpur: The Independent Commission on Policing, 27 February 2013), <https://www.hdcentre.org/wp-content/uploads/2016/06/The-Independent-Commission-on-Policing-and-its-Terms-of-Reference.pdf>; Michael Aeby interview with Carlos Kaloy Mnalupig, 3 October 2018.

164 United Nations Security Council, *Report of the Secretary-General on women and peace and security*, S/2018/900 (9 October 2018), para. 29.



women can play important roles in SSR by ensuring reforms actually make communities more secure for women and men, thereby achieving the fundamental objectives of SSR. Women can, for instance, provide knowledge about security issues in communities, provide security, increase communities' buy-in and exercise oversight. Civil society actors and women are, however, often excluded because they are not deemed security experts, due to a continued focus on state as opposed to human security, a lack of understanding of the importance of inclusion among decision makers, the lack of resources to enable their inclusion, as well as safety concerns.<sup>165</sup>

### 3.6 Monitoring mechanisms

Monitoring mechanisms are a key facet of implementation processes. They provide signatories, mediators, guarantors, national and international stakeholders and the public with reliable information to assess the progress made in the implementation of an agreement as well as potential breaches of an accord. They can also help to identify, prevent and manage conflicts that arise during an implementation process, which may threaten to derail the process. We found four types of monitoring mechanisms: third-party fact-finding missions; official local monitoring mechanisms; joint monitoring missions by the parties to the agreement; and independent formal or non-formal civil society mechanisms.

In the case of internationally-guaranteed agreements, a transition may be monitored by an international third-party fact-finding or monitoring mission that can observe the entire implementation of the agreement's provisions or parts of it (Guatemala, Liberia, and Tajikistan).<sup>166</sup> A second option is the establishment of an official independent monitoring mechanism managed by an impartial internal or external organization with the requisite technical expertise and entrusted by the parties and guarantors to oversee the implementation process. In two of the

11 transitions, inclusive monitoring mechanisms were established after the conclusion of the agreement. These comprised civil society and enabled active public participation. In Kenya, the AU mediator commissioned an independent Kenyan research organization – the think tank “South Consulting” – to run the KDNR Monitoring Project, which served as the official implementation monitoring mechanism. This ensured that the guarantors, mediators and stakeholders of Kenya's transition received regular monitoring reports that enabled them to assess the progress and need for interventions on the basis of independent and reliable information. It also gave civil society a central role in overseeing the implementation process. The researchers of the Monitoring Project engaged civil society stakeholders throughout the transition, made use of reports by Kenyan NGOs alongside documents from governmental and intergovernmental organizations, and conducted focus group and survey research involving 4,000 households countrywide as the basis of its reports.<sup>167</sup> The results of this monitoring were published and presented in the media. However, the effectiveness of the Monitoring Project in Kenya was undermined by the lack of political will on the part of the government to implement certain key reforms, such as the results of the Truth and Justice Commission. The Solomon Island's Peace Monitoring Council, made up of prominent civil society representatives, was tasked to oversee implementation, foster peaceful relations and facilitate disarmament. It set up a basic field monitoring structure comprising community members and assisted with the disarmament of militants. However, like other monitoring mechanisms with hybrid mandates, the Council was not an effective model to provide independent and reliable information about the implementation process to the guarantors and the public.<sup>168</sup>

Third, the implementation process can be observed by a joint monitoring mechanism, whereby

165 Megan Bastick and Tobie Whitman, *A Women's Guide to Security Sector Reform* (Washington, DC: The Institute for Inclusive Security and DCAF, 2013), 7–14, [https://www.dcaf.ch/sites/default/files/publications/documents/AWomensGuidetoSSR\\_final.pdf](https://www.dcaf.ch/sites/default/files/publications/documents/AWomensGuidetoSSR_final.pdf).

166 Schneckener, “Third-Party Involvement in Self-Determination Conflicts,” 484.

167 Wanyeki interview.

168 Michael Aeby interview with Sinclair Dinnen, 5 October 2018; Jack Maebuta and Rebecca Spence, *Attempts at Building Peace in the Solomon Islands: Disconnected layers*, CDA Collaborative Learning Projects Reflecting on Peace Practice Project, 2009: 18.

representatives of the signatories jointly gather and evaluate information on their own adherence to the agreement (Philippines, Northern Ireland). Whilst joint monitoring mechanisms can send an important signal by displaying parties' commitment to a transition and may be a vital instrument to discreetly resolve conflicts among the parties over the implementation process, these monitoring mechanisms may lack independence and prove non-transparent to the public. However, joint monitoring mechanisms can perform significant functions, such as public outreach, as demonstrated by the Bangsamoro joint monitoring mechanism role in communicating progress on implementation to the public.<sup>169</sup>

CSOs, therefore, may choose to set up unofficial civil society monitoring mechanisms to hold parties accountable to the commitments made in an agreement and to render the implementation process transparent to the public.<sup>170</sup> For instance, in the Philippines, local ceasefire monitoring began very early on and lay outside the formal provisions of the ceasefire or peace agreement, with local leaders or activists taking the initiative. In Guatemala, think tanks played an important role in monitoring the peace agreement through the production of rigorous studies and analyses of issues related to the implementation of the agreement.<sup>171</sup>

The fact that only two of the transitions studied involved official monitoring mechanisms with formal civil society and public participation suggests that the full capacities of civil society organizations have not been embraced by policymakers or negotiation parties. This untapped potential is also highlighted by the fact that CSOs with suitable expertise and

networks often set up independent and unofficial monitoring mechanisms that could support the at times rudimentary official monitoring structures of guarantors and mediators.

Nonetheless, official monitoring mechanisms can greatly benefit from the participation of civil society and the public in terms of the quality, independence and social grounding of monitoring. Civil society monitors may offer local knowledge, access to communities, as well as a capacity and expertise in monitoring. Civil society may also contribute to the legitimacy of monitoring and verification through a credibility stemming from their status as non-partisan or bipartisan. Moreover, civil society participation in monitoring and verification is more effective when provided with political, technical and financial support and when the role for civil society actors reflects their capacities and prior experience.<sup>172</sup>

Inclusion can thus play a critical role in ensuring the credibility, transparency and acceptance of the different types of monitoring mechanisms, as the inclusion of civil society and women may affect the scope, focus and relevance of monitoring for local communities and other stakeholders. Inclusion, however, may also complicate the coordination of monitoring processes and increase the risk of conflicts over a politically sensitive monitoring process.<sup>173</sup> The monitoring mechanism that has been set up for the peace agreement in Colombia (which was not part of this study) has very interesting participation spaces and is conducted by a foreign research institute with local monitors.<sup>174</sup>

169 Sean Molloy, *Assessing and Influencing Progress in Peace Processes: Workshop Report*, Political Settlements Research Programme (PSRP) (Edinburgh: The University of Edinburgh, 2018), 10–1.

170 Ross, *Civil Society's Role in Monitoring and Verifying Peace Agreements: Seven Lessons from International Experiences*; Aebly, *Zimbabwe's Gruelling Transition*, 359–67; United Nations, *Monitoring Peace Consolidation: United Nations Practitioners' Guide to Benchmarking*; "Peace Accords Matrix Colombia."

171 Sabine Kurtenbach, "Guatemala: A Dependent and Fragmented Civil Society," in *Civil Society and Peacebuilding: A Critical Assessment*, ed. Thania Paffenholz (Boulder, Colorado: Lynne Rienner Publishers, 2010), 90.

172 Ross, *Civil Society's Role in Monitoring and Verifying Peace Agreements: Seven Lessons from International Experiences*.

173 Ross, *Civil Society's Role in Monitoring and Verifying Peace Agreements: Seven Lessons from International Experiences*; Aebly, "Making an Impact from the Margins?"

174 Kroc Institute for International Peace Studies, *State of Implementation of the Colombia Peace Agreement: Report Two* (Notre Dame: University of Notre Dame, 2018), [https://kroc.nd.edu/assets/288008/180830\\_english\\_policy\\_report\\_2.pdf](https://kroc.nd.edu/assets/288008/180830_english_policy_report_2.pdf).

### 3.7 Variations in inclusion according to sector and overall observations

Comparing inclusion across implementation mechanisms in different sectors within and between country cases is challenging because the combination of mechanisms and reforms provided for by the agreements varied greatly, as do the context of the transitions, their principal parties and the included actors. The discussion has also focused on the implementation mechanisms that enabled the inclusion of additional actors, leaving out components of peace processes without inclusion. Nevertheless, some common trends and obstacles can be discerned, as can significant opportunities for participation in otherwise exclusive domains.

The level of inclusion varies according to implementation sectors and mechanisms. There are certain sectors where the inclusion of particular groups is highly constrained, such as women in SSR. Political groupings beyond the major signatories tended to be able to participate in constitution-making processes that were conducted by elected parliaments and transitional assemblies, as well as in power-sharing executives.

Civil society traditionally tends to be included in programmes relating to peacebuilding, reconciliation and human rights and claims space in constitutional reform processes. The research found that civil society actors were able to participate to varying degrees in all of the discussed types of implementation mechanisms. The level of influence and impact that they were able to exert on constitution-making processes, truth and reconciliation mechanisms and electoral reforms depends on their expertise, organizational capacity and the space offered by the major parties (a factor that will be discussed in greater detail below).<sup>175</sup> Although research institutes, professional associations and CSOs with relevant expertise could give significant input and serve as an interface between other civic and state actors, state-driven and highly sensitive SSR processes offered fewer opportunities for civil society participation.

There was nonetheless evidence of substantive and direct civil society participation in the development of new security policies and institutions. Whereas, in one exceptional case, the inclusion of CSOs in government blurred the line between civil and political society, surprisingly few cases featured the formal inclusion of civil society actors in official monitoring mechanisms. The data nonetheless point to the merits of civil society inclusion in monitoring mechanisms, regarding their reach, scope, transparency and credibility, but also indicate the organizational challenges of inclusive monitoring. Possibilities for civil society engagement in and substantive contributions to less accessible aspects of implementation processes appear to be dependent on the development of suitable expertise.

Only a handful of implementation mechanisms were designed to enable broad-based public participation. The six truth and reconciliation mechanisms with their extensive outreach programmes are clearly the component of implementation processes that allowed for the greatest and most direct participation of the general public. Constitution-making processes were the second most common opportunity for the public to engage in a transition, as five out of the seven cases of constitutional reforms enabled public participation through consultations and referenda. Although SSR is generally assumed to be off-limits to the public, two of the four processes saw a level of public involvement through consultations, while, in the exceptional case of Northern Ireland's police reform, the public was heavily involved. Public participation in the two monitoring mechanisms that were able to benefit from greater public engagement and the two electoral reforms, was comparatively minor and based on limited consultations and surveys.

### 4. Inclusion modalities in implementation: the formal and beyond

As the previous section demonstrates, the implementation phase broadens the scope of opportunity for

<sup>175</sup> CSOs were involved in constitution-making processes in five out of seven cases, in truth, reconciliation and peacebuilding mechanisms in four of five cases and in both cases of electoral reform.

inclusion, because a variety of implementation mechanisms and forums are being created, in addition to the central negotiation platform that exists during the negotiation phase. The focus thus shifts from representation in the central negotiation platform to inclusion in implementation mechanisms. These may involve several modalities of inclusion: most commonly, inclusive commissions, different forms of consultations, and public decision-making that can occur in different sequences.

The modalities of inclusion (outlined above in the concepts section) all continue to exist during implementation, but their distribution, relevance and – at times – meaning change. Inclusive commissions occur most frequently, followed by consultations. Public decision-making, mostly in form of referenda, also featured prominently in many implementation processes, while problem-solving workshops and mass action appeared to be less common. Direct representation at the negotiation table occurs during implementation, but the notion of the negotiation table itself becomes more difficult to define.

The inclusion modalities can be part of formal arrangements but also link to the informal. For example, while consultations can be a formally mandated aspect of implementation commissions, informal consultations of all sorts can also happen to enrich findings and debates. The negotiation table often exists, but not necessarily in the formal realm.

In order to avoid redundancy, the observer status modality is not included in the discussion below, as civil society and other included actors engaged in official and independent implementation monitoring activities did so largely through inclusive commissions, as in the cases of the Solomon Islands' Peace Monitoring Council and monitoring mechanisms such as Kenya's KDNR Monitoring Project, which relied on survey and consultations with societal stakeholders.<sup>176</sup>

#### 4.1 Inclusive commissions

Across the case samples, inclusive commissions were the most widely used modality in the implementation phase. Inclusive commissions comprised reform commissions, truth and reconciliation commissions, commissions of inquiry, human rights and gender commissions, peace commissions and monitoring commissions. Commissions were either temporary and mandated to carry out specific parts of the implementation process or given a permanent status and enshrined in a new constitution or act born out of the peace process. They varied in their composition and independence from the major negotiating parties and received temporary or permanent mandates to implement specific measures.

The truth and reconciliation processes in Burundi, Guatemala, Liberia, the Philippines and South Africa were carried out under the auspices of inclusive commissions. Inclusive commissions appear particularly well-suited to lead such processes, provided that their members are appointed through a transparent and, ideally, consultative selection process to ensure that the integrity of the commissioners is generally accepted. The broad representativeness of these inclusive commissions can achieve the buy-in of the conflict parties and public into the peacebuilding process and the acceptance of the findings of truth-seeking mechanisms. However, the same may be achieved by an independent commission consisting of experts and eminent persons who are deemed neutral rather than representative of different communities, political camps and corners of civil society.

Inclusion through inclusion commissions ranged from broad societal representation to token participation. While commissions could be inclusive in both their make-up and in their practice (primarily through consultations), what this meant for inclusion in implementation depended to a large degree on the influence of the commission itself on implementation or on the level of inclusion of the commission itself in the process. A strong and independent

176 South Consulting Ltd., *Monitoring and Evaluation Report on The Kenya National Dialogue and Reconciliation (KNDR) Monitoring Project* (South Consulting Ltd., February 2009), 1–6, <https://www.katibainstitute.org/Archives/images/Monitoring%20and%20Evaluation%20Report%20on%20the%20National%20Accord.pdf>; Maebuta and Spence, *Attempts at Building Peace in the Solomon Islands: Disconnected layers*, 16–17.

constitutional mandate did not guarantee a commission's impact on the implementation process, as demonstrated by South Africa's "Chapter 9 Institutions."<sup>177</sup> As an overall trend, societal actors included in the commissions were able to put substantive institutional changes onto the agenda and into the resulting documents of these commissions. The presence of civil society representatives with expertise was vital in this respect, as demonstrated by Kenya's commissions of inquiry, panel of experts and Commission for the Implementation for the Constitution. However, reform proposals and legislation produced by inclusive commissions were often ignored and had little tangible impact on the functioning of the state, political culture, power structures and conflict dynamics. Inclusive commissions can thus run the risk of becoming paper tigers or of simply serving as a window-dressing exercise for inclusion in implementation processes.

## 4.2 Consultations

Official, informal and public consultations with different societal groups were the second most widespread implementation modality and occurred across a number of implementation mechanisms, particularly constitution-making processes (Afghanistan, Kenya, Nepal and South Africa) and truth and reconciliation processes (Burundi, Guatemala, Kenya, Liberia and South Africa).

Consultations with civil society and the public were an integral part of virtually all of the discussed components of inclusive implementation processes. They commonly served to raise awareness, obtain input and increase the legitimacy of constitutional and other reforms. The consultations that took place between the authorities of the implementation mechanisms and members of political groupings, civil society and the public were instrumental in legitimizing reforms and, in a number of instances, helped to build trust and ownership in the permanent

institutions that became enshrined in the resultant constitutions and secondary legislation relating to the polity, political system and security apparatus. Civil society pressure groups and a variety of experts that were consulted broadly helped to shape institutions.

Broad-based public consultations and outreach programmes – using a variety of methods, including surveys, focus groups, written submissions, public gatherings and hearings – were not only a critical way to formally acknowledge the individual and collective experiences and views of public, but often constituted the sole link between the elite-driven official peace process and peacebuilding on the grassroots level. However, the views of the general public tended to have less impact on institutional reforms, and the reports arising from consultative truth-seeking processes were in several instances largely ignored or not followed up by decision makers.

It is also important to note that consultations were generally carried out by inclusive or independent commissions or transitional assemblies and parliaments. Given that consultations were mostly carried out by reform commissions and parliaments, their ability to enable meaningful inclusion and influence on implementation processes depended on the standing of these commissions.

## 4.3 Public decision-making

Peace processes may allow for public decision-making through referenda in which major political decisions relating to the negotiation, adoption and implementation of agreements are put to a public vote. Public decision-making in peace processes is most common in democratic societies, where votes are usually treated as binding.<sup>178</sup>

Public decision-making as part of implementation processes took place in four cases in the data sample: Burundi, Kenya, Guatemala and Northern Ireland.<sup>179</sup>

<sup>177</sup> Meintjes interview; Shireen Hassim, *Women's Organizations and Democracy in South Africa: Contesting Authority* (University of Wisconsin Press, 2006), 222.

<sup>178</sup> Paffenholz, "Civil Society and Peace Negotiations," 77.

<sup>179</sup> In Burundi, 91 percent approved the new constitution that was negotiated by elites. In Kenya, 68.5 percent approved the constitution that was drafted by experts. In Guatemala, 55 percent (17 percent turnout) rejected amendments that improved Mayans' status. In Northern Ireland, 71 percent approved Good Friday Agreement.



<sup>180</sup> They illustrated, first of all, that a referendum on an agreement (or constitution) can decisively boost its legitimacy, acceptance and popular ownership. This was the case in Northern Ireland, where the referendum was deemed vital to gain public buy-in for the implementation of the agreement's provisions and was of enormous symbolic importance, although the legitimizing effect of the referendum was lowered by the fact that only 51 percent to 57 percent of voters in Unionist areas approved the Agreement.<sup>181</sup> Second, referenda may be used to legitimize the outcome of highly exclusive elite bargaining processes, as in the example of Burundi, where the constitution that had emanated from an elite-driven and turbulent drafting process was approved by 91.2 percent of the eligible electorate. Third, the example of Guatemala illustrates the risk that a referendum may be instrumentalized by powerful groups and can effectively derail an implementation process if the majority rejects a painstakingly negotiated agreement and reform programme. In the case of Guatemala, a set of 50 constitutional reforms would have largely benefited the status of and protected the rights of the Maya population. The no-vote effectively halted the implementation of reforms envisaged in the Peace Accords and violence continued.<sup>182</sup> The no-vote in the referendum following the peace agreement between the Government of Colombia and the FARC (not a case study in our sample) is also a prominent case of a politicized referendum derailing a process.

#### 4.4 Direct representation at the negotiating table

What constitutes direct representation at the negotiation table in the context of implementation is not easy to define. Formal and informal negotiation spaces during implementation differ at times from classical formal high-level “track 1” negotiations. During the negotiation phase, there is often a formal “table” along with backchannel, frequently powerful, parallel or external negotiating spaces where the

“real” decisions are made.<sup>183</sup> During implementation, a multitude of formal and informal set-ups serve as negotiation spaces on multiple levels.

The absence of explicitly dedicated high-level negotiation platforms during the implementation phase may be explained by the fact that, after the signing of an agreement, central decision-making on implementation is often transferred from the negotiation platform to a power-sharing executive or transitional assembly. Across the 11 cases studied, there was one instance – in Liberia's transitional government – of direct representation of delegates of groups beyond the principle conflict parties and signatories in a national power-sharing executive. However, formal political power-sharing provisions were also an important component of five further peace agreements – those in Afghanistan, Burundi, Kenya, Northern Ireland and South Africa – whilst two, the Philippines and the Solomon Islands, comprised provisions for territorial autonomies.<sup>184</sup>

In Afghanistan, delegates of CSOs and fringe parties directly represented their respective organizations in the transitional assemblies and parliaments that were in charge of or contributed to legislative reforms as part of the implementation processes. The 502 members of the Constitutional Loya Jirga comprised male and female representatives of displaced persons and ethnic minorities, and was broadly representative of society. Burundi's transitional National Assembly included 28 representatives of CSOs. In South Africa, members of civil society organizations, such as trade unions and women's organizations, were included in power-sharing executives as representatives of the major political parties and exerted considerable influence. Several ANC representatives in South Africa's government of national unity, for instance, were members of the South African Congress of Trade Unions and women's organizations, amongst others.<sup>185</sup>

<sup>180</sup> In South Africa, the apartheid government held a “whites-only” referendum in 1992, in which it received a mandate from the eligible all-white electorate to continue talks at the Convention for a Democratic South Africa and to seek a negotiated settlement; Meintjes interview.

<sup>181</sup> BP Case Study Northern Ireland.

<sup>182</sup> IPTI, BP Case Study, Guatemala peace process 1989-1999, unpublished.

<sup>183</sup> Paffenholz, Zachariassen and Helfer, *What Makes or Breaks National Dialogues?*, 39 and 67–8.

<sup>184</sup> “PA-X: Peace Agreements Database.”

<sup>185</sup> Sandy Africa interview.

Moreover, during implementation processes, decision-making tends to be decentralized compared with the negotiation phase, as various implementation mechanisms that feature different inclusion modalities are set up, and additional actors may be represented in the steering bodies of such mechanisms. In the Philippines, the government-MILF negotiation panels were renamed implementation panels after the signing of the Comprehensive Agreement.<sup>186</sup> In this case, the implementation panels consisted of representatives of the government and MILF, but some of their members also represented other constituencies and comprised experts with ties to academia, women's, indigenous peoples' and other civil society groups (see detailed case study in this report).<sup>187</sup> Direct representation in the implementation phase thus usually takes place in different forums and contexts than in the negotiation phase and, as a result, acquires a quality different from the original modality of inclusion.

As such, the “negotiating table” is a relative concept during implementation. Already during the negotiation phase, the veritable locus of negotiations is outside of the formal negotiation space behind closed doors.<sup>188</sup> The same is true to an even greater extent during the implementation phase, where formal mechanisms are only one space in which decisions are made. As the above section on constitution-making processes underlines, despite the provision for appointed transitional assemblies and elected parliaments to play a central role in the constitution-making process, the content of the constitution in several cases – Afghanistan, Burundi, Nepal and the Philippines – was largely determined by a small circle of political and military elites behind closed doors and then presented to the assemblies as a *fait accompli*.

It is therefore crucial to recognize the importance of other formal spaces beyond the formal negotiation space, such as parliaments – which, in certain cases, carry out constitutional reform programmes with a

varying degree of executive control – and processes for realization of development initiatives, as well as the informal spaces for ongoing negotiation of power distribution, such as informal elite deals and mass action (discussed below). Actors are often involved in parallel processes, which, in some cases, impact on and interact with one another or, in other cases, remain discrete, creating opportunities and challenges.

Direct representation at the negotiation table in the context of implementation can thus be characterized as an ongoing renegotiation of the peace agreement occurring in various spaces. As the literature suggests, continued high-level negotiations between the delegations of an agreement's signatories are likely to continue after an agreement has been reached in order to facilitate its implementation. This is, first, because – as most cases in our sample underline – the details of the implementation plan that results from often very general provisions of an agreement need to be elaborated in order to enable its implementation. Second, unforeseen circumstances and the volatile political, economic, social and international environment in which implementation processes take place may require adjustments to the envisaged transition plan to prevent the process from collapsing. Afghanistan is a particularly patent example of a case of implementation as a constant renegotiation during a state of ongoing conflict. Third, as seen in Northern Ireland, a major political party was excluded (or, in this particular case, self-excluded) from the talks, with the resultant implementation process stalling due to their absence. As a result, eight years after the Good Friday Agreement, renewed negotiations attempted to tackle the outstanding issues.

#### 4.5 High-level problem-solving workshops

High-level problem-solving workshops bring together representatives close to the leaders of the conflict parties and offer them a space for discussion and to explore potential solutions without pressure to

186 BP Case Study Philippines.

187 Bangsamoro Organic Law, Article XVI, Section 2, <http://bangsamoroonline.com/bol.pdf>.

188 Paffenholz, Zachariassen and Helfer, *What Makes or Breaks National Dialogues?*, 39 and 67–8.

reach an agreement or to make decisions regarding the implementation process.

In the 32 case studies on peace processes that produced agreements, high-level problem-solving workshops that took place during the implementation phase were only registered in the case of Tajikistan's General Agreement on the Establishment of Peace and National Accord and the Comprehensive Agreement on the Bangsamoro. Given the discreet nature of such sensitive informal initiatives and meetings, the discussed implementation processes may have involved workshops that went unnoticed.

An inter-Tajik dialogue begun in Moscow before the official UN-sponsored negotiations started and these informal deliberations between representatives of the government, opposition and independent members of the intelligentsia continued during the implementation phase.<sup>189</sup> The forum was credited for encouraging the formation of a unified platform for the opposition during the negotiations. Whilst the role of the role and impact of the forum during the implementation phase is unclear, it found to have fostered peacebuilding initiatives outside the official realm, and it later founded a permanent Public Committee for the Promotion of Democratic Processes.<sup>190</sup> Given the generally exclusionary nature of both the Tajik negotiation and implementation process, the influence the included actors may have had on high-level decision-making through these workshops remains doubtful.<sup>191</sup>

In the case of the Bangsamoro peace process, informal discussions through the programme Consolidation for Peace for Mindanao were organized

by Japan and with a Malaysian university during the negotiations, and a further meeting regarding implementation took place in 2014. These meetings allowed MILF representatives to meet with members of independent commissions, the provincial government, aid agencies, NGOs and academics to discuss matters relating to development, governance structures and normalization. The importance of the meetings for the implementation process remains unclear.<sup>192</sup>

#### 4.6 Mass action

The mass action modality refers to informal initiatives such as campaigns, street protests, strikes and petitions that members of society organize to exert pressure on negotiation parties and actors responsible for implementation processes.<sup>193</sup> Mass action campaigns often aim to create pressure to end violence, start negotiations, include issues and positions on the negotiation agenda, sign agreements or effect regime change.<sup>194</sup> Given the breadth of the activities that mass action could potentially encompass, the discussion here will be limited to instances of formal and informal mass action in the context of the formal components and mechanisms discussed above.

In the run-up to the referendums in Burundi, Guatemala and Northern Ireland, civil society groups engaged in publicity campaigns in support of the new constitutions and peace agreement, respectively. The campaign in support of the Good Friday Agreement in particular is widely considered to have significantly contributed to the broad-based popular support for the political settlement.<sup>195</sup> Whilst Kenyan human rights NGOs invested substantial resources into a public awareness campaign about

189 Randa Slim and Harold Saunders, "The Inter-Tajik Dialogue: From civil war towards civil society," Accord 10: *Politics of Compromise: The Tajikistan Peace Process*, Conciliation Resources, 2001: 45.

190 Randa Slim, "The Sustained Dialogue Process in Tajikistan: 1993-2005," paper delivered at the Expert Group Meeting "Dialogue in the Social Integration Process: Building peaceful social relations – by, for and with people," New York, 21-23 November 2005:13.

191 Michael Aebly interview with Edward Lemon, 15 October 2018; Epkenhans interview.

192 Bangsamoro Development Agency, "The Consolidation for Peace for Mindanao (COP6)," Press release, 23 June 2014, <http://bangsamorodevelopment.org/press-release-the-consolidation-for-peace-for-mindanao-cop6/>; Japan International Cooperation Agency, "Mindanao Peace Stakeholders Gather in Hiroshima," JICA, 9 July 2014, [https://www.jica.go.jp/english/news/field/2014/140709\\_01.html](https://www.jica.go.jp/english/news/field/2014/140709_01.html).

193 Paffenholz, "Civil Society and Peace Negotiations: Beyond the Inclusion–Exclusion Dichotomy," 77; Paffenholz, "Civil Society and Peacebuilding," 116.

194 Ibid.

195 IPTI BP Case Study, Burundi Peace Negotiations and Implementation Phase 1996–2013; Brett and Delgado, *The Role of Constitution-Building Processes in Democratization: Case Study: Guatemala*: 21; BP Case Study Northern Ireland.

the new constitution, NGOs and churches either campaigned in favour or against the new constitution before the referendum due to its provisions regarding abortion, LGBT rights and the status of Islamic courts, illustrating major divides within civil society.<sup>196</sup> Ultimately, the new Kenyan constitution included provisions that human rights and women's and LGBT groups had been lobbying for, ending the legal dualism, introducing the bill of rights and leaving the list of protected grounds open.<sup>197</sup> In Nepal, the interim constitution drawn up by the Comprehensive Peace Agreement was amended to declare a federal state after protests by the Madhes Movement, an example of an excluded minority putting forward demands.<sup>198</sup> The adoption of the new constitution in 2015 prompted renewed and deadly protests by Madhes and Tharu groups, who felt that the constitution backtracked on federalism.<sup>199</sup>

During the outreach programme of South Africa's constitutional reform, CSOs organized petitions in support of specific constitutional provisions that were considered by the drafters alongside individual written submissions and helped to underline these preferences.<sup>200</sup> Petitions were also signed by several thousand people and submitted to the Independent Commission on Policing in Northern Ireland in the context of the Commission's public outreach. The proposals made by the Commission, in turn, prompted protests and lobbying efforts on the part of various stakeholders and members of the public.<sup>201</sup>

The examples show that mass action may prove to be a critical way for members of society to achieve institutional changes in the context of implementation

processes that are dominated by political elites; they underline the importance of the role of CSOs in rallying support for peace agreements and the resultant constitutions in referendums. The cases also suggest that petitions can powerfully influence the content of legislation and policies arising from a drafting process. However, the discussed cases also suggest that, rather than mass action alone, behind-the-scenes lobbying of lawmakers, commissioners and government officials by civil society, and indeed other interest groups, is likely to be critical to achieving the adoption of institutional reforms that reflect their aims.

#### 4.7 Other informal avenues of inclusion

Cases such as the transitions in Bangsamoro and Liberia suggest that informal networks and personal relations with individuals in influential positions may provide avenues for members of the public and civil society to influence the course and outcome of implementation processes that are just as important as formal structures for participation. In Bangsamoro, civil society activists used their personal kinship networks to gain access to decision makers in relevant government institutions.<sup>202</sup> In Liberia, traditional secret societies that were not formally represented in official structures were powerful institutions that had significant influence over communities and also played an important role in the political process at both the local and national levels.<sup>203</sup> These important avenues to engage in and influence in different aspects of implementation processes fall beyond the scope of the present study's analytical framework. This equally applies to avenues of participation that may result from the

196 Cheeseman interview.

197 Wanyeki interview; Cheeseman interview.

198 Inclusive Peace & Transition Initiative, *Women in Peace & Transition Processes: Nepal (2008-2012)*, Case Study Series. Geneva: Inclusive Peace & Transition Initiative (The Graduate Institute of International and Development Studies), July 2017, [https://www.inclusivepeace.org/sites/default/files/IPTI-Case-Study-Women-Nepal-2008-2012\\_0.pdf](https://www.inclusivepeace.org/sites/default/files/IPTI-Case-Study-Women-Nepal-2008-2012_0.pdf).

199 ICG, *Nepal's Divisive New Constitution*: 1.

200 Barnes and De Klerk, "South Africa's Multi-Party Constitutional Negotiation Process," 32.

201 Walsh interview; The Independent Commission on Policing for Northern Ireland, *A New Beginning: Policing in Northern Ireland: The Report of the Independent Commission on Policing for Northern Ireland*, 10.

202 Adolfo interview.

203 Gürlér interview; International Crisis Group, *Rebuilding Liberia: Prospects and Perils*, Crisis Group Africa Report No. 75 (Freetown and Brussels: International Crisis Group, 30 January 2004), 21, <https://d2071andvip0wj.cloudfront.net/75-rebuilding-liberia-prospects-and-perils.pdf>; International Crisis Group, *Liberia and Sierra Leone: Rebuilding Failed States*, Crisis Group Africa Report No. 87 (Dakar and Brussels: International Crisis Group, 8 December 2004), 27, <https://d2071andvip0wj.cloudfront.net/87-liberia-and-sierra-leone-rebuilding-failed-states.pdf>.

fast-growing access to digital communication media that has begun to even reach remote rural communities in developing countries. Our case sample did not cover such instances, but there is a more recent and growing focus on virtual inclusion and technical means of including a broad range of actors in peace and political transition processes. Information and communication technologies also influence inclusion in peace and political transition processes in terms of how various actors beyond the principal negotiation parties communicate and relate to one another.<sup>204</sup>

## 5. Challenges to meaningful inclusion in implementation

### 5.1 Level of inclusion vs. effectiveness of inclusion

The research underlines that more inclusion is not necessarily effective inclusion. Inclusion through representation does not automatically translate into influence, as elite actors often retain control of key decision-making processes.

The preceding sections have demonstrated that representative transitional and elected constitutional assemblies can enable the participation of otherwise marginalized political groupings and civic actors, but that this is not sufficient to ensure an inclusive process and outcomes, as the substance of a constitution is likely to be determined in different, often exclusive forums and preceding talks. In Nepal, selection criteria for the first Constituent Assembly facilitated a high level of inclusion of women delegates, but their influence on decision-making was curtailed by the fact that political elites undermined inclusive decision-making procedures and made major decisions in informal spaces behind closed doors. Women moreover mainly voted along party lines rather than to advance gender priorities or women's rights.

In Afghanistan, political minorities, civic groups and women were included in the assembly and consultations of the constitution-making process, but the influence of the included actors on the content of the process was minimized by elite deals among leaders of armed groups and the government's control over the drafting process.<sup>205</sup> For example, in Afghanistan, despite the broad-based representation of Afghanistan's Constitutional Loya Jirga and a countrywide consultation process, the constitution-making process and its outcomes were dominated by President Karzai and his powerful warlord allies, who could veto the results.<sup>206</sup>

In more representative implementation modalities such as commissions, inclusion also does not necessarily equate to influence, as powerful actors often control processes and outcomes. Even in cases where inclusive commissions were given the status of a permanent statutory body established by the constitution, such as South Africa's "Chapter 9 Institutions," and thus, in theory, enjoyed a high level of independence and protection from interference by the dominant political actors, influence was not guaranteed. This was underlined by the country's Commission for Gender Equality, which was starved of resources and has made little long-term impact on gender equality.<sup>207</sup>

Broad consultations can also give rise to a high level of inclusion, but this inclusion is not necessarily effective, as mostly there is no binding formula to ensure that the results of consultations are integrated into key processes and outcome documents. Afghanistan's constitutional reform involved expert consultations as well as hundreds of public outreach meetings in which 170,000 people were consulted and 50,000 written submissions received. The impact of the sampled public opinion on the content of the constitution that resulted from the

204 Centre for Humanitarian Dialogue and The United Nations Department of Political and Peacebuilding Affairs, "Digital Mediation Toolkit," *UN Peacemaker*, n.d., <https://peacemaker.un.org/digitaltoolkit>; Jennifer Gaskell, *ICTs & EU Civilian Peacebuilding: Reflections on Good Practices, Opportunities and Challenges* (Brussels: European Union, 30 November 2016); Ioannis Tellidis and Stefanie Kappler, "Information and Communication Technologies in Peacebuilding: Implications, Opportunities and Challenges," *Cooperation and Conflict* 51, no. 1 (March 2016): 75–93.

205 Brandt et al., *Constitution-Making and Reform: Options for the Process*, 331.

206 Ibid, 330.

207 Meintjes interview; Hassim, *Women's Organizations and Democracy in South Africa*, 222.



government-controlled process and reflected its preference for modernist institutions, is doubtful, but the consultations legitimized the outcome vis-à-vis both domestic and international stakeholders.<sup>208</sup>

Even the explicit direct representation of delegates of groups beyond the principal conflict parties and signatories in national power-sharing executives (direct representation at the negotiation table in its most immediate sense) does not guarantee influence. The agreement in Liberia provided for members of civil society groups to explicitly and directly represent their organizations in Liberia's power-sharing government, but they had little influence on the workings of the interim government, as control over decision-making was retained by political elites.<sup>209</sup>

## 5.2 Resistance to inclusion and gatekeepers

Despite the importance of inclusion in implementation, inclusion remains a highly political subject: who is included, how, and where, are all decisions that impact on power dynamics. As such, inclusion is often supported, regulated, co-opted or restricted by “gatekeepers” of inclusion, notably key elites.

In particular, inclusion is often regulated, co-opted or restricted by gatekeepers, particularly key elites, with the overarching aim of retaining control of the process. Gatekeepers of inclusion come from a wide range of stakeholders: political and military elites, armed groups, international mediators, guarantors and donors, international NGOs, NGOs, business, traditional and religious leaders, and the media. Gatekeepers' strategies include controlling the selection of actors; ignoring the inputs of included actors; co-opting actors; targeting funding and other resources or support; denigrating, delegitimizing or legitimizing actors; and using repression and violence against actors.

The gathered interview data highlights the gatekeeping role of elite actors beyond the political elites of the principal conflict parties. These include religious and business leaders, the media as well as international organizations, foreign governments and international NGOs. For instance, in Guatemala, the country's economic elite viewed aspects of the peace agreement as threatening their long-held economic privileges in the country. Following the agreement, the CACIF (Coordinating Committee of Commercial, Industrial and Financial Associations) associated with corporate business organized to disrupt the agreement's implementation, notably via a campaign during the referendum specifically opposing the implementation of articles related to land reform.<sup>210</sup> Many of these actors regulate inclusion through the allocation of funding to civil society. In the Philippines, international stakeholders (states, regions, NGOs) were able to determine inclusion because they decided on funding and on its allocation. In the past, civil society in Mindanao has suffered from the misdirection of funding and at least one civil society actor has noted that there is less partnership with the international community now, during implementation, than there was during the negotiation phase.<sup>211</sup>

Nonetheless, overall, the data suggest that the primary gatekeeping role is played by domestic political elites. Elites tend to regulate inclusion by delegitimizing and denigrating included actors or co-opting them; ensuring the participation of close allies or token-representatives; or regulating the political space and demobilizing civil society by means of violence and repression. In a number of instances, elites paid lip-service to inclusion to appease donors and civil society while failing to walk the talk.

In Tajikistan, none of the discussed sectors saw significant inclusion due to the absence of support by the major conflict actors and international

208 Kaja Borchgrevink, “Religious Actors and Civil Society in Post-2001 Afghanistan,” Peace Research Institute Oslo (PRIO), 2007: 49; Afsah and Guhr, “Afghanistan: Building a State to Keep the Peace”: 427.

209 Zanker interview.

210 C. Esra Cuhadar, “Enlarging the Negotiation Table with Business Sector Actors: Who, How and with What Effect?,” *International Negotiation* 24, no. 1 (7 March 2019): 91–116, doi: 10.1163/15718069-24011146.

211 Statement during Expert Workshop.

mediators and also due to a lack of capable CSOs.<sup>212</sup> A Tajik Commission on National Reconciliation was established, but elites ensured that the membership of the Commission only comprised representatives of the main conflict parties.<sup>213</sup> In Nepal, political elites excluded ethnic minorities from the constitution-making process and managed to capture the constitution-making process and hinder the inclusive reforms provided for by the CPA, with the aim of maintaining their dominance in society. One of the only two avenues of Guatemala's implementation process for public participation (the other being the constitutional referendum) was the truth-seeking mechanism's statement-taking, which faced resistance from the military establishment.<sup>214</sup>

The analysis also suggests that elites have the power to define or redefine inclusion and to strengthen or to limit it to what they considered to be 'inclusive enough'. The implementation of the Bangsamoro agreement has provided for a reasonably high degree of inclusion, but this inclusion has been regulated by the conflict parties' control over selection and decision-making, particularly by specifying the functioning of formal bodies and the criteria for selection to those bodies. By making their own appointments, they are controlling the scope of the agenda and representation in the process.

### 5.3 Elite resistance to implementation

Beyond resistance to inclusion, elites can also resist the implementation process and the broader political change process itself. Indeed, despite the fact that efforts to prevent or end armed violence through negotiated settlement have become increasingly inclusive, a relatively small group of influential individuals wielding a disproportionate amount of power and resources continues to influence negotiation and implementation processes more than others.

Recent IPTI research has clustered elite behaviour in the implementation phase into those elites that support the implementation process (and are also characterized by a willingness to continue ongoing negotiations), and those that are dissatisfied with the new status quo and thus resist the implementation process, by ignoring results, boycotting the implementation, or increasing violence.<sup>215</sup>

Supportive elites can help to shape a political setting that is conducive for implementation. In Kenya, elites agreed to the establishment a number of implementation commissions, including the Commission of Inquiry into Post-Election Violence (the Waki Commission), Constitutional Reform Commission, the Truth, Justice and Reconciliation Commission, an electoral reform commission (the Kriegler Commission) and the National Cohesion and Integration Commission. A "grand coalition" government was also established, consisting of the four main political parties, which regarded one another with great suspicion. Within the government, elites competed to secure key positions, including within the implementation commissions.<sup>216</sup> However, when the power constellation in the country changed, the same elites were no longer interested in adhering to a number of key results of the implementation process.

In many cases, a formal agreement does not resolve all disputed issues and there may be different interpretations of (parts of) the agreement. In this context, elites who are supportive of the implementation process will engage in continued negotiation efforts, which often take place in established implementation mechanisms. In Afghanistan, talks in Bonn in 2001 specified a timeline for continued negotiations to establish a new government in Afghanistan. Signatories to the Bonn Agreement subsequently participated in an Emergency Loya Jirga, putting in place a

212 Epkenhans interview; Lemon interview.

213 Lemon interview.

214 Inclusive Peace & Transition Initiative, *Women in Peace and Transition Processes: Guatemala (1994–1999)*, footnotes 15 and 18; Jane Linekar interview with Hilde Salvesen, 25 October 2018.

215 Andreas Hirblinger et al., *Supporting or Resisting Change: Elite Strategies in War to Peace and Political Transitions*, Geneva: Inclusive Peace and Transition Initiative (The Graduate Institute of International and Development Studies), February 2019, 44, <https://www.inclusivepeace.org/content/supporting-or-resisting-change-elite-strategies-war-peace-and-political-transitions>.

216 Charles Hornsby, *Kenya: A History Since Independence* (I.B.Tauris, 2013), 771.

transitional government, and a Constitutional Loya Jirga, establishing a new constitution.

On the contrary, elite actors who are dissatisfied with the new status quo may try to reshape the political landscape to their advantage or aim to undermine the implementation process.

Elites may shape the political setting by influencing participation in a newly formed government or limiting the power of particular established implementation bodies. In Kenya, political and governing elites undermined the process by ignoring requirements and recommendations set by key implementation committees.<sup>217</sup>

Elites may additionally employ strategies to influence public views to undermine public support for agreement implementation or for the institutions created through the agreement. Elite efforts to exercise political influence during this phase are often directed against newly established transitional institutions. For instance, in Nepal, public protests were organized by some influential leaders following the release of the interim constitution in order to campaign for a federal governance arrangement. The interim constitution was subsequently amended to include a commitment to shift to federalism. Elites who have successfully managed to hold onto power during the peace process may try to influence public views to discredit reports or accusations produced during the implementation period that pose a threat to their political standing. For example, following investigations in Kenya by the Commission of Inquiry into Post-Election Violence, the International Criminal Court (ICC) announced it would indict six suspects for their role in the organized violence. In light of this, government and political elites tried to influence public views by spreading anti-Western, anti-ICC propaganda, framing the ICC indictments as a Western intervention. Public

support for the ICC decreased significantly before the 2013 elections and two suspects won the presidency and vice presidency.

Elites who resist implementation may try to undermine or undo the process entirely, showing no commitment to implementing the agreement's provisions or actively seeking to reverse them. In Kenya, political and governing elites undermined the process by ignoring requirements and recommendations set by implementation committees.<sup>218</sup> The agreement in Guatemala was only partially implemented due to the opposition of key political and military elites, who campaigned against the constitutional changes required by the agreement's implementation. The changes were rejected by referendum, derailing the process.<sup>219</sup> In instances where elites may have been pressured to sign an agreement, or where important parts of the governing or military elite have been excluded, the implementation phase provides these actors with opportunities to roll back from the commitments made. Governing parties may, for example, ignore the results of the agreement entirely. In Eritrea, despite an ostensibly inclusive and democratic process that culminated in an agreement on a new constitution, the ruling political elite centralized power in the executive branch of government, gradually closed down political space and ensured that the constitution was never implemented.<sup>220, 221</sup>

## 6. From inclusive processes to inclusive outcomes: Towards inclusive and peaceful societies?

Based on the research results, this chapter assesses the question of whether inclusive processes lead to inclusive outcomes. In order to answer this question, it is essential to define what an inclusive process is – when does it start, when does it end – and what we mean by inclusive outcomes. The research primarily

217 IPTI, BP Case Study, Kenya Post-election Violence Negotiations and Implementation 2008–2013, unpublished.

218 Ibid.

219 BP Case Study Guatemala.

220 Dan Connell, "Redeeming the failed promise of democracy in Eritrea," *Race & Class* 46, no.4 (2005): 68–89.

221 Eritrea is not among the case sample selected for this study due because only cases with some discernible implementation were retained.

examined inclusive implementation processes, but also looked back to ascertain whether the preceding peace negotiations were inclusive and whether the negotiation process gave rise to inclusion provisions for implementation. An inclusive process is thereby understood as a negotiation or implementation process that had at least some level of inclusion (presence) that we also differentiated into representation (diversity in presence) and effective inclusion (possibility for influence).

What is an inclusive outcome? Does it aim for more inclusive forms of implementation bodies? For more inclusion in government structures, such as more women in parliament? Or for more participatory decision-making processes stimulated in a constitution and ideally also fully implemented, enabling citizens to have full access to decision-making? Ultimately, the aim is larger societal and political transformation towards inclusive peaceful societies. What this research can contribute to this objective is to identify the necessary conditions and precedents to engender pathways towards inclusive societies, as inclusive peaceful societies ultimately remain an aspiration. Our research initially examined the formal implementation period as agreed in a formal peace or political transition agreement and subsequently conducted additional primary interviews in order to fill in data gaps for the implementation period and (in cases where this was possible) to assess future trends after the end of the formal implementation period. When clustering the cases into three rough periods – negotiations, formal implementation, and further steps towards political and societal change towards inclusive peaceful societies – we see mixed results. Cases with high levels of inclusion during negotiations had a relatively high level of inclusion during implementation (South Africa, Afghanistan, Northern Ireland and Kenya), while there are cases with a relatively low level of inclusion during negotiations that nonetheless gave rise to strong inclusion provisions in the agreements for implementation and were followed by high levels of inclusion during implementation (Liberia and the Philippines). Cases with a high level of inclusion during negotiations could also slide into lower levels of inclusion during implementation (Guatemala).

Only one case with a low to almost non-existent level of inclusion had also no inclusion during implementation (Burundi). This suggests that, while there is no automatism between inclusive negotiations and inclusive implementation, it seems much more likely that inclusive implementation will result from inclusive negotiations. Inclusion provisions – the more concrete, the better – have in all cases (even arising from exclusive negotiations) provided for inclusive implementation.

“Inclusion formulas” as understood in terms of representation and diversity have been particularly successful in creating preconditions for pathways to inclusive societies. This entails provisions that reflect the composition of society and politics (e.g., ethnicity, race, religion, tribe, gender, age, geography) that are not only included into short- or medium-term formal implementation bodies but, beyond which, continue to guide political and societal change on all levels. Pertinent examples come from South Africa with the inclusion of affirmative action to counteract the historical injustices of the legacy of apartheid; and from Nepal with an inclusion formula putting emphasis on cast, gender, religion and geography that is guiding the composition of everyday institutions in governance, development – both nationally and locally, and at the formal and informal levels. Kenya is another example where all of the implementation bodies followed a government-overseen process that adhered to an inclusion formula specifying concrete percentages of representation for ethnicity, geography, religion and gender. Political affiliation was not a criterion, but informally determined the variety in composition. When comparing the cases, in South Africa and Nepal, affirmative action is deeply rooted, while, in Kenya, the attempts of the National Integration and Cohesion Commission to enforce affirmative action in government and parastatal employment failed due to resistance from the dominant ethnic groups in power. However, 10 years after the agreement, the discussion is once again up for negotiation.

In terms of trends many years after the formal implementation of agreements, our research confirms the results of the small number of studies

that have examined this question.<sup>222</sup> These studies also show that, across the board, the outcomes 10 to 20 years after implementation are not especially promising, characterized by constant challenges to existing elite deals that require constant re-negotiations of political contracts. Inclusive processes can lead to inclusive outcomes, but such outcomes are not automatically guaranteed. There is no linear or automatic progression from an inclusive negotiation to inclusion provisions in an agreement, to inclusive implementation bodies that lead into inclusive constitution-making that will implement inclusive governance and development on all levels. The reality is a constant back-and-forth between progress and setbacks, which can manifest as violence or protests, and legal or political change.

Political transformation processes thus entail constant long-term re-negotiation, requiring both patience and robust monitoring and oversight mechanisms in order to move towards pathways to inclusive societies. Inclusion is constantly up for negotiation, meaning that, while inclusion is subject to ongoing challenges, setbacks and manipulation, this also entails opportunities to repeatedly and continually renegotiate inclusion processes and structures during all phases of the process. An understanding of constant re-negotiation is necessary to embrace messy political and societal realities as a given and to move towards genuinely adaptive peacebuilding. This includes going beyond formal peace agreement implementation spaces to engage with other formal – but, most of all, different informal – elite and civil society spaces. This, in turn, means the notion of the “negotiation table” needs to be nuanced to account for this multitude of formal and informal set-ups that serve as negotiation spaces on multiple levels.

Moreover, the complex and protracted nature of implementation processes – and of peace and political transition processes more broadly – makes the binary notion of success and failure of these processes extremely problematic. Expectations need to be recalibrated to take account of the fact that

political transition processes have ups and downs, and the notion of success needs to be nuanced to reflect the complexity of reality, where inclusive approaches are subject to multiple trade-offs among competing priorities. This can help to develop more adaptive approaches whereby inclusion can simultaneously serve goals relating to short-term stabilization – by overcoming blockages – and the long-term aim of leading countries on a pathway to peaceful, just and inclusive societies.

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222 See “Political Settlements Research Programme,” *Politicalsettlements.org*, n.d., <http://www.politicalsettlements.org/> and “Varieties of Peace,” *varietiesofpeace*, 2017, <https://www.varietiesofpeace.net>.



# Conclusion

The research demonstrates that inclusion is extremely important for implementation, as inclusion features in most implementation mechanisms and included actors overall work to support implementation and help the peace process or political transition to continue. The research also suggests that inclusion can provide opportunities to overcome blockages and delays in the process and can build and sustain momentum during complex and drawn-out implementation processes. The inclusion of civil society actors (including women's groups, indigenous groups, and religious and business actors) in the Bangsamoro process, for example, has helped to prevent the process from collapsing – particularly through their advocacy – and has even pushed the process forward.<sup>223</sup>

Nevertheless, despite the importance of inclusion in implementation, greater inclusion in implementation is not necessarily effective or meaningful in the sense that included actors can influence the process and/or its outcomes, especially as inclusion in and of itself is not sufficient to ensure influence. As a result, inclusive processes do not automatically guarantee inclusive outcomes.

Research and practice on inclusion in the implementation of peace and transition processes deals with extremely complex societal transformations and it is important to situate the findings within

that complexity. A transition is constantly negotiated and implemented in multiple spaces, which are rarely connected, and where power and politics are always an issue. As such, it is important to shift the disproportionate focus on formal implementation spaces, taking greater account of informal implementation spaces, including development spaces, which exist in parallel to implementation mechanisms but which are for the most part disconnected from them. It is also crucial to reconceptualize the prism of peace and transition processes away from the classical linear, siloed model to go beyond the vision of peace agreements as both the starting point and anchor of assessment. Peace agreements and the processes to implement them are key recurring milestones (critical junctures) subject to both setbacks and constant re-negotiation. Inclusive implementation processes – when they are (at least partly) genuine and meaningful – can create the preconditions and set precedents for pathways to inclusive outcomes. Hence, there is a fundamental need to focus on the objective of inclusive outcomes at every step of the way to ensure that countries are ultimately on a pathway to inclusive societies and polities.

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223 See the Bangsamoro case study for more details.

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# Annex 1

## Outline of the conflicts and peace process of the 11 cases

The findings of this research project are based on a comparative analysis of the implementation of 11 cases of political transition or peace processes. These 11 cases span decades and continents. The social, economic and political contexts differ enormously, as do the conflicts that the processes were intended to resolve. Every conflict is unique and the cases take in decades-long wars that have killed hundreds of thousands of people, small-scale violent conflict with far lower death tolls, and much that lies between. The number and type of principal actors vary from two fairly homogenous parties, to numerous shifting alliances and splinter groups. The type and level of involvement of international actors also differ. It follows that each peace and transition process is also different, and their implementation, and inclusion in their implementation, is impacted by their context. It is important therefore to have a basic awareness of the conflicts that led to these peace and transition processes, and the processes themselves.

### Afghanistan: Bonn Agreement (2001)

War had been ongoing in Afghanistan since 1979 and the Soviet Union's invasion, when the country became a battleground, and its fighters became proxies, for the Cold War powers. In the aftermath of 9/11, the US led an invasion of Afghanistan and, by November 2001, the Taliban, who had held power since the mid-1990s, was toppled. The UN determined to play a central role in the country's transition and, in November 2001, Afghan parties, including factions of the Northern Alliance and international players, but excluding a number of groups from other parts of the country, gathered in Bonn, Germany, to negotiate an agreement detailing the process for rebuilding a government in Afghanistan.

The Bonn Agreement identified an Interim Administration and set an ambitious political timeline of four years to select a transitional government, develop a constitution and hold presidential and parliamentary elections to establish a new government. The constitution was approved in 2004, after which elections took place. However, the agreement and ensuing process did not bring violence to an end.

### Burundi: Arusha Peace and Reconciliation Agreement (2000)

The war that began in Burundi in 1993 killed at least 300,000 people and displaced more than a million before the final ceasefire was signed in 2008. Fighting was predominantly between the Tutsi-dominated military and the Hutu-based National Council for the Defence of Democracy—Forces for the Defence of Democracy

(CNDD-FDD) and the Party for the Liberation of the Hutu People—Forces for National Liberation (PALIPE-HUTU-FNL).

As fighting went on, the government, National Assembly and all political parties were engaged in peace talks, which began in 1996, facilitated by Tanzania and South Africa, and concluded with the Arusha agreement, signed in August 2000. The two major armed non-state groups were not part of the negotiations, but they were included through an additional agreement in 2003. Between 2000 and 2005, a transitional legislature, executive and judiciary were in place, charged with agreeing on a new constitution. In 2005, there was a referendum on the new constitution, followed by elections. The transition ushered in a decade of relative stability.

### **Guatemala: Agreement for a Firm and Lasting Peace (1996)**

In 1996, the government and the Guatemalan National Revolutionary Unity (URNG), a coalition of opposition armed groups, signed the Agreement for a Firm and Lasting Peace. The war had lasted for 36 years and an estimated 200,000 people had been killed or “disappeared,” a great majority of them among the Maya population. The UN-mediated peace process of 1994–1996 in fact comprised a number of accords covering a range of topics from demobilization and reintegration to socio-economic and political reform. Implementation of the agreement required constitutional changes, and a national referendum was held in 1999. The changes were rejected by 55 percent of voters in a vote with a turnout of only 17 percent. While the peace agreement brought an end to the war, extremely high levels of violence and organized crime continue.

### **Kenya: Transition Agreements (2008)**

Long-standing grievances among Kenya’s population stem from the colonial period, but have only been exacerbated by post-colonial governments. Politics in Kenya functions within a system of patronage where corruption is rife, and parties have polarized and ethnicized. This contributed to the violence of 2007–08, when irregularities in the 2007 election, and contestation of the results, triggered protests across the country, which deteriorated into inter-ethnic violence. More than 1,000 people died and 350,000 people were displaced in just a few weeks. The conflict drew international attention, and the African Union mandated a panel of mediators headed by Kofi Annan to facilitate a solution. The Kenya National Dialogue and Reconciliation was launched in January 2008 and, in a few weeks, produced four peace agreements, to be implemented by commissions. These agreements were intended to end the immediate violence as well as to begin to address the root causes of the crisis. In 2010, a new constitution that significantly devolved power was passed in a referendum and the transition formally ended with the holding of democratic elections.

### **Liberia: Comprehensive Peace Agreement (2003)**

A major cause of the wars in Liberia was the exclusionary nature of governance and the instrumentalization of ethnicity in the exercise of power. The first war lasted from 1989 until 1997. Two years later, war broke out again, as Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) fought the government. Some 60,000 to 80,000 people are estimated to have been killed, and one million people displaced.

In 2002, the UN set up an International Contact Group on Liberia. Formal negotiations began in June 2003, with ECOWAS as chief mediator. The armed parties agreed a ceasefire, and then 18 political parties and six civil society entities joined the talks as observers. A Comprehensive Peace Agreement was signed in Accra, Ghana, in August 2003. A power-sharing transitional government took office in October and remained in place until democratic elections in late 2005. The successful transition set Liberia on a path to peace and democratization.

### **Nepal: Comprehensive Peace Agreement (2006)**

Armed Maoists emerged in remote regions of Nepal in 1996, in opposition to the monarchy and widespread exclusion and discrimination. Escalating violence led to the King's dismissal of Congress in 2001 and imposition of direct rule: a state of emergency was declared. However, by 2006, rising popular discontent with the monarchy led to a People's Movement, which brought about the reinstatement of Parliament, which in turn suspended the monarchy.

In November 2006, the government and the Maoists signed a Comprehensive Peace Agreement, committing to end all discrimination. A Constituent Assembly was to be elected and was to draft a new constitution. The Assembly formed in 2008, but its tenure expired in 2012 without an agreed constitution. Elections for a second Constituent Assembly took place at the end of 2013, which finally adopted a new constitution in September 2015. Armed violence has come to an end and democratic legislative elections were held in 2017, but political in-fighting is preventing progress, particularly that of reconstruction after the devastating 2015 earthquake.

### **Northern Ireland: Belfast (Good Friday) Agreement (1998)**

The roots of divisions over Northern Ireland can be traced back centuries, to discrimination by the British against Irish Catholics, exacerbated by the settlement of Protestants from Scotland and England. Violence flared in the 1960s, after a burgeoning civil rights movement met with police repression. Conflict escalated and thousands of people were killed over the next decades.

A series of previous (failed) attempts to resolve the conflict laid the groundwork for the 1998 Belfast (Good Friday) Agreement, which was mediated by the US and signed by the UK and Ireland Governments and Northern Ireland's political parties. Its provisions included a power-sharing arrangement for Northern Ireland and cooperation mechanisms for Northern Ireland, Ireland and the UK. The agreement was accepted through referendum in Northern Ireland. Ireland also accepted the necessary constitutional changes by referendum. It laid the ground for peace and stability after the protracted conflict, but the power-sharing arrangements have proved fragile, with multiple suspensions of the Northern Ireland Assembly.

### **Philippines: Comprehensive Agreement on the Bangsamoro (2014)**

Violent conflict began between the government and armed groups claiming to represent the Philippine Muslim (Moro) population of the region of Mindanao at the end of the 1960s. While the Moro National Liberation Front and the government signed a peace agreement in 1996, the Moro Islamic Liberation Front and the government only signed the Comprehensive Agreement on the Bangsamoro in March 2014. The agreement incorporates a series of accords signed between 1997 and 2014. Implementation therefore began before 2014 and is ongoing: the core legislative reform to result from the peace agreement is Bangsamoro Basic Law (now commonly referred to as the Bangsamoro Organic Law, or BOL), which was subjected to a referendum in January 2019. The yes vote has paved the way for the establishment of the Bangsamoro Transition Authority. Armed violence in the region has been substantially reduced, although some smaller armed groups and private militia remain active.

### **Solomon Islands: Townsville Agreement (2000)**

The causes of armed conflict on the Solomon Islands are complex, but many grievances related to unequal development. Fighting began in 1998 in the province of Guadalcanal, between the Isatabu Freedom Movement (made up of people from Guadalcanal) and the Malaita Eagle Force (made up of people from the island of Malaita who had migrated to Guadalcanal). It continued until 2003, also involving the police, which fractured along ethnic lines.

Formal peace talks began in mid-1999 and an accord was rapidly signed, but fighting continued. In June 2000, the MEF staged a coup and conflict intensified. Peace talks between the national government, the provincial government, the MEF and the IFM resumed in Townsville, Australia, in October 2000, and the Townsville Peace Agreement commits the Government of the Solomon Islands to constitutional reforms. Few of the agreement's provisions, were, however, implemented and armed conflict was not brought to an end until after the Regional Assistance Mission arrived in 2003. Eventually, the government decided to draft a new constitution: several drafts were produced, but none has been ratified as of end 2018.

### **South Africa: Interim Constitution (1994)**

South Africa's democratic transition ended the brutal repression, excessive political violence and regional wars fuelled by the authoritarian white minority regime. The political settlement was negotiated between 1990 and 1994. Twenty-six political parties and organizations signed a National Peace Accord in September 1991. The Convention for a Democratic South Africa (CODESA), a national dialogue, collapsed after around six months of talks. However, the government and the African National Congress continued to negotiate in private and, in September 1992, agreed on a Record of Understanding. The Multi-party Negotiation Process, involving 26 political groupings, completed the negotiations in November 1993. A Government of National Unity was installed and South Africa's first democratic elections took place in April 1994. Parliament elaborated a new permanent democratic constitution, which came into effect in 1997 that protects the human rights of all South Africans. Transition institutionalized liberal democracy and ended political violence, but the nation remains divided along racial lines; the social inequities created by apartheid were not redressed and violence, especially against women, remains rife.

### **Tajikistan: General Agreement on the Establishment of Peace and National Accord (1997)**

In 1992, shortly after the dissolution of the Soviet Union, Tajikistan collapsed into civil war, as pro-government representatives of the "old" Communist elite fought a loose coalition of Islamists, democrats and nationalists. Between 1992 and 1997, 60,000 to 100,000 people were killed and more than 500,000 were displaced. UN-mediated negotiations resulted in a peace agreement in 1997, which set up a power-sharing arrangement between the Government of Tajikistan and the United Tajik Opposition, as well as a Commission on National Reconciliation, responsible for overseeing other aspects of implementation. The transition ended the war and elections took place in 1999 and 2000. These entrenched the power of the authoritarian government.

# Annex 2

## Detailed Research Plan

### Development of an analytical framework to study inclusion in implementation processes

In a conceptual step, the study elaborates a comprehensive analytical framework to examine the modalities, conditions and impact of inclusion in implementation processes by drawing from existing theoretical concepts and empirical data. For this purpose, 32 IPTI case studies on inclusion in peace processes, which produced agreements that were to a varying extent implemented, were screened to identify relevant factors in addition to those identified in the literature. The comprehensive analytical framework guides the empirical case analysis and qualitative comparison of eight process design factors in 11 country cases. The analytical framework may be used by researchers and policymakers to structure prospective analyses and assess avenues, conditions and potential effects of broad-based inclusion in forthcoming agreement implementation processes.

### Qualitative comparison of eight process design factors in 11 implementation cases

Eight factors that primarily relate to the institutional design of implementation processes and have been identified in the development of the comprehensive analytical framework are compared in 11 country cases. The purpose of the comparison is to assess the effects these factors may have on the ability of included actors to participate and influence implementation processes. The cases are compared in respect to the following issues identified in the comprehensive framework:

- a) Modalities of inclusion in agreement implementation
- b) Rationale for inclusion in agreement implementation
- c) Provisions of agreements for inclusion in their implementation
- d) Inclusion in different mechanisms and sectors of implementation processes
- e) Functioning of inclusion modalities in implementation mechanisms
- f) Gatekeepers of inclusion in agreement implementation
- g) Selection of actors included in agreement implementation
- h) Timing of actors included in agreement implementation

The study qualitatively compares these issues in the implementation of 11 agreements that were stuck between 1994 and 2014 in Afghanistan, Burundi, Guatemala, Kenya, Liberia, Nepal, Northern Ireland, Philippines, Solomon Islands, Tajikistan and South Africa. Since the analysis depends on existing data, the case studies have been selected from IPTI's case collection because they cover relatively well-documented implementation



processes with sufficient information and significant variations with regards to the eight examined issues. The selected cases therefore enable a fruitful exploration of potential effects of the eight factors and the articulation of assumptions. The case selection is, thus, not representative and serves the purpose of exploration rather than the testing of hypotheses. Certain cases in IPTI's database without discernible or sufficiently well-documented implementation processes – and which were thus not included in this study's qualitative case sample – are referred to where appropriate.

### **Concise case study comprising the comprehensive frameworks' full range of parameters**

One country case, the implementation of the Comprehensive Agreement on the Bangsamoro in Mindanao, Philippines, is being examined in respect to all parameters of the comprehensive analytical framework. The case analysis serves to: (a) investigate the potential implications of the full range of parameters for inclusion; (b) explore the interconnectedness of factors; and (c) gauge the impact included actors can make on the outcome of implementation processes. The case has been selected because the peace process involves a variety of inclusive commissions and inclusion modalities in different implementation mechanisms, and thus serves well for exploration and illustration. The recent case can, moreover, be analysed on the basis of available data.

### **Expert workshop, review and further data analysis and interpretation**

As an integral part of the project, IPTI and the OGC hosted a two-day expert workshop in Oslo to debate the conditions for inclusion and its effects on implementation processes based on the preliminary findings of the study. The invited researchers, policymakers, practitioners and civil society representatives assessed the implications of issues relating to features of implementation processes that affect inclusion for policymaking and practice. The participants' evaluation of the preliminary findings against their own experience provided further input to the study. The workshop also served to encourage ongoing knowledge transfer among researchers, policymakers, practitioners and civil society representatives. As a consequence, the research team reassessed the existing data in order to do justice to the complexity of implementation processes and to identify more findings with regards to the effects of inclusion on both formal implementation and the overall political change processes in the context of a logic of pathways to peace.







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